
(2001) 01 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 15574 of 1989 W.M.P. No. 23558 of 1994

Natarajan U.R.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 18B

Citation : (2001) 1 LLJ 1586

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant;

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—This writ petition seeks to quash the order of the first respondent, dated July 7, 1994 passed in LA. No. 95 of 1993 in I.D. No. 10 of 1992, rejecting the petitioner's application for impleading respondent Nos. 3 to 6 as parties to the dispute in I.D. No. 10 of 1992.

2. According to the petitioner, he was employed in the second respondent firm between May 1, 1985 and October 8, 1986, that on termination of his employment on October 8, 1996, he raised an industrial dispute which came to be referred for adjudication before the first respondent by G.O. Ms. No. 111(2), dated May 25, 1987 as I.D. No. 144 of 1987, which was renumbered as I.D. No. 10 of 1992. It is contended that when the dispute was taken up for trial, the managing partner representing the second respondent deposed before the Court that the firm was dissolved on March 30, 1990 and thereafter the petitioner was obliged to file an application in I.A. No. 95 of 1993 for impleading the other partners of the firm namely, respondent Nos. 3 to 5 as party respondents in I.D. No. 10 of 1992. In the affidavit filed in support of the said application, the petitioner claimed that the order of appointment, Exhibit W2, was in fact signed by respondent Nos. 3 to 5 along with the managing partner.

3. The said application was resisted at the instance of the respondents contending that since the respondent Nos. 3 to 5 were not made parties before the Conciliation Officer, there is no scope to implead them in the dispute by the first respondent. The said stand of the second respondent found favour with the first respondent which dismissed the petitioner's application in I.A. No. 95 of 1993.

4. The learned counsel for the petitioner relied upon a Division Bench judgment of this Court reported in *P. G. Brookes v. Industrial Tribunal, Madras* and Ors. 1953 II LLJ I which was rendered long prior to the introduction of Section 2-A(2) which was brought into the statute book by way of amendment by the State of Tamil Nadu. After the introduction of Section 2-A(2), it is no longer necessary for the workman to wait for a reference to be made by the Government in respect of matters relating to non-employment of workmen. The Division Bench after adverting to Section 18 of the Industrial Disputes Act, have held as under:

"As contended by the learned counsel for the petitioner, there is no section in the Act expressly empowering the Tribunal to add parties to the proceedings. Section 11(3) restricted the application of the provisions of the CPC to the four matters mentioned in Sub-clauses (a)(b)(c) and (d) of that section. The Tribunal is authorised to enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, issue commission for the examination of witnesses and in respect of such other matters as may be prescribed. It is not suggested that any other matters have been prescribed. It is therefore contended that Order 1, Rule 10, CPC does not apply, therefore, the Tribunal cannot add new parties. But in our view such power is necessarily implied in Section 18 of the Act. Clause (b) of Section 18 will not have any meaning unless the Tribunal has power to add parties. Under that clause an award is binding on all other parties summoned to appear in the proceedings as parties to the disputes, unless the Board or Tribunal, as the case may be records the opinion that they were so summoned without proper cause. Clause (a) deals with all parties to the industrial dispute. Clause (b) refers to all other parties summoned to appear as parties in the dispute. This necessarily implies that parties other than the original parties to an industrial dispute can be summoned as parties to the proceedings. Such parties can be summoned at the instance of a party or suo motu by the Tribunal by issuing notice to them. The clause also empowers the Tribunal to decide whether the parties so summoned were really proper parties. The only suggestion the learned Counsel can make is that the parties mentioned in Clause (b) are parties summoned by the Government. To put it differently according to learned counsel, if an industrial dispute is pending before a Tribunal the Government may go on adding parties to dispute. This construction will obviously introduce confusion in the proceedings and will enable the Government to interfere with the progress of the judicial process, which could not have been the intention of the Legislature. We would therefore hold that Clause (b) by necessary implication gives a power to a Tribunal to add parties."

5. In the case on hand, it is not in dispute that the second respondent is a partnership firm which consisted of respondent Nos. 3 to 5 along with one V.C. Gunasekaran as partners constituting the firm. It is also not in dispute that Exhibit W2 appointment order issued to the petitioner was signed by all the partners of the erstwhile firm. It is also not in dispute that the firm got dissolved on March 30, 1990. In such circumstances, applying the ratio of the Division Bench referred to above, the petitioner's application for impleading respondent Nos. 3 to 6 cannot be held to be not maintainable. The first respondent having thus vested with the necessary powers by virtue of Section 18-B of the Industrial Disputes Act, 1947, the rejection of the petitioner's application on the ground that the parties could be impleaded only through the reference and not by the first respondent is liable to be interfered with. Even the other ground relied upon by the first respondent namely that the partnership being represented by a managing partner, there would be no necessity to implead the individual partners is also not tenable inasmuch as it is admitted by the second respondent that the partnership firm itself was dissolved on March 30, 1990. In such circumstances, there would be every justification in the petitioner's prayer seeking for impleading all the partners of the firm. In such circumstances, No. fault can be found with the move of the petitioner in seeking for impleadment of all the individual partners to the proceedings.

6. Though notice was served on the fourth respondent, no appearance has been entered on his behalf. Third respondent is stated to be no more, since dead, the writ petition against him gets abated. It is however, open to the petitioner to take out necessary application for impleading the heirs of the third respondent if so advised.

7. As regards the other respondents, inasmuch as they would be given due opportunity before the Court below, the same would not cause any prejudice. In the circumstances, having regard to the various reasons mentioned above, the writ petition is allowed and the order impugned in this petition is set aside. No costs. Consequently, the connected W.M.P. is also closed.

8. The application filed by the petitioner in I.A. No. 95 of 1993 will stand allowed and first respondent is directed to proceed with the dispute after serving due notice on respondent Nos. 2,4,5 and 6 in accordance with law. As the dispute is of the year 1987, the first respondent is directed to dispose of the dispute expeditiously. The first respondent shall dispose of the dispute on its own merits and whatever stated in this order about the dissolution of the firm will have no binding effect on the first respondent in the disposal of the dispute on merits.