
(1957) 04 MAD CK 0039
In the Madras High Court

Pudukottah Textiles Ltd.

APPELLANT

Vs

A. Subramaniam and Others

RESPONDENT

Date of Decision : 03-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1958 Mad 139 : (1957) 70 LW 895 : (1957) 2 MLJ 438

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—The petitioner in each of these cases is the same, the Pudukottah Textiles, Ltd. The first respondent in each of these applications was an employee of the petitioner mills. It should be convenient to refer to them collectively as the respondents, except where the case of each individual employee has to be considered. Since the questions that arise for determination in these eight applications were mostly identical, I shall dispose of these applications by a common Order.

2. The Government imposed a cut in the supply of electrical energy to textile mills among others in 1952 and 1953. As a result of that cut employees in several mills had to be laid off. They claimed compensation, which the managements of the mills were not inclined to grant. On 15th June, 1953, the Government referred to the Special Industrial Tribunal an industrial dispute between the managements of the several mills and the workers in those mills, whether the involuntary unemployment brought on by the cut in the supply of electrical energy and the consequent lay-off justified the grant of lay-off compensation to the workers. The petitioner mill and its workers were parties to that industrial dispute. The Industrial Tribunal gave its award on 27th January, 1954. It is enough to note at this stage that the compensation it directed to be paid was limited to permanent employees, that is, those who had a year's continuous service, the word "continuous" of course, being understood in the light of the definition in the Industrial Disputes Act. The Management of the

petitioner mills preferred an appeal against that award. It was common ground that the workers of the petitioner mills did not prefer any appeal.

3. During the pendency of the appeal, the respondents and some of the other employees of the petitioner mills had their services terminated under varying circumstances by the management. Each of them preferred an application to the Appellate Tribunal, complaining that the termination of his services was in violation of Section 22 of Act XLVIII of 1950. Those applications were transferred for disposal to the Chairman, Central Government Industrial Tribunal, Madras, u/s 23-A of Act XLVIII of 1950, which was introduced by the Amending Act XXIX of 1955, on 13th July, 1955.

4. The petitioner resisted the applications. The Chairman of the Tribunal gave separate awards on the applications of A. Subramaniam (first respondent in W.P. No. 729 of 1956), Allapichai (first respondent in W.P. No. 734 of 1956), A. Ganapathy (first respondent in W.P. No. 731 of 1956), S. Rangaswami (first respondent in W.P. No. 735 of 1956) and S. K. Kayambu (first respondent in W.P. No. 755 of 1956). It was a joint award that the Tribunal passed in the case of C.T. Alagan (first respondent in W.P. No. 733 of 1956), A. Arumugam (first respondent in W.P. No. 732 of 1956) and R. Karuppaiah (first respondent in W.P. No. 730 of 1956). But even there the claims of each of them were separately considered.

5. In each of these cases the petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari, to set aside the award of the Chairman of the Tribunal.

6. I shall first indicate the scope of the award with reference to each of the eight contesting respondents.

7. The Tribunal found that A. Subramaniam, (the first respondent in W.P. No. 729 of 1956), was a substitute, whose services were terminated by the petitioner on 24th September, 1955, by the Management's refusal to assign any further work. The Tribunal found that Subramaniam had been frequently absenting himself from work, and that the demand made by the Management, that he should give an undertaking that he would at least in future be regular in his attendance, was justified." As Subramaniam refused to give such an undertaking the Tribunal took the view that termination of Subramaniam's services was justified. The Tribunal refused to order the reinstatement of Subramaniam but directed that "in view of his services he should be given a compensation of Rs. 100."

8. As I said, the claims of R. Karuppaiah (first respondent in W.P. No. 730 of 1956), A Arumugam (first respondent in W.P. No. 732 of 1956) and C. T. Alagan (first respondent in W.P. No. 733 of 1956) were dealt with by a common Order. The Tribunal recorded that each of these three workers had only been a substitute. The Tribunal, however, held that the Management did not act bona fide in refusing to give them work after the several dates mentioned in the award, and the Tribunal directed that each of them should be reinstated in

service, and further directed that each of them should be given a compensation of Rs. 350.

9. In the case of A. Ganapathy (first respondent in W.P. No. 731 of 1956), the Tribunal accepted the contention of the Management, that he was only a substitute -worker. That he was discharged from the service of the Management on 14th December, 1955, was not in dispute. The Tribunal held that it was virtually on the advice of the Deputy Superintendent of Police who appeared on the scene when there was trouble in the mills, that the services of Ganapathy had been terminated, and that the discharge from employment was without any enquiry. The Tribunal held that the action of the Management was arbitrary, and it directed that Ganapathy should be reinstated in service and paid a compensation of Rs. 200.

10. That the services of S. Rangaswami (first respondent in W.P. No. 735 of 1956) came to an end on 1st March, 1955, was not in dispute. The Management claimed he had stayed away. The Tribunal negatived that contention and upheld the claim of the worker, that he had been refused work by the Management after 1st March, 1955. The Tribunal observed that the worker's representations to the Management were not even replied to, and it held that the Management was not justified in terminating the services of Rangaswami. The Tribunal directed his reinstatement and the payment of a compensation of Rs. 200.

11. Kayambu (first respondent in W.P. No. 755 of 1956) again was a substitute worker. The Tribunal negatived the contention of the Management, that Kayambu stayed away from work after 18th April, 1955 and upheld the contention of the worker, that after serving a memorandum of charges on him on 16th April, 1955, they refused to give him any work. The Tribunal held that that refusal was unjustified. It directed the reinstatement of Kayambu and a payment of Rs. 200 to him as compensation.

12. In the case of Allapichai (first respondent in W.P. No. 734 of 1956) the Tribunal negatived the contention of the Management, that he was only a learner in the reeling department and upheld the contention of the worker, that he was a probationer. That Allapichai was on leave from 19th September, 1954, for three days was common ground. Allapichai's complaint was that he was refused work and his services were dispensed with on 22nd September, 1954. The Management contended that Allapichai stayed away from work, and it was not a case of discharge. The Tribunal accepted the worker's case and directed that he should be reinstated and paid a compensation of Rs. 200.

13. The validity of these awards was attacked by the learned Counsel for the petitioner on the following grounds : (1) Section 22 of Act XLVIII of 1950 did not apply, as none of the respondents was a "workman concerned in the appeal " which was no doubt pending before the Labour Appellate Tribunal. (2) The applications u/s 23 were all preferred to the Labour Appellate Tribunal after 13th September, 1955, on which date Act XXIX of 1955 which enacted Section 23-A of

Act XLVIII of 1950 came into force. Therefore the transfer of the proceedings to the Chairman of the Central Government Industrial Tribunal was bad in law, and that Tribunal had no jurisdiction to pass any award. (3) The Tribunal had no jurisdiction to award any compensation. (4) In the case of the respondents other than Allapichai the Tribunal, having found that they were only substitutes, should not have ordered their reinstatement. (5) The Tribunal set aside the orders of termination of services of the respondents other than Subramaniam on the ground that there had been no prior enquiry into the charges against them. The Tribunal itself should have investigated further whether the charges were true, and failure to do so vitiated the exercise of the jurisdiction, even if the Tribunal had it to pass the award.

14. In *Management of Newtowne Studios, Ltd. Vs. T.R. Ethirajulu and Others*, I had occasion to consider some aspect of the question, who is a workman concerned in an appeal within the meaning of Section 22 of Act XLVIII of 1950. There I held that where the workers of an employer are collectively made parties to an industrial dispute, all those in the service of the employer on the date of the order of reference u/s 10(1)(c) of the Industrial Disputes Act were parties to the dispute, and as such were parties concerned in the industrial dispute and concerned in the appeal. The learned Counsel for the petitioner urged that of the respondents, Subramaniam (first respondent in W.P. No. 729 of 1956), Ganapathi (first respondent in W.P. No. 731 of 1956) and Rangaswami (first respondent in W.P. No. 735 of 1956) entered the service of the petitioner only on 1st December, 1954, 1st December, 1954 and 10th October, 1953 respectively, and they were not in the service of the petitioner on 15th June, 1953, when the industrial dispute was referred by the Government u/s 10(1)(c) of the Industrial Disputes Act. That the other respondents were in the service of the petitioner on 15th June, 1953, was not denied.

15. I do not, however, consider it necessary to go further into the questions, whether even these three, Arumugam, Ganapathi and Rangaswami, were "workmen concerned in the appeal" within the meaning of Section 22. Such a contention was never put forward before the Tribunal. The material for determining such a question was not placed before the Tribunal. It is not open to the petitioner to raise a new contention at this stage in proceedings under Article 226 of the Constitution, when the contention involves investigation of facts as well. As such a contention was never raised before the Tribunal, the petitioner cannot be heard to urge that it was a case of failure to exercise the jurisdiction to decide a question at issue.

16. The second of the contentions of the learned Counsel for the petitioner, that the Appellate Tribunal had no jurisdiction to transfer the applications of the respondents preferred u/s 23 of Act XLVIII of 1950 to the Chairman of the Central Government Industrial Tribunal, Madras, is really without any substance. Act XXIX of 1955 came into force on 13th September, 1955. No doubt the applications of the respondents were all preferred subsequent to that date. What

Section 23-A (1) of Act XLVIII of 1950, enacted by Act XXIX of 1955, authorised was:

Where any proceeding under...section 23 is pending before the Appellate Tribunal, the Chairman, without constituting any Bench for the purpose, may--

* * * (c) transfer the proceeding. ...to any one of the Industrial Tribunals specified for the disposal of such proceedings by the Central Government by Notification in the Official Gazette.

17. The learned Counsel for the petitioner urged that this authorised only the transfer of proceedings pending before the Tribunal on 13th September, 1955. I am unable to accept that limitation on Section 23-A (1) of the Act. The expression "is pending" "has to be construed with reference to the date on which the power conferred by Section 23-A (1) is exercised, the date of the transfer. The applications preferred by the respondents were pending in that sense when they were transferred for disposal to the Chairman of the Central Government Industrial Tribunal, Madras. That Tribunal therefore had jurisdiction to dispose of the applications that had been preferred by the respondents u/s 23.

18. The third of the contentions of the learned Counsel for the petitioner was, that the Tribunal had no jurisdiction u/s 23 of Act XLVIII of 1950 to award any compensation. It should be remembered that of the respondents all but Subramaniam (first respondent in W.P. No. 729 of 1956) were directed to be reinstated. No back pay for the period during which they were out of employment was ordered. Instead, the Tribunal awarded each of these respondents a specified sum as "compensation". The learned Counsel for the petitioner relied upon J.K. Hosiery Factory Vs. Labour Appellate Tribunal of India and Another, , in which Desai, J., held at page 502:

Neither the Industrial Disputes Act nor the Standing Orders Act make an employer liable to pay compensation to an employee discharged or punished in contravention of the provisions of Section 38. The Contract Act admittedly does not contain any provision about such compensation. Therefore, an Appellate Tribunal has no power by virtue of Section 33 to award compensation for infringement of the provisions of Section 22.

19. It may not really be necessary to record my dissent with all respect to the learned Judge, from the view taken by him. In the present case what was awarded as compensation was really in lieu of wages that the respondents other than Subramaniam would have been entitled to, had there been no break in the continuity of their service. That break was occasioned by the conduct of the petitioner-Management in contravention of Section 22 of Act XLVIII of 1950. What Section 23 of Act XLVIII of 1950 permits the Appellate Tribunal to do is to dispose of the complaint as if it were an appeal pending before it. The analogous provision in the Industrial Disputes Act is Section 33-A, which directs that such a complaint should be treated as an industrial dispute. Whether it is treated as an industrial dispute or as an appeal, what results is an award, in the one case by

the Industrial Tribunal, and, in the other case, by the Appellate Tribunal, or by the Tribunal to which the proceedings of the Appellate Tribunal stood transferred u/s 23-A of Act XLVIII of 1950. Neither reinstatement nor payment of wages as such when the employee was not out of employment is a Common Law right, but both reliefs could be granted by the Industrial Tribunal u/s 33-A of Industrial Disputes Act, and by the Appellate Tribunal u/s 23 of Act XLVIII of 1950. Whether independently of back-wages for the period, during which the complaining workman was unjustifiably kept out of employment, the Tribunal can award compensation does not arise for consideration except in the case of Subramaniam in W.P. No. 729 of 1956. As I said, though what was awarded was styled compensation, it represented only a portion of the wages the respondents would have been entitled to had they continued in the service of the petitioner. In my opinion, except in the case of Subramaniam (the first respondent in W.P. No. 729 of 1956), the order of the Tribunal directing a specified amount to be paid to each of the respondents was well within the jurisdiction of the Tribunal.

20. In the case of Subramaniam, however, it should be noted that the Tribunal came to the conclusion that the Management was justified in terminating his services, and reinstatement was refused. No question of payment of anything to him as wages or in lieu of wages could arise for consideration. The contention of the learned Counsel for the petitioner, that in that case at any rate, on the findings of the Tribunal it had no jurisdiction to award any sum by way of compensation pure and simple appears to be well-founded. It was certainly not "compensation " for refusal of employment, because the Tribunal held that the termination of the services and the consequent refusal of employment were justified. The only relief given to Subramaniam under the award of the Tribunal was payment ex-gratia of compensation. That, in the circumstances of this case, it had no jurisdiction to award. The rule nisi issued in W.P. No. 729 of 1956- will be made absolute, and that petition alone will stand allowed.

21. Coming to the fourth of the grounds I have listed above, I have pointed out that the Tribunal itself accepted the case of the petitioner-Management that the respondents other than Allappichai (first respondent in W.P. No. 734 of 1956), were only substitutes. The order of reinstatement in no way touched that position. As substitutes they would have been entitled to receive work and get paid therefore under the Standing Orders, that is, whenever work was available. The period during which they were out of employment was more than a year. The order of reinstatement passed by the Tribunal has to be interpreted only as an order directing their reinstatement as substitutes. It did not further enlarge their rights. It should be remembered that, had they been permanent employees, the question of back-wages for the period for which they were kept out of employment would have been different. In awarding a specified sum as compensation the Tribunal obviously had in view what they would have earned as substitutes. The Tribunal set out specifically in dealing with the claims of Karupiah, Arumugam and Alagan:

I find that the applicants were not entitled to get regular work on all days and hence it is unfair to ask the Management to pay back-wages to them which they would have not got if they were in service. Since the refusal to give work is unjustifiable, I think the applicants deserve some relief from the date of employment for about one year.

22. The last of the contentions of the learned Counsel for the petitioner must also be negatived. Having come to the conclusion, that the discharge without an enquiry was unjustified, the Tribunal was not called upon to go into the further question, whether if there had been an enquiry the charges would have been proved. The learned Counsel for the petitioner referred to the observation of Das, J., as he then was, at page 153 in *Automobile Products of India, Ltd. v. Rukmaji Bala* (1955) 1 M.L.J.148. But as the respondents' counsel pointed out, in this case what the petitioner called the merits of the dismissal were considered by the Tribunal. The point at issue was whether the termination of services without enquiry was justified. The Tribunal held that it was not. There was therefore no occasion for the Tribunal to go into the question, whether the charges themselves were true or not. Failure to go into the truth or otherwise of these charges did not vitiate the exercise of the jurisdiction the Tribunal had.

23. As I have already recorded above, the rule issued in W.P. No. 729 of 1956 will be made absolute and that petition will stand allowed. The award of the Tribunal in that case in relation to A. Subramaniam will stand set aside.

24. The rule issued in the other petitions will stand discharged and each of these petitions will stand dismissed. No order as to costs in any of these applications.