

(2011) 09 MAD CK 0345

In the Madras High Court

Case No : Writ Petition No. 19835 of 2009

P.B. Sivasankaran

APPELLANT

Vs

The Presiding Officer First Additional Labour Court and The
Management of T.T.K.L.I.G. Ltd.

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25F, 2A(2)

Citation : (2011) 09 MAD CK 0345

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Kannan, for the Appellant; G. Anandakrishnan, for T.S. Gopalan and Company for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition seeking to challenge an award passed by the I Additional Labour Court, Chennai in I.D. No. 42 of 2001, dated 29.6.2007. By the impugned award, the Labour Court dismissed the industrial dispute raised by the Petitioner after holding that he is not a workman coming within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short, "the Industrial Disputes Act").

2. In the writ petition notice of motion was ordered on 30.9.2009. Subsequently, it was admitted on 23.7.2010. On notice from this Court, the second Respondent has entered appearance through its counsel and also filed a counter affidavit dated 8.9.2011. Since the material papers filed before the Labour Court were not available, this Court directed the Registry to summon the records relating to the main industrial dispute and accordingly, the records have been circulated for perusal by this Court.

3. Heard the arguments of Mr. V. Kannan, learned Counsel for the Petitioner and Mr. G. Anandakrishnan, learned Counsel representing M/S.T.S. Gopalan &

Company for the second Respondent.

4.1. The facts leading to the case are as follows: The Petitioner was employed by the second Respondent/management as a Trainee Supervisor since 27.11.1993. His services were terminated on 13.9.2000 and at the time of his termination he was drawing a salary of ` 6,300/-. The Petitioner contending that the termination was illegal, as it was not preceded by any enquiry, and that he was not guilty of misconduct raised an industrial dispute u/s 2-A(2) of the Industrial Disputes Act before the Assistant Commissioner of Labour (Conciliation-I).

4.2. On receiving notice from the Conciliation Officer, the second Respondent/Management raised an objection dated 12.12.2000 stating that the Petitioner was a Supervisor and in-charge of the department in a shift and about five to six persons were employed under his supervision. He not only supervises the work but also allocated the work among the workers working under him in a shift. He prepares production log sheet, quality test report and he was authorised to sign the exit passes for the workers and sanction leave for the workers working under him. As Production Supervisor he was also in-charge of training prime manufacturing personnel in all respects of their job and to make recommendations regarding the ongoing training needs. He was also in-charge of imparting training to trainees put under him. Therefore, the dispute raised by the Petitioner was not valid and the matter cannot be dealt with by the Conciliation Officer.

4.3. The Conciliation Officer, as he could not bring out mediation between the parties, gave his failure report dated 9.1.2001.

4.4. On the strength of the failure report, the Petitioner filed a claim statement dated 23.1.2001. In the claim statement, his contention was that he was only doing production work and was not supervising other workmen. He admitted that he was preparing production control sheets, weighing the products and writing down the product weight and checking the width and length of the product, dipper temperature, leach temperature and washing waster temperature and he mainly worked as in-charge of the quality department. He admitted that he has to prepare the log report and daily report and he has to check every hour's production. He stated that he was on E.S.I. leave from 14.8.2000 to 23.8.2000 and when he reported for work on 24.8.2000 he was denied work and thereafter, after sending representations, he raised an industrial dispute and he contended that the termination was violative of Section 25F of the Industrial Disputes Act. The Labour Court registered the said dispute as I.D. No. 42 of 2001 and ordered notice to the second Respondent.

4.5. The second Respondent filed a counter statement dated 26.2.2002. In the counter statement, once again they raised the preliminary issue that since the Petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, the dispute is not maintainable. On the merits of the case it was contended that he was given a show cause notice as to why action

should not be taken against him for his unauthorised absence. Except denying the allegation, he has not given any satisfactory explanation and therefore, the second Respondent/ management was forced to terminate his service due to his frequent unauthorised absence.

4.6. Before the Labour Court, on the side of the Petitioner, he had examined himself as W.W.1 and marked 14 documents as Exx.W1 to W14. On the side of the second Respondent/management, they had examined one Sridharan, who was General Manager (HR) of the second Respondent/ company, as M.W.1 and on their side 49 documents were marked as Exx.M1 to M49.

4.7. The Labour Court, on the basis of this evidence-both oral and documentary, framed two issues as follows:

(i) whether the Petitioner was entitled to reinstatement in service with back-wages, continuity of service and all other attendant benefits? and

(ii) if not, to what relief he is entitled to?

4.8. The preliminary objection regarding the status of the workman was taken note of and the Labour Court, after referring to the evidence, especially the cross-examination of M.W.1, and also to certain decided cases, held that the Petitioner has got power to take action against the workers who are in default in their work and accepted the stand of the management that since the Petitioner had raised the industrial dispute under the premise that he was a workman, it is for him to prove that he comes within the four corners of the Industrial Disputes Act and in the absence of his discharging his burden of proof, the Court cannot hold him to be a workman within the meaning of the Industrial Disputes Act and hence, dismissed the industrial dispute.

5.1. The learned Counsel for the Petitioner contended that it is not the nomenclature which is the determining factor in deciding whether a particular person is a worker or not and the Labour Court is required to consider whether a person is employed in an industry for hire or reward for doing manual, skilled, unskilled, operational, technical or clerical work. Once the test of employment for hire or reward for doing a specific type of work is satisfied, then he will fall within the definition of workman. For this purpose he placed reliance upon the judgment of the Supreme Court in *Devinder Singh Vs. Municipal Council, Sanaur*, .

5.2. The learned Counsel for the Petitioner also referred to certain documents to show that his work was more of a technical nature and not supervisory.

6. Per contra, the learned Counsel appearing for the second Respondent also produced the true copies of the documents filed before the Labour Court, including Ex.49 series.

7. In the cross-examination of the Petitioner, who had examined himself as W.W.1, he had stated that for each shift there used to be a Supervisor. When

Ex.M1 (a log report) was shown to him, he had admitted that it contained the signature of the Petitioner as second shift supervisor. He also admitted that he has signed Exx.M2 to M8. With regard to Ex.M9 though he stated that he did not know the contents, he accepted the signature and volunteered to give an explanation that it was obtained in a blank paper. But a perusal of Ex.M10 series shows that they were printed sheets which were signed continuously by all the Shift Supervisors and therefore, this stand of the Petitioner is not consistent with the documents produced by the Management. He also admitted that in Ex.M12, which is a job training record, his signature is found under the category of Supervisor. Similar was the case of Exx.M13 to M15. He has recommended the case of confirmation of one R. Kannan as per Ex.M17 and as daily over time shift Supervisor, his signature is found in Ex.M18. He has also admitted his signature in Ex.M19 series. In the case of leave granted to one M. Jaichandran he has admitted his signature in Ex.M20. Though he denied his signature in other exhibits granting leave, his admission in respect of Ex.M20 is very significant. The General Manager (HR), who was examined as M.W.1, in his cross-examination categorically stated that the Petitioner has power to take disciplinary action against the workers and he has to prepare the log report and daily report and he has power to take action against the erring workers. Though he can grant memos to the workers, he himself cannot initiate disciplinary action.

8. If it is seen in the context of the overwhelming evidence to show that the Petitioner was discharging not mere the work of operation, but of a Shift Supervisor, then it can be hardly said that he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, especially in the context that the Petitioner was drawing a salary of Rs. 6,300/-, and inasmuch as the proviso to Section 2(s) of the Industrial Disputes Act excludes Supervisors drawing more than Rs. 1,600/- per month, the contention of the Petitioner that he is a workman cannot be accepted.

9. Though the counsel for the Petitioner stated that he has been sent out without proper enquiry, that question can be gone into only if the industrial dispute is maintainable before the Labour Court. When the Petitioner cannot raise a dispute and the industrial dispute is not maintainable, the question of going into the merits of the Petitioner's termination will not arise.

10. It is no doubt true that mere nomenclature as a Supervisor by itself will not exclude a person from the purview of the Industrial Disputes Act and it is the nature of the duties that has to decide the matter one way or other. In the present case, the Petitioner has not let in any material to show that his work is mainly that of a worker and the duties of a Supervisor are only incidental. On the contrary, in the present case, the overwhelming materials produced by the management show that the Petitioner worked as a Supervisor in-charge of a shift, having powers to grant leave, recommend confirmation of regularization and issue memos against the subordinate workers. When once materials are produced before the Labour Court and the Labour Court was not satisfied that

the Petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, this Court under Article 226 of the Constitution of India cannot overturn the verdict given by the Labour Court. In the present case, though the award of the Labour Court is not satisfactory and the Labour Court should have done more work in granting specific finding, since the entire work has been brought before this Court, even on reappraisal of the evidence, this Court is not willing to reverse the finding, though the statement made by the Labour Court is not happily worded.

11. In this context, it is necessary to refer to the judgment of the Supreme Court in limiting the jurisdiction of this Court in going into the factual findings regarding the status of a workman. The Supreme Court vide judgment in Syed Yakoob Vs. K.S. Radhakrishnan and Others, laid down the limitations of jurisdiction of the High Court in a writ of certiorari under Article 226 of the Constitution of India. It was observed as follows:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is

within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised....

12. The view taken in Syed Yahoob case, supra, came to be reiterated subsequently by the Supreme Court in Sawarn Singh and Another Vs. State of Punjab and Others, . In paragraph (13), the Supreme Court observed as follows:

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

13. Thereafter, the Supreme Court once again in the judgment in Surya Dev Rai Vs. Ram Chander Rai and Others, reiterated similar principles and in paragraph 38(3) it was observed as follows:

38(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction "by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction "by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

In the light of the above, this Court is not inclined to interfere with the impugned award though for different reasons which are set out herein. Hence, the writ petition stands dismissed. No costs.