

(2011) 10 MAD CK 0200

In the Madras High Court

Case No : Writ Petition No. 4011 of 2009

N. Murugesan, L. Johnson and N. Gunasekaran

APPELLANT

Vs

The Management, M/s. Magtorq India Limited, Hosur and The
Labour Court, Salem

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25F(C), 25G
Tamil Nadu Industrial Disputes Rules, 1958 — Rule 62(2)

Citation : (2011) 10 MAD CK 0200

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Govardhanan for M/s. M. Gnanasekar, for the Appellant; S. Ravindran for M/s. T.S. Gopalan and Co. for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioners have filed the present writ petition seeking to challenge an Award passed by the second respondent Labour Court, Salem in I.D.No.658 of 2000, dated 10.12.2007. By the impugned Award, the labour court held that there are valid reasons for retrenching the petitioners and the retrenchment was justified and the petitioners are not entitled for any relief. In that view of the matter, the industrial dispute was dismissed by an Award dated 10.12.2007.

2. When the writ petition came to be filed after one year and three months, the same was admitted on 20.3.2009. Pending the writ petition, their request for an interim direction was rejected by this court. On notice from this court, the first respondent management has filed a counter affidavit, dated 8.6.2009.

3. Mr. V. Govardhanan, learned counsel leading for Mr. M. Gnanasekar, learned counsel appearing for the petitioners contended that the impugned award passed

by the labour court was illegal and liable to be set aside by this court. It was the case of the petitioners that a collective industrial dispute was raised by the petitioners along with other employees u/s 2(k) of the I.D. Act and the matter was referred for adjudication by the second respondent Labour Court vide Government order in G.O.(D).No.935, Labour Department dated 24.11.2000. The said dispute was taken on file as I.D.No.658 of 2000. A claim statement dated 10.2.2001 was filed on behalf of the petitioners.

4. The contention made in the claim statement was that the first respondent Management was engaging workers at low wages and that the workers had formed a trade union. The management had started victimizing the workers. Several workers were victimized and that one of the worker victimized was by name Simon. He had got a favourable Award from the labour court. The management utilizing the help of one P.V.N. Kutty, Muralidharan, G.K. Venkatesh had started a new company called Megtorq. The said company was a Benami company. Both the companies are managed by one Balagopal. Though a settlement was signed between the management and the worker on 20.6.1997, the settlement was not properly implemented. Hence the workers called for a general body meeting and sent a notice to the management on 29.10.1998. The management immediately retrenched 13 workers, whose names were set out in the annexure to the order of reference which included these three petitioners/workers also. Therefore, an industrial dispute was raised before the Labour Officer, Krishnagiri. The management did not participate in the conciliation meetings on several dates. Therefore, a failure report was sent to the Government, which in turn referred the dispute for adjudication. The management did not participate in the conciliation talks and employed 13 workers as fresh employees. All the 13 workers were working in the electronic shop, Drive assembly, welding and fabrication. The contention that there was reduction in number of orders was not correct. Hence it was prayed that retrenchment must be held to be illegal and the workers should be given the relief.

5. The first respondent management has filed a counter statement, dated Nil (September, 2001). In the counter statement, it was stated that the company was started in the year 1989 and was engaged in manufacture of Eddy current drives and electronic controls. It had 46 employees as on 24.10.1998. Further, it had an agreement for the manufacture of Eddy current drives and electronic controllers. They had also a selling agreement for marketing these products. In addition to these products, the respondent company was also manufacturing power transmission products from 1991. Due to severe recession from the year 1996-97, the orders for the company was adversely affected and the profits also came down substantially. The orders for the Eddy current drives and controls have become Nil from April, 1998. Hence the management had discontinued the manufacture of these products all together and thus, rendering several employees surplus. The income derived from the Planetary Gear Box was minimal and the manufacturing of these gear boxes can be done with a few

employees and that the existing manpower was not required. Therefore, having no other option, it had retrenched 13 workmen comprising in different categories, I.e., machine shop operators, electronic shop operators for Eddy current drives and controls, welding and fabrication for Eddy current drives. The respondent had followed the procedures u/s 25F(C) of the I.D. Act. They had also published a list of retrenched employees under Rule 62(2) of the Tamil Nadu Industrial Disputes Rules and that the retrenchment was done strictly in terms of the Act. The retrenchment compensation was paid by way of cheques and the workmen had also encashed the cheques. Out of 13 employees, three petitioners had also settled their dues. It was stated that the first respondent had no connection whatsoever with M/s. Dynaspade Integrated Ltd., Hosur and that they are different legal entities. The settlement referred to by the petitioners were also scrupulously implemented.

6. Before the Labour Court, on behalf of the workmen, the first petitioner was examined as P.W.1. One Devendran was examined as P.W.2. On the side of the workmen, one document was filed and marked as Ex.P.1. The management had examined one G.K. Venkatesh (the Managing Director of the Company) as R.W.1. On their side, 15 documents were filed and marked as Ex.R.1 to R.15. The labour court on the basis of these evidence (oral and documentary), came to the conclusion that the technical knowledge and skills required in the manufacture of gear box and Eddy current drives are totally different. The management had real problems in the manufacture of Eddy current drives. They had no other option except to retrench the employees who were engaged in the Eddy current drives and controls. Those employees were not aware of manufacture of gear box. Therefore, there was reasonable classification in retaining some workers and retrenching others. The bank accounts furnished by the management showed that cheques given to the employees were encashed. Even though accepting the retrenchment compensation is not a bar for disputing the validity of retrenchment and in the present case, the labour court found that the retrenchment was bona fide. There was no evidence to show that seniors were sent out and juniors were retained.

7. The learned counsel for the petitioners Mr. V. Govardhanan, referred to the seniority list marked before the labour court as Ex.R.14, dated 24.10.1998 to contend that the petitioners who were appointed as Turning Machine Operators in the machine shop were retrenched even though in the case of the first and third petitioners they had joined in the year 1993 and in the case of the second petitioner, he had joined in the year 1991. It is seen that the persons whom they had referred to as juniors were all held different posts as a Gear Box Assembly, Fitter-Drilling, etc. Even in the evidence tendered by P.W.1 (Murugesan, who is the first petitioner), in cross examination he had stated that while retrenching, "last come, first go" was followed. Similarly, P.W.2, Devendran in his cross examination had stated that ECD and Gear box workers are different and "last come, first go" rule was followed. The Managing Director, who was examined as R.W.1 had stated that N.K. Madesh and Kalyanasundaram did not come under

the retrenchment category and that they did not retrench anybody in the gear machine operator post, which is a highly technical job.

8. In support of the award passed by the labour court, Mr. S. Ravindran, learned counsel appearing for M/s. T.S. Gopalan & Co. for the first respondent referred to a judgment of a Supreme Court in *Swadesamitran Limited, Madras Vs. Their Workmen*, for contending that the rule of "last come, first go" can be deviated if justified by the employer for the departure made from the said principle. In case where the departure was not justified, then a presumption can be made that Section 25G of the I.D. Act was not followed. He referred to the following passage found in page 508 of the said judgment, which reads as follows:

...The position under the industrial law seems to us to be fairly clear. The management has the right to retrench the workmen provided retrenchment is justified. In effecting retrenchment the management normally has to adopt and give effect to the industrial Rule of retrenchment. For valid reasons it may depart from the said Rule. If the departure from the said Rule does not appear to the Industrial Tribunal as valid or satisfactory, then the action of the management in so departing from the Rule can be treated by the Tribunal as being *mala fide* or as amounting to unfair labour practice; in other words, departure from the ordinary industrial Rule of retrenchment without any justification may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior considerations and as such it is *mala fide* and amounts to unfair labour practice and victimisation....

(Emphasis added)

Therefore, he contended that the management was justified in retrenching the petitioners and the departure if any for the rule of last come first go was satisfactorily explained and accepted by the labour court. Hence there is no case made out to interfere with the impugned award.

9. He further submitted that while exercising jurisdiction under Article 226 of the Constitution, especially in dealing with the writ in the nature of certiorari, parameters of exercise of power has been set out by the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, wherein in paragraph 7, it was observed as follows:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is

opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* 1, *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* 2 and *Kaushalya Devi v. Bachittar Singh* 3)

Therefore, he prayed that this court should not interfere with the well considered Award passed by the labour court.

10. In the present case, there is no attack that the condition precedents found in Section 25F(a) and (b) were not followed in retrenching the three petitioners. The only question was whether the respondent management in deviating from the principles laid down u/s 25G of the Industrial Disputes Act was justified in retrenching the 13 workers, who were in the ECD Section and retaining some of the workers who were involved in manufacture of gear box?

11. The evidence of the workers themselves showed that manufacture of gear box involved special training. In his evidence R.W.1 had stated that highly skilled technical workers were retained. Such a discrimination is permitted in terms of Section 25G and the employer had justified before the labour court for making a departure. As held in the *Swadesamitran's* case (cited supra), the respondent had satisfied the labour court in this regard.

12. Hence there is no case made out to interfere with the impugned Award. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs.