
(1986) 06 RAJ CK 0002

In the Rajasthan High Court

Case No : Miscellaneous Civil Writ Petition No. 1206 of 1985

Poonam Talkies

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 09-06-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 254

Citation : (1986) 2 WLN 255

Hon'ble Judges : Narendera Mohan Kasliwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendera Mohan Kasliwal, J.—M/s Poonam Talkies, Dausa (here in after referred to as the petitioner) has filed this writ petition on the allegation that on 18th November, 1978, some supporters of Cinema Karamachari Union started creating trouble in the Cinema Hall. Some of the workers blocked gutter line of Cinema and they also started harassing the public who wanted to see picture in the Cinema Hall and the entry gate of second class was also closed by putting the shutter down. On this, the Manager of the petitioner asked one Shri Hari Narain Sharma an employee of the establishment, who is deaf and dumb, to open the gate and as per direction of the Management of the petitioner, he opened the gate. On this, one Shri Rati Ram, who was also an employee of petitioner, started beating badly to Shri Hari Narain and on complaint received by the management from Shri Hari Narain a decision was taken to suspend Shri Rati Ram for 3 days.

2. The employees of the petitioner went on strike raising an issue of reinstatement of Shri Rati Ram. The strike commenced on 19th November, 1978. Most of the employees started picketing outside the Cinema Hall and they also restrained the entry of the visitors. Many notices were given to the employees for joining duty but no compliance was made for quite a long time. Some of the employees threatened the Manager for dire consequences and as such complaints were filed in police station, Dausa from time to time. It has been

further alleged that on the one side, the employees, stopped coming inside the Cinema for rendering their services and on the other hand, an industrial dispute of termination of services of Sarva Shri Shyamlal, Madanlal, Ram Singh, Kishanlal, Prahlad, Hiralal and Rati Ram was raised before the conciliation officer. After failure of the conciliation proceedings, the Government of Rajasthan made the following reference to the labour Court:

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3. The Labour Court issued notices to the petitioner vide Annexure-2 On behalf of the employees union, a statement of claim was submitted vide Annexure-3. The petitioner submitted its written statement vide Annexure-4. The petitioner also submitted certain documents in support of the contention raised in the written statement. The Union examined Sarva Shri Shyamlal, Madanlal, Krishanlal, Prahlad, Hiralal and Moolchand. Certified copies of the statements recorded and the affidavits of the above persons have been submitted and marked as Annexure 5 to 10. On behalf of the petitioner Shri Jagdish Chandra Sharma, Kishanlal, Puran Chand, Hazarilal and Kanhaiylal were produced. The copies of their affidavits and cross examination have been submitted and marked as Annexure 11 to 15. A written complaint filed by Shri Hari Narain dated 18th November, 1978 has been submitted and marked as Annexure 16.

4. It has been further alleged that the suspension matter of Shri Ratiram for 3 days was taken as a cause by the Union for going on strike. The Union also made a representation to the management vide their letter dated 18th November, 1978 stating therein that if suspension order of Ratiram shall not be withdrawn, the workers will go on strike for indefinite period. The management vide letter dated 19th November, 1978 replied to the Secretary, Rajasthan Cine Karamchari Union in which it was clarified that the action of the Union for going on strike was illegal and against law. It was further mentioned in the aforesaid letter that employees should come on duty failing which they would be treated as absent. The copy of the letter has been submitted and marked as Annexure 17. Besides that one more letter was given to the Secretary of the Union by the management on 20th November, 1978 in which it was clearly stated that Shri Ratiram Meena was suspended for 3 days only and the aforesaid order of suspension is purely an administrative matter. In this letter, again it was mentioned that on this issue, the strike was completely illegal and unjustified. The copy of this letter has been submitted and marked Annexure-18. On 21st November, 1978 a notice was pasted on the Notice Board informing the employees for resuming duty immediately. In spite of the aforesaid notice the employees did not come on work and continued on strike.

5. It has been further alleged by the petitioner that during strike, the conduct of the employees remained intolerable as they not only harassed the other employees and the management, but they also started harassing visitors. As

such from time to time, some complaints were made to the incharge police station vide Annexure-19 to 24. The behaviour of the employees was so much intolerable that complaints had to be filed before the Sub-Divisional Magistrate, Dausa for taking proper action against them. The copies of the complaints filed before the Sub-Divisional Magistrate, Dausa have been submitted and marked as Annexure 25 to 26. Again on 21st November, 1978, 25th November, 1978 and 2nd December, 1978 notices were pasted on the Notice Board making the employees to call off strike and resume on duty. The notices have been submitted and marked as Annexures 27 to 29. In spite of the Notices, the strikers did not come forward and continued the strike for indefinite period. Some strikers named Serva Shri Puran Chand, Mahaveer, Kanhaiyalal Meena and Moolchand etc. called off the strike and joined their duties and no dispute was raised in respect of them.

6. It has been further alleged that no dispute was ever raised before the management about Shri Shyamlal, Madanlal, Ram Singh, Kishan Lal, Prahlad Kajod, Nanagram, Hiralal and Rati Ram. However, some complaint was filed before the Conciliation Officer on 29th January, 1979. The conciliation proceedings ultimately failed and the conciliation report was submitted vide Annexure 30. As no settlement could be arrived at, hence an industrial dispute was referred by the State Government to the Labour Court. The Labour Court gave an award on 31st January, 1985 vide Annexure 31 and the same has been published on the Notice Board on 8th May, 1985. The copy of the award and notice have been submitted and marked as Annexure 31 and 32 respectively. The Labour Court in the award held that the employees were not entitled to any wages for the period from 19th November, 1978 to 21st December, 1978 but ordered the reinstatement of Shri Shyamlal, Madanlal, Kishanlal, Prahlad, and Hiralal on full back wages with effect from 21st December, 1978. In these circumstances this writ petition has been filed by the petitioner.

7. Learned Counsel for the petitioner first submitted that the reference made to the Labour Court was whether the termination of the service of the employees mentioned in the order of reference on 19th November, 1978 was valid and justified or not? If not, to what relief the workmen were entitled. It has been submitted that in the award the Labour Court has held as under:

mijksDr lkjs fooj.k ls ;g fu"d"kZ fudyrk gsS fd izkFkhZx.k dsk fnukad 21&5&78 ls nqckjk lsok es u ysuk vuqfpr gS A tgka rd fiNys osru dk iz"u gS] bruk vo"; dguk iM+sxk fd fnukad 19&11&1978 la 21&12&1978 rd dk osru ik, tkus ds fy, izkFkhZx.k dksbZ vkSfpR; izekf.kr ugh dj ik;s gSA

8. It has been submitted that though the reference made to the Labour Court was for deciding the question whether termination of the services from 19th November, 1978 was valid or not, but the Labour Court went beyond the order of the reference and held that it was not proper for the petitioner not to take the employees on duty from 21st December, 1978. It has thus been submitted that it was not within the competence of the Labour Court to decide the question which

was not the subject matter of reference. It has been further submitted in this regard that the Labour Court itself has not granted wages to the workmen from 19th Nov. 1978 to 20th Dec. 1978 and further held that it did not want to decide the issue regarding justification & that the petitioner did not terminate the services of the concerning employees on 19th November, 1978. In spite of the above finding the Labour Court went wrong in holding that the strike having come to an end on 20th December, 1978 the petitioner was not justified in taking back the employees on duty on 21st December, 1978.

9. On the other hand it was submitted by Mr. Mathur learned Counsel for the union that the Labour Court has not decided any question beyond the terms of reference. The Labour Court was called upon to decide the question whether the termination of the services dated 19th November, 1978 was proper or not and while deciding this question if the Labour Court held that it was not justified on the part of the petitioner not to take back the employees on duty on 21st December, 1978 after calling off the strike on 20th December, 1978, it was perfectly within the competence of the Labour Court to answer the reference in the above manner. It is submitted that the question as to for what period the employees were entitled to back wages had nothing to do with the question regarding the validity of the termination of the services. It has been further submitted that the issue involved in the case was the validity or invalidity of the termination of the service and if such date is taken as 21st December, 1978 instead of 19th November, 1978, it does not make any difference.

10. Mr. Kala learned Counsel for the petitioner in support of the contention that the Labour Court cannot decide any question beyond the terms of reference has placed reliance on *Kashmir Ceramics Ltd. v. Labour Court and Ors.* 1980 Lab I.C. 192 and *Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd. and Anr.* AIR 1979 SC 1356. There can be no manner of doubt in the principle enunciated in the above cases that the Labour Court or the Industrial Tribunal cannot travel beyond the terms of reference. However, it has to be seen to what was the real issue referred to the Labour Court in the present case and whether it has travelled beyond the terms of reference. The employees in the present case had gone on strike on 19th November, 1978 and the strike was called off on 20th December, 1978. It has been found by the Labour Court as a question of fact that the employees in question had gone back for resuming their duties on 21st December, 1978 but they were not allowed to join duties on 21st December, 1978. It has also been found by the Labour Court that it was not concerned with to decide the issue regarding the validity or otherwise of the strike which continued from 19th Nov., 1978 to 20th Dec., 1978. The Labour Court further found that the petitioner had not come forward with a plea that the services of the employees were terminated on account of any misconduct on their part or on account of having joined in the strike. Neither any inquiry was made in this regard nor any charge-sheet was given to the employees. The only stand taken by the petitioner before the Labour Court was that the employees a question did not return back to join duty on 21st December, 1978. The Labour Court has

decided this question against the petitioner and has placed reliance on the affidavits of the employees in which they had stated that they had returned on duty on 21st December, 1978 but they were not allowed to join duty. The Labour Court in arriving to the aforesaid conclusion has not committed any error of jurisdiction. The termination of the services Or not to allow the employees back on duty makes no material difference and in these circumstances it cannot be said that the Labour Court travelled beyond the scope of reference in the facts and circumstances of this case. The Labour Court has not allowed back wages for the period during which the strike continued as the question regarding the validity of the strike was never referred to the Labour Court and as such the Labour Court was perfectly justified in awarding the back wages from 21-12-78.

10. The next contention raised by Mr. Kala learned Counsel for the petitioner is that the petitioner M/s Poonam Talkies has been registered under the Rajasthan Shops and Commercial Establishment Act, 1959 and Section 26A of this Act also deals with the matters regarding termination of employees. It is submitted that this Act is a special statute governing the employees of the shops and commercial establishments and the Industrial Disputes Act, 1947 being a general law, no reference was competent under the Industrial Disputes Act. It has been submitted that the Shops Act is a beneficial legislation and the President of India has also given consent of such law, as such the provisions of the Shops Act, will prevail over the provisions of the Industrial Disputes Act under Article 254(2) of the Constitution of India.

11. Reliance in support of the above contention is placed on M. Karunanidhi Vs. Union of India and Another,

12. On the other hand it is submitted by Mr. Mathur that there is no repugnancy between the provisions of the Industrial Disputes Act and the Rajasthan Shops and Commercial Establishment Act. It has been further submitted that no such objection was taken before the Labour Court and as such the petitioner is not entitled to raise this objection before this court in the exercise of certiorari jurisdiction. Reliance is placed in support of the above contention on Delhi Consumer Co-operative Wholesale Stores Ltd. v. Secretary (Labour) and etc. 1983 Lab. I.C. 1652.

13. In my view there is no repugnancy between the Rajasthan Shops and Commercial Establishments Act and the Industrial Disputes Act. The Supreme Court in M. Karunanidhi's case (supra) has laid down that in order to decide the question of repugnancy it must be shown that the two enactments contained inconsistent and irreconcilable provisions, viz., that they cannot stand together or operate in the same field. It has been further held that where the two statutes occupied a particular field but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results. Applying the above test I am clearly of the view that there is no repugnancy in the above two enactments. It cannot be disputed that the Labour Court is competent to decide the question regarding termination of

services referred to it under the provisions of the Industrial Disputes Act. There can be no valid objection if the workmen covered by the Shops Act seek their relief under the Industrial Disputes Act by the mere fact of the petitioner being registered under the Shops Act. That apart no objection of the kind now raised before this court for the first time in the exercise of extra ordinary jurisdiction under Article 226 of the Constitution was ever raised before the Labour Court. The petitioner is thus not entitled to raise this objection for the first time before this court. I find support in the view taken by me from the following observations made by a Bench of the Delhi High Court in Delhi Consumer Co-operative Wholesale Stores Ltd.'s case (supra).

The next argument was that as the Stores was governed by the Delhi Shops and Establishments Act the workmen could only seek the relief under the said Act and not from the Labour Court. We cannot agree. This argument was not raised before the Labour Court and the petitioner would be prima facie barred from raising it before us. Not with standing this we allowed Dr. Singhvi to argue it on merits. But we find no substance in it. It is not disputed that respondent workmen were also governed by the provisions of the Industrial Disputes Act. In that context it is not understood how the workmen could be denied the relief under the Industrial Disputes Act. The Labour Court was thus competent to award reinstatement with back wages. The applicability of the Shops and Establishments Act only means that if the workman is covered by the said Shops Act he may seek relief also under the said Act but this cannot debar him from seeking relief under the Industrial Disputes Act, if he is entitled to the same. The object of the Shops Act is to give some minimum benefits and relief to the vast unorganised sector of the employees, it is not meant to take away the rights which an employee enjoys under the Industrial Disputes Act or other beneficial labour legislation. More over there is nothing in the Shops Act which deals with the case of retrenchment or closure. The Shops Act is not meant to deny relief to workman under the Industrial Disputes Act by the mere fact of stores being also registered under the Shops Act. The Shops Act is complimentary to the Industrial Disputes Act, it does not exclude the applicability of any other Act. Further the Industrial Disputes Act is a specific Act dealing with rights and obligations of employees and employers under the Act. Once the workmen are covered by the Industrial Disputes Act the provisions of Industrial Disputes Act will prevail over the provisions of any other Act, in case of conflict. Here there is no conflict, they are only supplementing each other. The argument to deny the benefit of the Industrial Disputes Act to respondent workmen must, therefore fail. Reference is this connection may be made to *Adaishwar Lal v. Labour Court* 1970 Lab. IC 936 Delhi. In view of the above discussion we see no merit in the petition. Dismissed with costs Counsels fee is fixed at Rs. 500/-

14. Mr. Kala learned Counsel for the petitioner then submitted that the petitioner had led evidence before the Labour Court to show that the workmen were gainfully employed and as such they were not entitled to any back wages. It has been submitted that it had been proved by the petitioner that Shri Madan Lal was

employed in police Shri Prahlad was working in Ball Bearing Company and Shri Kishanlal was working in Bank. It is thus submitted that though this fact was brought to the notice of the Labour Court, but no finding on this issue has been given by the Labour Court.

15. I see no force in the above contention. It is well settled that the workmen become entitled to back wages as soon as their termination is held to be illegal. The burden then lies on the employer to show that the employees were not entitled to back wages as they were gainfully employed during the relevant period. Annexure 5 is an affidavit of Shri Shyamlal, dated 15-3-1983 in which he clearly stated in para 13 that from the time his services were terminated he is unemployed and is in great financial stringency. He was cross examined on this point but he clearly stated that he never worked as a mason nor as beldar. He also stated that Kishanlal never worked in any State Bank. As regards Madanlal, he stated that he did not know whether Madanlal worked at any place or not. Madanlal also filed an affidavit Annexure 5 dated 15th March, 1983 in which he stated in para 13 that he was out of employment since the date of his termination of the service. It is pertinent to mention that though the petitioner has taken a plea that Madanlal was employed in police but in cross examination he was put another question that whether after the strike he was employed with the Pawa Transport or not. Madanlal clearly stated that he never worked in such transport company and was unemployed after the strike. Kishanlal in his affidavit Annexure 7 in para 12 also stated he remained unemployed after termination of his service. No question at all has been put to Kishan Lal in the cross examination that he was employed in any bank as now contended by the petitioner. Prahlad also stated in his affidavit in para 12 that he is unemployed since his services were terminated. No question was put to Prahlad in the cross examination that he worked in the Ball Bearing Company as now asserted by the petitioner. Apart from that the petitioner has not produced any documentary evidence in support of their contention that Shyamlal was working in as a mason and Madanlal was employed in police, Prahlad was working the Ball Bearing Company and Shri Kishanlal was working in Bank. It has not been mentioned as to at what place these persons were posted nor any details of the employers have been given. A bald and vague plea in this regard was taken in the affidavits of some of the witnesses mentioning that Shyamlal as a mason, Madanlal in Police, Kishan Lal in Bank and Prahlad in Ball Bearing Company were working at present. In case the petitioner wanted to discharge the burden which lay upon it to show that the workmen remained gainfully employed some evidence of employees could have been produced. The petitioner has miserably failed to discharge its burden in this regard and as such there is no force in this contention raised by learned Counsel for the petitioner.

16. No other contention was raised by learned Counsel for the petitioner. In the result I find no force in this writ petition and it is accordingly dismissed with no order as to costs.