

**(1998) 11 MAD CK 0118**  
**In the Madras High Court**

N. Rajendran

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

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**Date of Decision :** 11-11-1998

**Acts Referred:**

**Citation :** (1999) 1 MLJ 160

**Hon'ble Judges :** T. Meenakumari, J

**Bench :** Division Bench

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### Judgement

T. Meenakumari, J.—The writ petition is for the issue of writ of certiorari to call for the records from the first respondent relating to his Award in I.D. No. 112 of 1985, dated 14.12.1987 and quash the same.

2. The case of the petitioner is that the joined services in the second respondent-Mill in April, 1981 as an apprentice in the Weaving Department. In October, 1983 the Management entered into a 12(3) settlement with the Premier Mill Workers Organisation without even disclosing the contents of the Settlement to its office bearers. In November, 1983, the Management asked the workers to give increased production. When the workers protested against the same saying that they were already giving high production and they could not increase production further, the Management said as per the settlement dated 5.10.1983 the workers had to give 85% efficiency and if they failed, disciplinary proceedings would be initiated and only then the workers came to know about the terms of the settlement and they became agitated against the office bearers of the Premier Mill Workers Organisation and the Management. It is also alleged that on 1.1.1984, the Management arbitrarily terminated the services of a number of workers who were members of the CITU Union alleging falsely that they were only apprentices and they failed to show satisfactory progress in learning work and efficiency and in the same month, the management terminated the services of the office bearers and leading members of the CITU Union. The petitioner was one among them who was retrenched by the Management. In pursuance of the termination of the services of the employees, they were forced to raise industrial

disputes. So far as the petitioner is concerned, I.D. No. 112 of 1985 was taken on file by the first respondent. As issues were same, all the Industrial Disputes were taken up together for joint enquiry. The Industrial Tribunal has passed a common order dated 14.12.1987 directing the respondents to pay compensation to the petitioner as shown in the award. As a result, the amount of Rs. 810, has been shown against the petitioner who happened to be the claimant in I.D. No. 112 of 1985. The above award has been impugned in the present writ petition.

3. Both the parties have filed their written submissions in this case.

4. The petitioner was employed under the second respondent as an apprentice by the order of appointment dated 14.4.1981. As per the order of appointment, the apprenticeship was for a period of three years which would expire on 13.4.1984. The second respondent has terminated the services of the petitioner by an order dated 17.1.1984 even before the completion of three years on the alleged ground that his performance was not satisfactory. It has been argued by then learned Counsel for the petitioner that the petitioner was never given any warning about his performance during the period of apprenticeship and no notice of termination of his services was given before terminating his services and no opportunity of being heard was given to the petitioner before termination and there was no compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. It has also been argued that the Labour Court has held that the petitioner is, not a workman u/s 2(s) of the Industrial Disputes Act, 1947. It has been argued that even assuming that the petitioner was an apprentice, his termination amounted to retrenchment and as the provisions of Section 25-F of the Act were not complied with, his termination is illegal and void. It, has been argued that the first respondent has held that the claimants were not temporary workers. They were only apprentices. The termination of the services of apprentices during the period of apprenticeship or probation on the ground of unsuitability cannot be considered retrenchment. It has been argued by the learned Counsel for the petitioner that the finding of the Labour Court is not sustainable in view of the decision of the Supreme Court in *Management of Karnataka State Road Transport Corporation v. Boraiah* (1984)1 L.L.J. 110. Learned Counsel for the petitioner has also argued that once the retrenchment is found to be illegal and void for the violative of the provisions of Section 25-F of the Act, the workman deemed, to be in service and he has to be paid backwages. It has also been argued that the order of termination is violative of the principles of natural justice as no opportunity was given to, the petitioner. Hence, it is submitted that the award is not sustainable in law and is liable to be quashed.

5. On the other hand, learned Counsel for the second respondent has submitted that the Mill was started in the year 1979. The petitioner was engaged as an Apprentice for a period of three years with effect from 14.4.1981. On 5.10.1983, a settlement was entered into u/s 12(3) of the Industrial Disputes Act. On 28.1.1984, the petitioner was terminated as the second respondent was not satisfied with the petitioner's attitude in learning work. It is stated that the

petitioner raised an Industrial Disputes and by the award dated 14.12.1987, the Labour Court held that the petitioner was only an apprentice and the management was not satisfied with his performance. Hence the management terminated his services.

6. After going through the rival contentions, the Labour Court has held that the petitioner was only an apprentice and not a regular workman. It has also held that M-2 settlement is binding; The Labour Court has also held that the termination of the apprenticeship of the petitioner is not as a measure of punishment. It is only due to his unsatisfactory performance as apprentice. It is only a simple discharge. Hence, Section 25-F of the Act is not attracted. The Labour Court has ordered payment of an amount equal to forty-five days stipend as compensation.

7. The petitioner herein has chosen to question the above award. A number of decisions have been referred to by both sides. One of such decisions in *Management of Karnataka State Road Transport Corporation v. Boraiah* (1984) 1 L.L.J. 110 relied upon by the learned Counsel for the petitioner, to substantiate his contention whether the termination of probation on the ground of unsuitability amounts to retrenchment. In the above case, in paragraph 13 the Supreme Court has held as under:

Once the conclusion is reached that retrenchment as defined in Section 2(oo) of the Industrial Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Section 25-F of the Industrial Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25-F of the Industrial Disputes Act in case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed.

In the above case, the Supreme Court has held that the termination of service on the ground of unsuitability amounts to retrenchment and the provisions of Section 25-F have to be complied with. On the other hand, learned Counsel for the second respondent has relied upon the decision of the Supreme Court in *M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another*, to substantiate his contention that the High Court cannot, interfere by substituting its satisfaction with satisfaction of employer nor it can hold that in order to support its satisfaction it was necessary for employer to produce some reports or communication or other evidence to show that performance of employee was below expected norms. More so, when employer had examined two witnesses to prove that employee's work was not satisfactory. Basing on the

above decision, learned Counsel for the second respondent has argued that once it was found that the assessment made by the employer was supported by some material and was not mala fide, it is not proper for the High Court to interfere and substitute its satisfaction with the satisfaction of the employer.

8. The material on record shows that before the Labour Court the list of documents marked on behalf of the workers were copies of letters addressed by the Union to the respondent Management. On behalf of Management, the evidence produced were, appointment order, performance evaluation and a copy of the termination order of the individuals. In the case of the petitioner, M-129 was the appointment order, M-130, M-131 was the performance evaluation and M-132 was the termination order given to the petitioner. A reading of the award of the Labour Court also shows that on behalf of the Management, only one witness namely M.W.1 the Labour Welfare Officer was examined. The petitioner had no occasion to put forward his case before the Tribunal that his performance was satisfactory nor he had chance to rebut the evidence of the Management witness. On the side of the workers, only six witnesses namely W.W.1 to W.W.6 were examined and they were some of the petitioners and also they were union leaders in the Industrial Disputes. A reading of the award shows that the other petitioners including the present petitioner have never been examined. There was no evidence from the side of the second respondent to show that even after the performance evaluation was not satisfactory, during the apprenticeship, the petitioner was given an opportunity to improve his work. So far as the petitioner is concerned, the second respondent has not produced any evidence to show that the petitioner has not shown any progress; in learning the work and improving his efficiency. The second respondent has simply stated that the performance was assessed by the superiors and it was found to be unsatisfactory and the petitioner did not satisfy the condition for absorption as permanent workers. In paragraph 9 of the award, it has been stated that the Labour Welfare Officer of the respondent mill has been examined as M.W.1 and he has stated that there is an apprentice scheme in their mills under which the efficiency of the apprentices, their conduct, aptitude etc. would be assessed from time to time during the, period of apprenticeship and thereafter during the period of probation and only if the management is satisfied with their performance they, would be absorbed as permanent workers, that there are about 1000 workers in the respondent mill, that out of them about 520 are permanent workers, that they were also first taken as apprentices at the time when the mill was started and only on their satisfactory completion of, apprenticeship they were made permanent and that the petitioner were also taken only as apprentices under the said apprenticeship scheme. He has further stated that the said apprenticeship scheme was confirmed by a settlement entered into between the workers' union by name Premier Mills Employees' Welfare Organisation and the, management u/s 12(3) of the Industrial Disputes Act. To prove that the performance evaluation of the petitioner was not upto the mark, the second respondent has never chosen to adduce evidence of the concerned officer under whom the petitioner was working

as he would be the proper person to speak of the performance. In this case, it is evident that the only witness, is the Labour Welfare Officer who is concerned only with labour problems and not about the performance of the individuals. From the above, it could be said that there was no evidence to prove that the performance of the petitioner was not satisfactory. In *M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another*, , the Supreme Court has held that the assessment must be supported by some material. In view of the above, it could be said that the action of the respondent Management in terminating the services of the petitioner is illegal. In *Wasim Beg Vs. State of Uttar Pradesh and Others*, , the Supreme Court had an occasion to deal with the case where the probationer has been discharged from the service. In the above case, the Supreme Court has ordered a compensation of Rs. 2,00,000 to serve the ends of justice. Relying upon the decision of the Supreme Court in *M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another*, , it could be said that the termination of the petitioner is illegal as no evidence was adduced on the side of the respondent except the performance evaluation report to say that the performance of the petitioner was not satisfactory. In such circumstances, the impugned order cannot be sustained. It has been argued by the learned Counsel for the second respondent that even assuming that the termination of the service of the petitioner is bad, the petitioner cannot be reinstated at this stage as the respondent Mill has imported and sophisticated machineries and the petitioner may not be in a position to cope up with the work. Following the above said decision of the Supreme Court that the termination of a worker is illegal for non-production of the evidence, I hold that due to efflux of time, it would suffice if compensation is awarded to the petitioner instead of reinstatement. The second respondent is directed to pay a sum of Rs. 75,000 (Rupees seventy-five thousand only) to the petitioner as compensation instead of reinstatement in the interests of justice, in the particular circumstances of the case. The amount should be paid in 2 months from the date of receipt of the order. This should not be taken as a precedent for the future cases. With the above directions, the award is quashed so far as the petitioner is concerned. The writ petition is allowed. No costs. Consequently, W.M.P. No. 21561 of 1989 is closed.