

(1991) 12 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 1038 of 1984

P. Muthukrishnan

APPELLANT

Vs

Management of Central Cinema, Dindigul and Another

RESPONDENT

Date of Decision : 06-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2, 33C

Citation : (1992) 65 FLR 370

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Judgement

D.J. Jagannadha Raju, J.—The above writ petition is filed for a writ of certiorari to call for the records connected with the order dated July 8, 1982 passed in the Claim Petition No. 360 of 1981 on the file of the second respondent - Labour Court, Madras, whereunder the petition filed by the petitioner under Sec. 33-C(2) of the Industrial Disputes Act, (Act XIV of 1947) claiming a sum of Rs. 7,000/- towards service compensation and overtime wages was rejected.

2. The petitioner, in the affidavit in support of the writ petition claims that he was employed as Gate-Keeper in the Central Cinema, Dindigul, that he had put in about 20 years of service, that he was getting a salary of Rs. 150/- per month, that when he was arranging the benches in January 1981, he met with an accident as a result of which he sustained injury in the left leg which ultimately resulted in the amputation of the left leg below the thigh and that when he went after getting cured as above to work, the first respondent management did not allow the petitioner to work. The petitioner claims to have been turned out without being given work which necessitated, according to the petitioner, to file claim petition as stated above, on the ground that the termination of the services of the petitioner would amount to retrenchment within the meaning of Sec. 2(oo) of the Industrial Disputes Act (hereinafter referred to as the "Act").

3. The petitioner claims that he was entitled to service compensation at the rate

of 15 days pay for 20 years namely Rs. 1,500/-, that he was doing overtime work for 4 hours for 3 years entitling him to a sum of Rs. 5,500/- on that account and that, therefore, he would be entitled to be paid a sum of Rs. 7,000/-. The first respondent-management contested the claim of the petitioner contending that the writ petitioner did not suffer any injury by an accident arising out of and in the course of his employment on January 4, 1981, that the petitioner did not sustain any injury during the working hours, that whenever the petitioner did overtime work, he was paid what was due to him then and there and there was no pre-existing right to claim any retrenchment compensation. Consequently the management contended that the claim petition deserves to be dismissed.

4. The second respondent-Labour Court, on the basis of the relevant registers and the evidence on record, rendered a factual finding that the petitioner has not proved his claim regarding the performance of the overtime services and consequently rejected his claim for overtime wages. So far as the claim relating to compensation on account of the alleged retrenchment, the Labour Court was of the view that proviso (c) to Sec. 2(oo) of the Act is attracted to the case and inasmuch as it is a case of a worker being unable to attend to the work because of the amputation of his leg it shall not be construed as retrenchment within the meaning of the said provision. Aggrieved, petitioner has filed the above writ petition.

5. Mr. R. Ganesan, learned counsel appearing for the petitioner, contended that the Labour Court committed a grave error in appreciating the materials concerning the claim relating to overtime wages and further misdirected itself in the construction of Sec. 2(oo)(c) of the Act and consequently the order of the Labour Court is liable to be set aside. The learned counsel took me through the order of the Labour court at length and after going through the same, I find no patent error of law or perversity of approach in the assessment of the evidence on record relating to the claim of overtime wages by the petitioner and that the Labour Court has taken into account all the relevant materials and on an objective consideration of the same rendered a positive factual finding and thereby rejected the claim for overtime wages. The finding of the Labour Court, in my view, does not warrant any interference by this Court under Article 226 of the Constitution of India.

6. So far as the claim relating to retrenchment compensation and the question as to whether the petitioner could be construed to have been retrenched from service within the meaning of Sec. 2(oo) of the Act, the Labour Court, in my view could not be said to have misconstrued the relevant provisions of the Act. Sec. 2(oo) defines what retrenchment means and as the provision stood at the relevant point of time it provided for excluding specifically three categories of termination specified in clauses (a), (b) and (c). No doubt, the three classes of termination which were stipulated to be not coming within the meaning of retrenchment only specified the categories or classes of cases which could not be

included in the definition of retrenchment and they give no indication of what are included in the definition of retrenchment, which otherwise is an all inclusive one. Be that as it may, in the context of the present claim it becomes necessary to consider whether the proviso to Sec. 2(oo) is attracted to the case and the termination in question can be said to be one on the ground of "continued ill-health".

7. The learned counsel for the petitioner attempted to contend that cases of permanent disability like the one in question resulting in amputation would not be brought under the stipulation on the ground of "continued ill-health". The question regarding the scope of the said clause and particularly as to the purport and meaning of "continued ill-health" appears to have come up for consideration of courts earlier. In *Burrakur Coal Company Ltd. v. Azimuddin Ashraff and another* (1960-II-LLJ-434) a Division Bench of the Patna High Court had occasion to consider the very issue. That was a case of a permanent incapacity due to old age infirmity. While considering the claim in the said context, the learned Judges observed as follows (p. 438) :

"If the expression "continued ill-health" is susceptible of a narrower interpretation and means continued illness due to some organic disease, and if retrenchment means nothing but discharge of a portion of labour force as surplusage, then a person not suffering from any disease, but wholly disabled for active duties due to physical infirmity or otherwise, will not come within the purview of this Act. The acceptance of the argument of the learned Government Advocate will, therefore, introduce in the Act an anomaly not obviously in the contemplation of the legislature. In my considered judgment, "continued ill-health" includes any physical defect or infirmity incapacitating a workman for future work for an indefinite period."

8. In *Madurai Mills Co. v. Meenakshi Ammal* 1963 I LLJ 1 a learned Judge of this Court had an occasion to consider the issue in the context of a woman worker discharged from service on the ground of a medical certificate that the worker was anemic and weak and not fit. The learned Judge considered the issue at length and in the light of the judgment of the Patna High Court referred to above, though on the peculiar facts of the case inclined to interfere with the order of the court below, subscribed to the view taken by the Division Bench of the Patna High Court. The learned Judge also observed as follows (p. 4) :

"It is true that the health of an individual may break down, and doctors may fail to diagnose the cause of the physical debilitation. While I agree that continued ill-health is only a state of physical condition of the person concerned, which need not necessarily be correlated to any organic disease in the system, it is certainly extravagant to contend that mere physical weakness at a particular moment of time would constitute "continued ill-health" within the meaning of the Act. If that were to be the law, any passing ailment, which may temporarily render an employee unable to do work, would result in the far reaching consequence of discharge from service".

9. In yet another judgment of the Apex Court in *Workmen of B. W. C. & S. Mills v. B. W. C. & S. Mills* 1962 I LLJ 213 though there was not much and specific consideration of the scope of clause (c) of Sec. 2(oo), the Supreme Court held, in considering the case of discharge of certain workmen on the ground of their being found medically unfit, as follows (p. 216) :

"Now, when a workman is discharged on the ground that he is medically unfit as happened in the case of the ten workmen with whom alone we are concerned in this appeal, it cannot be said that they had been discharged on the ground that their services were no longer required; on the contrary, they were not in a fit condition of health to continue in service at all. Their physical condition prevented them from tendering the service for which they had been employed. The reason for their discharge was that they could not render the services required of them and which under the contracts of service they were bound to render. Their services cannot be said to have been terminated on the ground that such services were not required."

10. In the light of the above discussion and consideration, the expression "continued ill-health" has to be construed to be referable to a state of physical condition of the person concerned incapacitating the worker for an indefinite period though the same need not necessarily be correlated to any organic disease in the system. Consequently in my view, the order of the Labour Court in so far as it applied clause (c) of Sec. 2(oo) to the case of the petitioner cannot be said to be erroneous in law. The plea of the learned counsel for the petitioner in this Court also has no merit of acceptance. The writ petition therefore fails and shall stand dismissed, but in the circumstances, there shall be no order as to costs.