

(1961) 08 MAD CK 0019
In the Madras High Court

Pushpa Talkies

APPELLANT

Vs

Its workmen (through the Secretary, South Indian Cinema
Employees' Association) and Another

RESPONDENT

Date of Decision : 10-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25FF, 25H

Citation : (1961) 2 LLJ 787

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This petition under Article 226 of the Constitution seeks to quash the award of the labour court, dated 15 June 1959,

directing the petitioner to reinstate seven workers in service within a week after its publication in the fort St. George Gazette.

2. The petitioner is sub-lessee of not only the leasehold interest in the land and building constituting the cinema theatre but also an assignee of the

equipment, including a projector for running cinematograph business. From the original owners of the site and building, the lessor of the petitioner

had taken out a lease of these properties. The agreement to transfer the site and building was dated 7 December 1958, which was executed by the

lessor in favour of the petitioner. On 27 December 1968, the lessor, who was the previous employer, put up a notice which ran thus:

Take notice that since we have relinquished the business of Pushpa Talkies with effect from 27 December 1958 to one V. Subramaniam of Salem,

your services have been terminated with one month's notice from this 27 December 1958. You will be to refrain from attending duty and have to

take your salary after the expiry of the notice date.

It was alleged that after the notice the workers to whom the notice applied did not turn up for work, though this was controverted by the workers

themselves. The fact appears to be that, from that date, the workers did not actually work in the concern of the petitioner. The workers took up

the attitude that the transfer of the business actually took place before 27 December 1958, and that on that date they continued to be under the

employment of the petitioner, and that, therefore, the notice issued by the previous management on 27 December 1958, was improper and

ineffective to terminate their services by retrenchment. The petitioner, on the other hand, would have it that the actual transfer of the business as

distinct from the transfer of the site and building thereon, took place only on 27 December 1958 so that by reason of the notice on that date by the

previous employee, the workers in question no longer continued under his service so that no question of his liability would arise either u/s 25FF of

the Industrial Disputes Act or of his liability to reinstate the workers on any ground. In view of this difference, a reference of this dispute was made

to the labour court, the terms of the reference being whether the retrenchment of the workers was justified, and if not, to what relief they were

entitled.

3. Before the labour court, the previous management filed a counter in which it was asserted that the actual charge of the business was with him,

and that the notice to the workers on that date could, therefore, be said to be invalid. The labour court, on the basis of the evidence placed before

it, found that even before 27 December 1958, the previous management had virtually transferred the business to the petitioner, and that therefore,

the previous management had no right to issue notices to the workers on that date terminating their services on the ground of retrenchment. It held

therefore, that the notices were not valid. Without being content with this finding, the labour court went further to find that neither the previous

management nor the petitioner had complied with the provisions of Section 25FF and that the retrenchment of the workers was illegal and not

justified. Eventually, therefore, the labour court directed reinstatement of the workers with back wages from the date on which they were

retrenched. It is this award that is sought to be quashed by the present petition.

4. Sri R.M. Seshadri, the learned Counsel for the petitioner, urged two points:

(1) that the labour court misdirected itself in assuming that there was a transfer on 18 December 1958 of the business of running the cinema, as

distinct from a transfer of the site and the building thereon; and

(2) that it was also in error in holding that the petitioner had contravened the provisions of Section 25FF.

So far as the first point is concerned, it appears to be a factual one and involves review of the relative evidence. In support of his point, the learned

Counsel drew my attention to certain documents which were not even filed before the labour court. The finding of the labour court that there was

virtually a transfer of the business even prior to 27 December 1958. was evidently based on two documents, Exs. W5 and W6. The first of them is

dated 29 December 1958 and was written by the petitioner himself to the owners of the site and the building thereon. In that letter, the petitioner

stated thus:

Please be advised that under the agreement concluded with Liberty and Company of Bangalore, the business of Pushpa Talkies Tiruppur, has been

relinquished to me with all the rights hitherto held by the above concern. It should also be noted that I had taken possession of the theatre on and

from 15 December 1958.

5. In the second letter which was written by the previous employer, it was stated:

Please be informed that we had leased Pushpa Talkies, Tiruppur to V. Subramaniam, son of Venkatachala Gounder, merchant, residing No. 112,

Naidu Street, Salem-2, for running shows with effect from 15 December 1958, as per lease. dated 28 December 1958.

On the basis of these two letters, the tribunal considered that the transfer of the business virtually took place before 27 December 1958. This is a

finding of fact which cannot be interfered with in this petition.

6. The effect of the finding is that the workers in question should be taken to have continued under the service of the petitioner himself even from

prior to 27 December 1958. That means the previous management ceased to be the employer of the workers, with the result that the management

had no right to terminate their services by retrenchment, by notices, dated 27 December 1958. It follows, therefore, that the labour court's finding

that the notices were invalid, is correct. The first point of the learned Counsel is hence rejected.

7. On the second point of the learned Counsel, it does appear from Para. 9 of the labour court's order that there was some confusion. In view of

the finding aforesaid of the labour court, it is difficult to understand by what process of reasoning it came to the conclusion that the petitioner

infringed the provisions of Section 25FF. Since the workers had been continued according to the finding of the labour court, even prior to 27

December 1958, no question of the petitioner terminating the services of the workers arose without complying with the provisions of Section

25FF. As a matter of fact, no notice of such termination was at all given by the petitioner. It seems to me that the labour court was also in error in

assuming that Section 25H was applicable to the case. For the reason that there was no question of retrenchment of the workers made by the

petitioner himself, the labour court's order of reinstatement, to the extent to which it was based upon its view that the petitioner had contravened

the provisions of Section 25FF and Section 25H, cannot be supported.

8. The only real question to which the labour court should have addressed itself in considering the question whether the workers should be

reinstated and were entitled to the other reliefs prayed for by them, was to find whether the workers did not, of their own accord turn up for work

under the petitioner or they were prevented from turning up for work under the petitioner after 27 December 1958 or, in other words, whether

they stopped from work and if so, were justified in stopping away from work after 27 December 1958. The relief to be given to the workers

would depend upon the answer to be given to that question. But the award of the tribunal does not ex facie show that the labour court addressed

itself to that question at all and this, in my opinion, there fore, vitiated the award. On that ground the award has to be quashed.

9. The petition is allowed. Rule nisi is made absolute. The tribunal will be at liberty to dispose of the reference afresh. In the, circumstances of this

case, there will be no order as to costs.