

(2011) 07 MAD CK 0418

In the Madras High Court

Case No : Writ Petition No. 7331 of 2006

Palani Andavar Cotton and Synthetic Spinners Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 17, 17B, 20, 20(1)

Citation : (2011) 07 MAD CK 0418

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R.Gandhi, for S. Vadivel Murugan, for the Appellant; N.G.R. Prasad, for R3, 5, 6, 7, 9, 16, 18, 26, 28, 39, 41, 45, 47, 50, 53, 57, 58, 59, 61 and 62, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This writ petition has been filed praying for a Writ of Certiorari to call for the records and to quash the common award passed by the first Respondent Labour Court, dated 20.9.2005, in I.D. Nos. 137 to 197 of 2004.

2. It has been stated that the Petitioner is a spinning mill engaged in the manufacture of cotton yarn, blended yarn and Viscose Yarn. As such, the Petitioner had employed a number of workers. However, due to the recession in the market and due to the strike by the employees the Petitioner Mill has been facing severe financial crisis. In such circumstances, the Petitioner Mill has been declared, as a Sick Industrial Undertaking, by the Board for Industrial and Financial Reconstruction. The Petitioner Mill had stopped its activities of producing yarn due to the illegal strike by the employees, from 5.11.2001.

3. It has been further stated that the Petitioner Mill has not been in a position to carry on its activities normally, due to various reasons, including the levy of taxes, both by the Central and the State Governments, rise in electricity charges, rise in price of diesel, yarns, cotton and other necessary items. In such

circumstances, the management of the Petitioner Mill had issued a notice, u/s 9A of the Industrial Disputes Act, 1947, relating to the service conditions of the workers of the Petitioner Mill.

4. It has been further stated that as the workmen, including those who are the Respondents in the present writ petition, did not cooperate, and as No. amicable settlement could be arrived at between the Petitioner management and the Respondent workmen, they have been terminated from service, from 14.11.2002 onwards. Thereafter, the matter had been referred to the Assistant Commissioner of Labour, Coimbatore, for conciliation. However, No. conciliation was possible due to the non co-operation of the employees. After the Conciliation Officer had submitted a failure report to the State government, industrial disputes had been raised before the first Respondent Labour Court, in I.D. Nos. 137 to 197 of 2004.

5. The first Respondent Labour Court had passed a common award, dated 20.9.2005, erroneously, holding that the Respondent workmen had been retrenched from service, without following the necessary procedures for such retrenchment, as provided under the Industrial Disputes Act, 1947. It had also been held that the Respondent workmen had been terminated from service during the period, between 28.2.2003 and 9.4.2003, when the conciliation proceedings were pending before the Assistant Commissioner of Labour, Coimbatore, without obtaining the necessary prior permission, as provided under law.

6. The award of the first Respondent Labour Court, dated 20.9.2005, had been challenged by the Petitioner stating that it is arbitrary, unreasonable and contrary to law. It has also been stated that the first Respondent Labour Court had erred in holding that the termination of the Respondent workmen had taken place during the pendency of the conciliation proceedings before the Assistant Commissioner of Labour, Coimbatore. In fact, the termination of the Respondent workmen from service had taken place even before the conciliation proceedings had commenced. The termination of the Respondent workmen had taken place, from 14.11.2002 onwards, and not between 28.2.2003 and 9.4.2003, as held by the first Respondent Labour Court.

7. It had also been stated that the first Respondent Labour Court had failed to appreciate the fact that the Petitioner Mill had sent a Section 9A notice to the striking workers, well in advance, before they had been terminated from service, along with one month's pay, as prescribed by law. Therefore, it cannot be said that the Respondent workmen would be entitled to make their claims, u/s 33(1) (a) of the Industrial Disputes Act, 1947. Further, the first Respondent Labour Court had erred in invoking the provisions of Section 25N of the Industrial Disputes Act, 1947, granting the reliefs to the Respondent workmen, as there was No. retrenchment of workmen, in the eye of law.

8. The learned Counsel appearing on behalf of the Petitioner had further stated that the Respondent workmen had been terminated from service, as they were

involved in an illegal strike, contrary to the provisions of Section 22 of the Industrial Disputes Act, 1947. Therefore, the termination of the Respondent workmen from service cannot be called as retrenchment.

9. It has been further stated that, once it is found that the strike notice issued on behalf of the Respondent workmen was found to be illegal, it cannot be held that the Respondent workmen would be entitled to the reliefs sought for by them before the first Respondent Labour Court. Further, No. prior permission would be needed for terminating them from service. Therefore, the first Respondent Labour Court had committed a serious mistake in passing the impugned award ordering reinstatement of the Respondent workmen in service, with 25% of the backwages.

10. The learned Counsel appearing on behalf of the Petitioner Mill had further stated that the conciliation officer ought to have submitted the failure report to the appropriate government, without any delay. The conciliation process would be deemed to have concluded at the expiry of the mandatory period prescribed for the submission of the report to the appropriate Government. Any termination of workmen from service, by the management, before the commencement of the conciliation process or after it had concluded, would not come under the category of illegal termination, as in the present case.

11. The learned Counsel appearing on behalf of the Petitioner had relied on the following decisions in support of his contentions:

11.1 In Hindustan Wire Products Ltd. Vs. Jaspal Singh and Others, , the Supreme Court had held as follows:

8. ...He emphasised that most workmen have gone away with retrenchment, it is only in case of these fourteen workmen, the matter is still hanging fire. He brought to our notice that the Appellant is in financial doldrums and is facing proceedings before BIFT under the Sick Industrial Companies Act and, therefore, is in difficulty to give effect to the order made by the High Court. In his submission appropriate course is to examine the question of adequately compensating the Respondents in these cases and putting a quietus to the matter.

11.2 In Management, Essorpe Mills Ltd. Vs. Presiding Officer, Labour Court and Others, the Supreme Court had held as follows:

18. Learned Counsel for the Respondent relied on Section 20 which deals with commencement and conclusion of proceedings. According to the High Court the conciliation proceeding is deemed to have been commenced on the date on which the notice of strike u/s 22 is received by the Conciliation Officer.

19. The High Court seems to have lost sight of the crucial words "notice of strike or lockout u/s 22". Section 22 presupposes a notice before the workmen resorted to strike. The notice has to be given to the employer. Sub-section (6) of Section 22 also has relevance because within a particular time period after receipt of the

notice under Sub-section(1) he shall report to the appropriate Government or to such authority as the Government may prescribe.

11.3 In Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, the Supreme Court had held as follows:

In the last few years it has been consistently held by the Supreme Court that relief by way of reinstatement with backwages is not automatic even if terminating of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and backwages in cases of such nature may be appropriate. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and backwages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. The compensation of Rs. 40,000/-to each of the workmen (Respondents 1 to 14) shall meet the ends of justice. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9% per annum.

12. Per contra the learned Counsel appearing on behalf of the Respondent workmen had submitted that the retrenchment of the workmen by the management of the Petitioner Mill, during the pendency of the conciliation proceedings is illegal and void. The conciliation proceedings in question had commenced, on 20.11.2002, following the notice issued by the Petitioner management, u/s 9A of the Industrial Disputes Act, 1947, for varying the service conditions of the Respondent workmen. The conciliation proceedings cannot be deemed to have concluded at the relevant point of time when the Petitioner management had retrenched the Respondent workmen from service. Any such retrenchment made by the Petitioner management would be void and not voidable, as per the relevant provisions of the Industrial Disputes Act, 1947. Further, it cannot be said that the strike by the employees of the Petitioner Mill was illegal, as alleged by the Petitioner. The failure report of the conciliation officer, dated 24.2.2003, marked as Exhibit W.5, before the first Respondent Labour Court, had reached the appropriate government, only on 26.12.2003. As such the conciliation proceedings would be deemed to have continued, till 26.12.2003. Whereas, the termination of the service of the Respondent workmen, by the Petitioner management had taken place, between 28.3.2003 and 9.4.2003.

13. The process of conciliation, which had been initiated, on 20.11.2002, before the Assistant Commissioner of Labour, Coimbatore, had been concluded, only on 26.12.2003, when the failure report had been submitted to the Government. It is not in dispute that, when the termination of the Respondent workmen from service had been made, the Petitioner management had not obtained the necessary permission for altering the service conditions of the employees, as it was during the pendency of the conciliation process, as provided u/s 33 of the Industrial Disputes Act, 1947.

14. It had been further stated that the termination of the service of the employees, during the pendency of the conciliation proceedings, would be void in the eye of law, as held by the Supreme Court, in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . The first Respondent Labour Court had rightly held that the Petitioner management had not complied with the requirements of Section 25N of the Industrial Disputes Act, 1947. No. retrenchment compensation had been paid to the retrenched workmen before they had been terminated from service. Therefore, the first Respondent Labour Court had passed an award, dated 20.9.2005, holding that the retrenchment of the Respondent workmen is illegal and void. Therefore, the first Respondent Labour Court had passed an award directing the Petitioner management to reinstate the Respondent workmen in service, along with 25% of the backwages.

15. The learned Counsel appearing on behalf of the Respondent workmen had relied on the following decisions in support of his contentions:

15.1 In M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, , the Supreme Court had held as follows:

27. A mere look at the aforesaid provisions shows that in cases of public utility services referred to in Section 22(2) of the Industrial Disputes Act, the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lockout u/s 22 is received by the Conciliation Officer. That deals with commencement of mandatory conciliation proceedings as laid down by Section 12(1) read with Section 20(1). But when we come to Section 20(2), it become obvious that the legislature has introduced by way of legal fiction an irrebuttable presumption as Sub-clause (b) of Section 20(2) that when during conciliation proceedings No. settlement is arrived at between the parties, the conciliation proceedings shall be deemed to have concluded when the failure report of the Conciliation Officer is received by the appropriate Government. Consequently, the legislative intention becomes clear that conciliation proceedings initiated u/s 12(1) whether of a discretionary nature or of a mandatory nature shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government. As noted earlier, it is not in dispute between the parties that after the closure of investigation on 22.6.1982 when the conciliator sent the failure report, it reached the State Government only on 13.8.1982. Therefore, it has to be held that the conciliation proceedings in the present case had not got terminated and got concluded only on 13.8.1982 as per the aforesaid statutory presumption created by the legal fiction provided in Section 20(2)(b). Therefore, as a necessary corollary, it must be held that these conciliation proceedings were pending till 13.8.1982. it is axiomatic that conciliation proceedings which are deemed not to have concluded must be deemed to have continued or remained pending. That which is not concluded is pending, equally that which is pending cannot be said to be concluded.

15.2. In Management, Essorpe Mills Ltd. Vs. Presiding Officer, Labour Court and

Others, the Supreme Court had held as follows:

Somewhat unacceptable plea has been taken by Respondents 2 to 23 that in terms of Section 22(1)(b) after fourteen days of giving the notice, the workmen can go on strike. If this plea is accepted six weeks time stipulated in Section 22(1)(a) becomes redundant. The expression "giving such notice" as appearing in Section 22(1)(b) refers to the notice u/s 22(1)(a). Obviously, therefore, the workmen cannot go on strike within six weeks notice in terms of Section 22(1)(a) and fourteen days thereafter in terms of Section 22(1)(b).

24. The expression "such notice" refers to six weeks" advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in Section 22. If such stand is accepted it will go against the requirement of Section 22 which aims at stalling action for illegal strike.

15.3. In *Harjinder Singh Vs. Punjab State Warehousing Corporation*, , the Supreme Court had held as follows:

It is true that in the writ petition filed by its, the Corporation did plead that the dispute raised by the Appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because No. such argument was advanced before him and also because that plea is falsified by the averments contained in Para 2 of the reply filed on behalf the Corporation to the statement of claim wherein it was admitted that the Appellant was engaged as work charge motor mate for construction work on 5.3.1986 and he worked in that capacity and also as work munshi from 3.10.1986 and as mentioned above, even after expiry of the period of three months specified in the order, dated 5.2.1987, the Appellant continued to work till 5.7.1988, when the first notice of retrenchment was issued by the Managing Director of the Corporation. Therefore, it was not open for the Corporation to contend that the Appellant had not completed 240 days service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason.

16. The learned Counsel appearing on behalf of the Respondent workmen had also submitted that this Court had passed an order, dated 27.9.2007, directing the Petitioner management to pay the last drawn wages to the Respondent workmen, as per Section 17B of the Industrial Disputes Act, 1947. However, the Petitioner management had failed to comply with the said order even though the writ appeal filed by the Petitioner management had been dismissed, confirming the order directing the payment of the last drawn wages to the workmen concerned. In such circumstances, the Petitioner management cannot be shown any sympathy on the ground that it is under severe financial hardship, as pleaded by the learned Counsel appearing on behalf of the Petitioner

management. In such circumstances, the writ petition is liable to be dismissed.

17. In view of the averments made on behalf of the parties concerned and on considering the decisions cited and on a perusal of the records available, it is seen that the conciliation proceedings had commenced on 20.11.2002. The conciliation officer, on finding that No. conciliation was possible, between the Petitioner management and the Respondent workmen, had submitted a failure report, dated 24.2.2003, marked as Exhibit W-5, before the first Respondent Labour Court. The said report had reached the State government, on 26.12.2003.

18. Further, it is also noted that the Respondent workmen had been terminated from service, by the orders issued by the Petitioner management, between 28.3.2003 and 9.4.2003, during the pendency of the conciliation proceedings. It is not in dispute that No. prior permission had been obtained from the authority concerned, before whom the conciliation proceedings were pending, before the orders of termination had been passed, as prescribed u/s 33 of the Industrial Disputes Act, 1947. It is not in dispute that No. retrenchment compensation had been paid to the workmen concerned, in accordance with Section 25N of the Act. As such, the termination of the services of the Respondent workmen would be void, as held by the Supreme Court, in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, .

19. In such circumstances, the contentions raised on behalf of the Petitioner management stating that it is facing serious financial difficulties and therefore, the termination of the workmen from service is justified cannot be accepted. The first Respondent Labour Court had clearly found that the termination of the Respondent workmen from service is contrary to the provisions of the Industrial Disputes Act, 1947. Therefore, there can be No. justification for the Petitioner to claim that the award of the first Respondent Labour Court, dated 20.9.2005, made in I.D. Nos. 137 to 197 of 2004, is erroneous and illegal. Incidentally, it is also noted that the Petitioner management had not complied with the orders passed by this Court, u/s 17B of the Industrial Disputes Act, 1947, directing the Petitioner management to pay the Respondent workmen the last drawn wages.

20. The contention of the learned Counsel appearing on behalf of the Petitioner that the conciliation officer ought to have submitted the conciliation report, within fourteen days of the commencement of the conciliation proceedings, or within such shorter period, as may be fixed by the Government, as per Clause 6 of Section 12 of the Industrial Disputes Act, 1947, and on the failure of the conciliation officer to comply with the said provision, the conciliation proceedings would be deemed to have come to an end, cannot be accepted. Section 20 of the Industrial Disputes Act, 1947, makes it clear that the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike, or lock-out, u/s 22, is received by the conciliation officer, or on the date of the order referring the dispute to the Board, as the case may be. The conciliation proceedings shall be deemed to have concluded, where No. settlement is arrived at, when the report of the conciliation officer is received by the appropriate

Government, or when the report of the Board is published, u/s 17 of the Act.

21. In the present case nothing has been shown on behalf of the Petitioner that the conciliation proceedings, which had commenced on 14.11.2002, had been concluded before the termination orders had been passed, in respect of the Respondent workmen. On the contrary, it is found that the Respondent workmen had been terminated from service, during the period when the conciliation proceedings were pending, between 28.3.2003 and 9.4.2003.

22. Further, the contention raised on behalf of the Petitioner management that the strike notice issued on behalf of the Respondent workmen was illegal, as it had been issued contrary to Section 22 of the Industrial Disputes Act, 1947 and therefore, the consequential conciliation proceedings was contrary to law and hence, No. prior permission was needed for issuing the termination orders cannot be held to be valid, as such contention is contrary to the facts and circumstances of the case.

23. It is noted that the first Respondent Labour Court, based on a careful scrutiny of the records available before it, and on analysing the evidence adduced on behalf of the Petitioner management, as well as the Respondent workmen, had come to the conclusion that the termination of the Respondent workmen, by the Petitioner management, was bad in the eye of law. Such a finding by the first Respondent Labour Court cannot be said to be perverse or based on No. evidence. In such circumstances, the first Respondent Labour Court had directed the Petitioner management to reinstate the Respondent workmen, with 25% backwages, by its award, dated 20.9.2005, made in I.D. Nos. 137 to 197 of 2004. As such, the Petitioner has not shown sufficient cause or reason to set aside the findings of the first Respondent Labour Court, in its award, dated 20.9.2005. In such circumstances, this Court is of the considered view that the writ petition filed by the Petitioner is devoid of merits and therefore, it is liable to be dismissed. Hence, it is dismissed. No costs.