

(2013) 07 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No's. 9525 of 2005 and 4166 of 2007

M/s. Shaw Wallace and Co. Ltd.

APPELLANT

Vs

The Presiding Officer and George Devaram
George
Devaram Vs M/s. Shaw Wallace and Company Limited and
The Presiding Officer

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 2(e), 33, 33(1), 33(2)(b)

Citation : (2013) 5 LLN 701

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : S. Ravi for M/s. Gupta and Ravi in W.P. No. 9525 of 2005 and Mr. V. Ajoy Khose in W.P. No. 4166 of 2007, for the Appellant; S. Ravi for M/s. Gupta and Ravi for 1st Respondent in W.P. No. 4166 of 2007, Mr. V. Ajoy Khose for 2nd Respondent in W.P. No. 9525 of 2005, Labour Court for 1st Respondent in W.P. No. 9525 of 2005 and 2nd Respondent in W.P. No. 4166 of 2007, for the Respondent

Judgement

S. Nagamuthu, J.—The petitioner in W.P. No. 4166 of 2007, who is the 2nd respondent in W.P. No. 9525 of 2005, is the workman and

the 1st respondent in W.P. No. 4166 of 2007, who is the petitioner in W.P. No. 9525 of 2005 is the employer. In both the writ petitions, the

award of the labour court, Chennai, made in I.D. No. 423 of 1991 dated 19.11.2004 is under challenge. The facts of the case leading to these

writ petitions would be as follows [for the sake of convenience, hereinafter, the workman shall be referred to as the petitioner and the employer

shall be referred to as the respondent management]:-

Admittedly, the respondent/management is non public utility service in terms of the First Schedule to the Industrial Disputes Act, 1947. The

petitioner/workman was previously working under the respondent in Chennai as Typist. By order dated 15.06.1984, the petitioner was transferred from Chennai to Kottayam Mixing Works run by the respondent management w.e.f. 02.07.1984. But the petitioner did not obey the order of transfer. Instead, he filed a civil suit in O.S. No. 5911 of 1984 before the I Assistant Judge, City Civil Court, Chennai, challenging the order of transfer and also seeking permanent injunction to restrain the respondent from giving effect to the said order. Initially, the learned I Assistant Judge by order dated 25.09.1984, granted an order of temporary injunction. Challenging the same, the respondent management filed an appeal in C.M.A. No. 294 of 1984 before the Principal Judge, City Civil Court, Chennai. By order dated 27.11.1984, the learned Principal Judge allowed the appeal and set aside the order of temporary injunction granted in favour of the petitioner. As against the same, the petitioner filed a revision in CRP No. 93 of 1985 before this Court. By order dated 11.01.1985, this court dismissed the same.

2. Thereafter, the respondent management by letter dated 16.01.1985 called upon the petitioner to report for duty at Kottayam immediately. But, the petitioner did not choose to join duty. Instead, he applied for leave from 11.01.1985 to 31.01.1985. The reason stated in the leave application was that he was suffering from backache. The respondent management doubted the said statement and, therefore, advised the petitioner to under go medical examination. Accordingly, the petitioner appeared before one Dr. B. Krishnan Rao for medical check up. By certificate dated 06.02.1985 the Doctor opined that the petitioner workman was not suffering from any back pain. Even then, the petitioner did not join duty. In the meanwhile, the petitioner withdrew the suit in O.S. No. 5911 of 1984 with a liberty to raise an industrial dispute. The Shaw Wallace Employees' union to which the petitioner is the member raised a dispute before the Labour Court No. I, Chennai on 20.03.1985. While so, the respondent management issued a charge sheet to the petitioner on 24.01.1985 alleging that the petitioner had not obeyed the order of transfer. Yet another charge sheet was issued on 22.02.1985 alleging that the petitioner had applied for leave on false ground. The petitioner workman submitted his explanation denying the charges. However, an enquiry officer was appointed to enquire into the charges. On enquiry, the enquiry officer submitted

a report holding him guilty of the charges. Based on the same, the petitioner was dismissed from service on 29.04.1985. Challenging the said order

of dismissal, the petitioner raised an industrial dispute in I.D. No. 423 of 1991 before the Principal Labour Court, Chennai. By award dated

19.11.2004, the Principal Labour Court set aside the order of punishment and directed reinstatement in service with continuity of service and with

50% of back wages. Challenging the said award, the respondent management is before this court with W.P. No. 9525 of 2005 and challenging the

denial of 50% of back wages, the petitioner workman is before this court with W.P. No. 4166 of 2007.

3. The petitioner/workman contended before the Labour Court that the dismissal of the petitioner from service without complying with Section

33(2)(b) of the Industrial Disputes Act was illegal. The Labour Court agreed with the said contention and accordingly set aside the order of

dismissal by award dated 19.11.2004. In W.P. No. 9525 of 2005, the respondent management contends that the Labour Court was not right in

holding that the dismissal was wrong since there was no conciliation proceeding pending on the date of order of dismissal. It is the contention of the

learned counsel for the petitioner workman that as on the date of dismissal order there was conciliation proceeding pending.

4. According to the learned counsel for the petitioner, a complaint was forwarded by the trade union on 20.03.1985 requesting for conciliation

between the workman and the management in respect of the transfer of the petitioner to Kottayam. On receipt of the same, the conciliation officer

sent a letter to the management under letter No. 571/1985 dated 27.03.1985 and based on the same, some investigation was done. Thus, it is the

contention of the petitioner workman that the conciliation proceeding commenced on 20.03.1985 itself.

5. But, according to the learned counsel, on the dispute raised by the trade union, the conciliation officer sent a letter to the petitioner workman

under letter vide Re. S3/75410/85 dated 05.11.1985 informing the petitioner that the conciliation officer had commenced the conciliation w.e.f.

14.11.1985. The learned counsel would point out that the dismissal of the petitioner was on 29.04.1985 itself. Thus, as on the date of dismissal,

according to the learned counsel for the respondent, conciliation proceeding was not pending as conciliation proceeding commenced subsequently

on 14.11.1985.

6. Before going into further discussions on facts, let us have a look into the relevant provisions of the Industrial Disputes Act. Section 33(1) of the

Industrial Disputes Act reads as follows:-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2[an arbitrator or] a

Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service

applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such

dispute, save with the express permission in writing of the authority before which the proceeding is pending.

7. A reading of the above provision would make it very clear that express permission u/s 33 is required in writing from the authority if only there is

a conciliation proceeding pending before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court, etc. Thus,

the above provision leaves no doubt that to invoke the said provision it should be demonstrated that as on the crucial date of dismissal from

service, there was a conciliation proceeding pending.

8. What is a conciliation proceeding has been defined in Section 2(e) of the Industrial Disputes Act which reads as follows:-

2(e) ""conciliation proceeding"" means any proceeding held by a conciliation officer or Board under this Act;

9. It is the contention of the learned counsel for the petitioner/workman that the moment a dispute is raised before the conciliation officer, the

conciliation proceeding commences and it becomes pending whereas, according to the counsel for the respondent management, the conciliation

proceeding commences only from the date on which the conciliation officer decides to go in for conciliation by fixing a date.

10. In this regard, the learned counsel for the petitioner has relied on a judgment of a Division Bench of this court in The Management of Bharathan

Publication (P) Limited Vs. The Labour Officer-III and Bharathiyar Employees"

Mazdoor Sangh, In that case, the crucial question was whether any formal intimation to the management by the conciliation officer is required so as to hold that from the date of such intimation, the conciliation proceeding commences. The Division Bench referred to Rule 23 of The Tamil Nadu Industrial Disputes Rules, 1958 which reads as follows:-

23. Conciliation Proceedings in non-public utility service.-(1) Where the Conciliation Officer receives any information about an existing or

apprehended industrial dispute which does not relate to a public utility service and he considers it necessary to intervene in the dispute, he shall give

formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be

specified therein. (2) The Conciliation Officer may hold a meeting of the representatives of both the parties jointly or of each party separately. (3)

The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

Having extensively referred to these provisions, in paragraph 7 of the judgment, the Division Bench has held that it is not necessary that in each

and every case, a formal intimation should be sent so as to hold that from the date of such intimation only the conciliation proceeding commences.

To make it more understandable, let me extract paragraph 7 of the judgment which reads as follows:-

7. We have been taken through the record. It is seen that the matter was attended by the concerned Officer on a number of dates after the

suspension of Mr. Karunakaran and he has subsequently been dismissed on 22nd April 2007, which has led to another complaint being filed to the

Conciliation Officer and he has given a Failure Report on 30th October 2007. It cannot be said that the dismissal was not a dispute under

conciliation before the officer. Yet there is no formal intimation as such on record even with respect to dismissal that the matter is being admitted in

conciliation. Can it therefore, be said that all the exercise that the officer was doing all throughout was not conciliation at all? It is true that there is a

provision for issuing a formal intimation under Rule 23(1) of the Rules, as has been noted above. But, it is not necessary that in each and every

case such a formal intimation would be issued. It is possible that mediation, investigation and conciliation can go on together simultaneously or one

after another without there being any specific separate notice that from a particular date conciliation is going to begin. In the facts of this case, it cannot therefore be said that what the officer was doing was not conciliation.

11. A reading of the above judgment would make it appear that it is the view taken by the Division Bench that soon after a dispute is received by the conciliation officer, it is possible that a mediation or investigation can also happen simultaneously with conciliation. Therefore, according to the Division Bench, even in the absence of any formal intimation, if some action has been taken by the conciliation officer on the dispute, then the conciliation proceeding has already commenced.

12. But, the learned counsel for the respondent management would make reliance on a judgment of another Division Bench of this court in *The Management of Menon Pistons Pvt. Ltd., Shirol, Kolhapur Vs. The Labour Officer II, Madras - 108, The Management, Menon IMPEX Private Ltd., Madras-34* and *Thiru. R. Jagannathan* wherein a quite contrary view has been taken. In that case, the Division Bench had occasion to refer to the above provision including Rule 23 of the Tamil Nadu Industrial Disputes Rules. In this case, the Division Bench has held the view that the conciliation proceedings will not commence unless a date is specified by the conciliation officer for commencement of proceedings as required in Rule 23(1) of the Rules. In paragraph 18 of the said judgment, the Division Bench has held as follows:-

18. ...Even assuming that the management had been called upon to offer their remarks on the petition filed by the employee that would not mean that conciliation proceedings had been commenced. As argued by the learned counsel for the appellant, the Act clearly gives the Conciliation Officer a wide discretion as to whether he should intervene in matters relating to non-public utility service. For this purpose, he can even hold a meeting of the representatives of both the parties either jointly or separately. He can adopt all means that are proper to satisfy himself as to the existence of industrial dispute. Unless a date is specified by him for commencement of proceedings, we cannot assume that the proceedings have commenced. In fact Rule 23(1) states that it is only with effect from that date, that the proceedings will commence. If, in fact such date had been given, the third respondent viz., the worker, would have brought to the notice of

this Hon''ble Court that a date has been specified by the Conciliation Officer for commencement of proceedings. It has not been done in the instant case. When the Rules are clear, that the Conciliation Officer has a duty to set down a date for commencement of Conciliation proceedings, it is neither possible nor correct for this Court to assume that the Conciliation proceedings have commenced. Before commencement of Conciliation proceedings, the Conciliation Officer has on a perusal of the records before him found that he had no jurisdiction to decide the dispute, since the Appropriate Government was not the State of Tamil Nadu.

Therefore even at the threshold the matter had ended.

13. The learned counsel for the petitioner workman has brought to my notice that a SLP filed against the judgment in Management of Bharathan

Publications (Private) Ltd. v. Labour Officer III, Kuralagam, Chennai, 2009(3) LLN 821 before the Hon''ble Supreme Court was disposed of

holding that the workman was not right in making a complaint to the conciliation officer as the remedy for him was to raise an industrial dispute.

Accordingly, the Hon''ble Supreme Court, permitted the Management to withdraw the writ petition. At any rate, the Hon''ble Supreme Court did

not examine the question as to when the conciliation proceeding commences.

14. A reading of the above judgment of the Division Bench in Menon Pistons case would make it clear, according to the Division Bench, the

conciliation proceeding does not commence from the date of receipt of the industrial dispute. Instead, it commences only from the date fixed by the

conciliation officer under due intimation to the management. But, in the subsequent judgment, the other Division Bench in Management of

Bharathan Publications (Private) Limited's case, cited supra, has taken a quite contrary view. It is obvious that unfortunately, the judgment in

Management of Menon Pistons Pvt Ltd. v. The Labour Officer II Madras-108, 2000 3 L.W. 71 was not brought to the notice of the Division

Bench which decided Bharathan Publications case.

15. It is the contention of the learned counsel for the respondent/management that unless the management knows that there is a conciliation

proceeding pending, one cannot expect the management to seek permission for passing an order of dismissal from the conciliation officer. Further,

according to Section 12 of the Industrial Disputes Act, in respect of Non Public

Utility Service, on receipt of a dispute, the conciliation officer has got discretion either to commence conciliation or not to commence. Thus, on receipt of the representation of the workman, if only the conciliation officer decides to conduct conciliation, there is commencement of conciliation. Thus, according to the learned counsel, the conciliation officer should fix a date indicating the commencement of conciliation. Therefore, according to him, the view taken by the Division Bench in Management of Menon Pistons Pvt Ltd.'s case, cited supra, is the correct view. I have considered the above submissions. As I have already pointed out, these two Division Bench judgments contradict each other on the crucial issue as to when the conciliation proceeding commences for the purposes of Section 33(1) of the ID Act. This conflict needs to be resolved by a Larger Bench. Therefore, I deem it appropriate to direct the Registry to place the papers before My Lord, The Hon'ble The Acting Chief Justice, to constitute a Full Bench to resolve the conflict between the above judgments of the Division Benches of this Court and to answer the following questions:-

(i) Whether the conciliation proceedings in terms of Section 2(e) of the Industrial Disputes Act, 1947, for the purposes of Section 33(1) of the Industrial Disputes Act, 1947, commences from the date on which the industrial dispute is received by the conciliation officer?

Or

(ii) Whether it commences from the date fixed by the conciliation officer in the notice under intimation to the Management under Rule 23 of The Tamil Nadu Industrial Disputes Rules, 1958?