

(2011) 10 MAD CK 0166

In the Madras High Court

Case No : Writ Petition No. 15372 of 2009 and M.P. No. 1 of 2009

Nirvagam, R S L 'B' Tannery, Vaduganthangal, Katpadi
Vattam, Vellore Mavattam

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal, Tamil Nadu,
Chennai-104, and The Workmen, Seyalalar North Arcot
Mavatta Thol Padhanidum Thozhilalar Sangam, 1067,
Katchery Road, Vaniambadi, Vellore Mavattam Pin-635 751

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(4), 2, 25(C), 25(D)

Citation : (2011) 10 MAD CK 0166

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ravindran for Mr. S.R. Shanmugadoss, for the Appellant; S.T. Varadarajulu for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present writ petition, seeking to challenge an Award passed by the first respondent Industrial Tribunal, dated 10.11.2008 made in I.D.No.46 of 2002. By the impugned Award, the Tribunal held that suspension of operation of tannery, i.e., RSLB Tannery, Vaduganthangal with effect from 15.4.2002 was not justified and the workers were entitled for full wages.

2. The writ petition was admitted on 05.08.2009. Pending the writ petition, this court had directed the management to deposit Rs.2 lakhs to the credit of I.D.No.46 of 2002 with the first respondent. On notice from this court, the second respondent is represented through their counsel. When the matter came up on 12.8.2011, this court directed the original records to be produced from the Industrial Tribunal. Accordingly the Registry received the file and circulated it for perusal by this court.

3. Heard the arguments of Mr.S.Ravindran, learned counsel leading for Mr.S.R.Shanmugadoss, the learned counsel for the petitioner management and Mr.S.T.Varadarajulu, learned counsel for the second respondent union.

4. The second respondent union had raised a dispute against the suspension of operation declared by the petitioner management. It was stated by them that without any justification and due notice, they had imposed lock out with effect from 15.4.2002. As against the alleged lock out, they raised an industrial dispute before the Government Labour Officer, Vellore. As the conciliation could not end in any settlement, the officer gave a failure report dated 17.6.2002. The failure report was sent to the Government. The State Government by their order in G.O. (D)No.830, Labour and Employment Department, dated 01.10.2002 had referred the dispute for adjudication by the first respondent Industrial Tribunal. The reference that was made was "whether the action of the petitioner RSL B Tannery unit in suspending the operation with effect from 15.4.2002 was legally justified and if the demand of the trade union is justified, an appropriate order may be granted. The said dispute was registered by the Tribunal as I.D.No.46 of 2002 and notices were sent to both sides.

5. The second respondent union has filed a claim statement. The petitioner has filed a counter statement dated Nil (September, 2004) that too after a period of two years from the date of the reference. In the counter statement, it was stated by them that they had never recognised the second respondent union. The second respondent has no locus standi to raise the dispute. The company had severe financial crisis. There was excess stock of raw materials. The company had put up notice narrating the events and giving employees holidays or leave till the company is revived. The suspension of operation declared by them was on the basis of "no work, no pay". Despite the petitioner tried to improve their performance, the same was not possible. It was not a case of either lock out or closure and no prior permission was required. The union as it was not recognised cannot raise a dispute.

6. Before the labour court, on behalf of the workmen M/s.K.William and Jai Sankar were examined as W.W.1 and W.W.2. Three documents were filed and marked as Exs.W.1 to W.3. On the side of the management, no oral and documentary evidence was examined. The Tribunal on the basis of the oral and documentary evidence came to the conclusion that the factory was closed on 15.4.2002. u/s 25-M of the I.D. Act, it was mandatory on the part of the management to get prior permission from the competent authority for laying off the workers. This aspect was deposed by W.W.1 and he was not even cross examined. In the absence of any prior permission and the petitioner not having proved the suspension of work, the action of the management in declaring suspension of operation was illegal. Hence the workers were entitled to get full wages and other attendant benefits.

7. It also transpired that during the pendency of the I.D.No.46 of 2002, some 43 workers moved the labour court with claim petition u/s 33-C(2) claiming that it

was a case of closure of the establishment and not mere suspension of production. Since Section 25-O was not complied with, they were eligible to get wages. The labour court vide its order dated 31.10.2007 found that there was actually closure of establishment and not mere suspension of produced and calculated the amount in favour of the workmen. The common order passed by the labour court, dated 31.10.2007 was challenged in the writ petition before this court in W.P.No.2296 of 2008. This court by an order, dated 23.7.2008 had confirmed the order of the labour court. Thereafter, the management filed a writ appeal in W.A.No.1131 of 2008. The division bench while entertaining the writ appeal had granted a stay on the condition that the management shall deposit Rs.30000/- in respect of each workman and it is only on such deposit, the stay will continue. Aggrieved by the conditional interim order passed by the division bench, the management preferred a SLP in SLP(C)No.30128 of 2008. The Supreme Court granted leave and also stayed the order of the division bench. Therefore, the order passed by the labour court is not final.

8. Hence the only question that has to be considered in this writ petition is whether the Award passed by the tribunal is legally valid?

9. It must be noted that in the present case, a reference made by the State Government u/s 10(1) of the I.D. Act was whether the suspension of operation was justified and whether the demand of the union to remove the suspension of operation was justified. When that reference was taken on file, notice was issued. The second respondent union had filed a vague claim statement containing only one paragraph and did not state that it was a case of suspension of operation and that it was justified. Even the petitioner management in their anxiety to non suit the workmen, only questioned the locus standi of the trade union to raise the dispute. It did not state the circumstances under which they had imposed the suspension of operation. The Tribunal also instead of deciding the question whether it was a case of suspension of operation or a lock out, went on tangent and held that it was a case of lay off and thus Section 25-M of the ID Act was contravened.

10. The second respondent union in their claim statement had nowhere stated that it was a case of lay off, attracting Section 25-M of the I.D. Act. Therefore, it was something entirely a special plea taken by the Tribunal without having regard to the facts of the industrial dispute. In the claim statement filed by the union, they have stated that it was a case of illegal lock out. Obviously, the Tribunal did not keep the difference between a lock out and a lay off. The union had filed as an exhibit the notice of suspension of operation as Ex.W.2, wherein the management had stated that it was a case of suspension of operation on account of slackness in business. Though W.W.1 deposed briefly giving the circumstances under which the dispute was raised and that they are having 104 workers following in their trade union, there was no cross examination on that evidence. Even W.W.2 Jai Sankar in his cross examination did not elaborate the exact nature of denial of employment to workmen.

11. The distinction between "lock out" and "lay off" was well brought out by the Supreme Court in *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, and in paragraph 8, the Supreme Court had observed as follows:

8. Stated broadly lay-off generally occurs in a continuing business, whereas a lockout is the closure of the business. In the case of a lay-off, owing to the reasons specified in Section 2(kkk) the employer is unable to give employment to one or more workmen. In the case of a lockout the employer closes the business and locks out the whole body of workmen for reasons which have no relevance to causes specified in Section 2(kkk). Thus the nature of the two concepts is entirely different and so are their consequences. In the case of a lay-off the employer may be liable to pay compensation as provided by Section 25-(C), 25-(D) and 25-(E) of the Act; but this liability cannot be invoked in the case of a lockout. The liability of the employer in cases of lockout would depend upon whether the lockout was justified and legal or not; but whatever the liability, the provisions applicable to the payment of lay-off compensation cannot be applied to the cases of lockout. Therefore, we hold that the lockout in the present case was not a lay-off, and as such the respondents are not entitled to claim any lay-off compensation from the appellant....

12. The Supreme Court further elaborated the distinction between the lock out and lay off vide its judgment in *Priya Laxmi Mills Ltd. Vs. Mazdoor Mahajan Mandal, Baroda*, and in paragraphs 12 and 16, it had held as follows:

12. It should, however, be made clear that lock-out can be declared also for reasons similar to those described in the present notice of lock-out. In that case although it will be lock-out in another sense, it may not be a lock-out within the meaning of Section 3(24) of the Act. That kind of a lock-out with the avowed object of preventing violence and threat to life and property may even be justified on facts in a given case. In such a situation it may be difficult to prove that it is an illegal lock-out since in an illegal lock-out the sole object is to compel the workmen to accept the terms of the employer which the workers consider as unreasonable and oppressive.

16. It is contended on behalf of the appellant that Item 6(ii) in Schedule III to the Act which deals with the unemployment of persons previously employed in the industry concerned cannot govern a case of lay-off. According to counsel lay-off is not unemployment since the relationship of master and servant is not snapped. We are unable to accept this contention. Lay-off is not defined in the Act but has been defined in Section 2(kkk) of the Industrial Disputes Act:

"lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

* * *

Even according to the dictionary meaning, lay-off means to discontinue work or activity; to dismiss or discharge temporarily. When workers are in employment and they are laid off, that immediately results in their unemployment, howsoever temporary, and such an unemployment will clearly come under Item 6(ii) in Schedule III of the Act. It is not disputed that #unemployment# is an industrial matter as defined u/s 3(18) of the Act. Since unemployment is an industrial matter under Item 6(ii) of Schedule III to the Act, the lock-out which has been found by the Labour Court to have direct connection with lay-off is clearly illegal u/s 98(1)(a) of the Act.

13. Therefore, in the present case, though lock out was the case pleaded by the workmen but the relief claimed was for illegal lay off. In essence, the Tribunal did not answer the order of reference in terms of Section 10(4) of the I.D. Act. The parallel case conducted by a set of workmen before the labour court u/s 33-C(2), was a case of closure attracting the provisions of Section 25-O of the I.D. Act. It had not reached its finality and the interim order granted by the division bench of this court is before the Supreme Court. Hence no reliance can be placed upon those orders.

14. Therefore, in the facts and circumstances of the case, the Tribunal not having discharged its statutory functions in terms of the I.D. Act, this court is obliged to interfere with the impugned Award. The Tribunal being not properly posted with relevant pleadings and also that the evidence let in were also not satisfactory, the impugned Award of the labour court in I.D.No.46 of 2002, dated 10.11.2008 stands set aside. The writ petition will stand allowed. The matter is remitted back to the first respondent Tribunal for a fresh disposal in accordance with law after due notice to the parties. The parties are allowed to file additional pleadings and appropriate documents so as to have an effective disposal of the dispute. Since more than nine years have lapsed, the labour court shall give preference for the disposal of the dispute. In any event, it shall dispose of the same within six months from the date of receipt of this order. However, there will be no order as to costs. Consequently connected miscellaneous petition stands closed.