
(1979) 02 MAD CK 0049
In the Madras High Court

R. Maria Thangam

APPELLANT

Vs

U. Murugan and Others

RESPONDENT

Date of Decision : 28-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Industrial Disputes Act, 1947 — Section 10, 33
Payment of Wages Act, 1936 — Section 15, 16

Citation : (1979) ILR (Mad) 186 : (1979) 2 LLJ 29

Hon'ble Judges : Sathiadev, J;Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—This writ petition is to quash the order made by the Labour Court, Madurai in Claim Petition No. 117 of 1971 u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act.)

2. The case of the claimants-workmen was (hey were in the service of the writ petitioner--Saw Mill for a period ranging from 4 to 6 years and all of a sudden they were refused. employment with effect from 5.10.1970. It is further stated that when their union issued a notice to the writ petitioner seeking re-employment, it was informed that the Saw Mill had been closed. In view of the above, the workmen claimed closure compensation at the rate of 15 days wages for every year of service and also a month's salary in lieu of a month's notice of the closure of the mill leave wages for the respective period of their service including wages for national holidays and festival holidays for which leave was not granted to them and bonus at the rate of Rs. 40 per year for every year of service. Obviously, therefore, the claim of each workman had varied and the total amount claimed by all of them comes to more than Rs. 40,000.

3. In the counter statement of the writ petitioner it was pleaded that there were only 6 persons who were regularly employed in the Saw Mill who were claimants 2, 13 to 15 and 19 and one Ambrose and the others engaged by the Saw Mill were merely casual workers, called upon to do work on piece-rate basis. One

S.M. James was the Manager of the Saw Mill in 1968 when he left to start a Saw Mill of his own named Andavar Saw Mill. All workmen of the writ petitioner's Saw Mill, both regular and casual, except S. Arulappan, Section Saluvai Thasan and R. Arputham, left the service of the writ petitioner along with the said James. As a result of it, right from 1968 a new act of workmen were employed in the saw mill and from 2.6.1969 even those workers abstained from work. This resulted in an industrial dispute and the matter was settled on 24.1.1970. Since in 1970 the writ petitioner because ill he could not attend to the business of the Saw Mill. There was none else to whom he could entrust its running. He was medically advised rest and, therefore, it was thought better to close the mill with effect from 3.10.70 for which purpose due notice of closure was given to all workmen on 3.9.1970. The general notice of closure was put on the notice board on 3.9.1970 and the workmen of the Saw Mill had full notice of the contemplated closure.

4. It was also contended that the respondents had not put in the number of years of service in the Saw Mill as claimed by each of them in their claim statement. The workmen had not put in more than one year's continuous service in the Saw Mill and, therefore, they were not entitled to closure compensation. In the counter-statement, the details of the period during which each one of the workman had been in service were mentioned. The entitlement claimed under the head of leave wages including wages for national and festival holidays and the bonus was denied. Lastly, it was submitted before the Labour Court that the claim petition u/s 33C(2) of the Act was not maintainable.

5. Overruling the objections of the writ petitioner, the Labour Court, Madurai passed an award on 29.3.1974. It held that the workmen were not entitled to leave wages including wages for national and festival holidays and also bonus. However, it found the workmen were entitled to one month's salary in lieu of notice and closure compensation at the rate of 15 days wages for every year of service put in by each one of them. In arriving at that conclusion, the Labour Court worked out the number of years of service put in by each of the workmen. Ultimately, it awarded Rs. 900 to the first claimant Murugan, towards a month's salary and closure compensation, Rs. 660 to each of the workmen Nos. 2 and 3, namely, T. Rathinamony and M. Rasaya, Rs. 825 to the fourth claimant Amirtharaj, Rs. 785 to the fifth workman Natesan, Rs. 600 to each of the petitioners 6 and 11, Arulappan and Duraisamy, Rs. 450 to the seventh petitioner Albert Stephen, Rs. 300 to each of the petitioners Nos. 8 and 9, namely, Thanka Nadar and Ayyapalam, Rs. 650 to workmen No. 10 Siluvai Thasan, Rs. 540 to each of the petitioners 12 and 15, Shanmugam and Crux Maria and Rs. 405 to the 13th petitioner Issack, Rs. 600 to the 14th workmen T. Krishnan, Rs. 360 to each of the petitioners 16, 17 and 18, namely, Iyappan, Gopalakrishnan and Seso Das, Rs. 270 to the 19th workman Rajappas and Rs. 216.75 to the 20th petitioner Thankaraj and Rs. 225 to the 21st petitioner Madasamy. It is the correctness of the above award that is questioned in this writ petition.

6. When the writ petition was taken up for final hearing, a preliminary objection was taken by Mr. A.L. Somayaji, the learned Counsel for the respondents. It is contended that since to each workman a different relief has been afforded, peculiar to his own claim, the cause of action is distinct. The closure of the Mill might have enabled the workmen to have preferred application u/s 33C(2) of the Act. But in order to show that he might be entitled to monetary compensation u/s 33C(2) he will have to satisfy the conditions thereunder. Merely because unemployment arises on closure, it does not mean that the cause of action as regards various persons would be one and the same. Therefore, a single writ petition cannot be filed by the management. Otherwise, what would happen, is, in the case of one it would be open to him to plead that he had not been validly retrenched or that he had not been properly dismissed or again he had not put in 240 days, of service for a continuous period of one year and he may succeed with reference to one workman and yet may not succeed. He is, able to get rid of the various distinct relief under one writ petition.

7. Normally speaking each of the workman should file an independent petition u/s 33C(2). But it is only the statute that enables the workmen to file a joint petition, u/s 33(5) of the Act. That enabling provision cannot control the proceedings under Article 226 which arise under the Constitution. In other words, Section 33(5) of the Industrial Disputes Act cannot control writ proceedings under Article 226.

8. In support of this submission, reliance is placed on a judgment of My Lord Ismail, J., in Subbiah v. Loyal Textile Mills, Kovilpatti 46 F.J.R. 280. The learned counsel while citing the decision draws our attention to the fact that the very decision of Ismail, J., relied upon the ruling of a Division Bench of this Court in Rainbow Dyeing Factory v. Industrial Tribunal, Madras (1959) 1 M.L.J. 53. It is finally submitted that the judgment of Ismail, J. was confirmed in Writ Appeal No. 232 of 1975.

9. As against this, both Mr. M.R. Narayanan swami and Miss O.K. Sridevi contend as under. No doubt the workers are unable to join a single claim petition u/s 33(5). That is why it came to be dealt with under a common award. What is now sought to be done by filing the writ petition is to have the award quashed. In other words, by the exercise of certiorari jurisdiction, the offending order is removed and nothing more is done. Otherwise, if there are 1,000 workmen, it will require the management to file 1,000 writ petitions which would neither be just nor convenient. What has led workmen to file the petition u/s 33C(2) was the closure. If their claims are found on closure, namely, because while affording relief different reliefs came to be awarded, that does not mean that the management should be required to file separate writ petitions.

10. The judgment reported in Subbiah v. Loyal Textile Mills. Kovilpatti (supra) dealt not with a case u/s 33C(2) of the Act but a case arising under the Payment of Wages Act. It requires to be noted that the learned Judge was bound by the judgment of the Division Bench in Rainbow Dyeing Factory v. Industrial Tribunal,

Madras (1959) I M.L.H. 53. That judgment of the Division Bench related to a case of reference made u/s 10(1) of the Act concerning various industries and the question arose whether one writ petition alone could be maintained by several managements. The learned Judges answered in the negative. Having regard to the facts of this case, the proper decision to be applied is that of My Lord Ramaprasada Rao, J., (as he then was) in *S. Arcot Dist. Co-op. M.T. Soc. v. Presiding Officer* (1972) I M.L.J. 442. That directly arose u/s 33C(2). The ratio of that decision is commended to us for acceptance, because by the certiorari what is sought to be removed is only the offending order, which is illegal according to the management.

11. It would also be a matter of prudence and necessity to have only a common writ petition, because the transaction involved a Common question of law, whether there was a valid closure or not. That is the reason why in several cases the Supreme Court as well as High Courts have liberally applied the provision of Order I, Rule 8, Civil Procedure Code. In fact, in *Annam Adinarayana v. State of Andhra Pradesh* (1957) II A.W.R. 345, a similar petition was filed and that Court held a tingle writ petition was maintainable.

12. Then again in *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*, , it was held one writ petition was sufficient in relation to a writ of mandamus for certain directions by the management when they wanted to attack the "gherao" of the workmen. In (1963) 50 ITR 195 (SC) , the question arose relating to the court fee. A single writ petition was filed. No objection was taken at the High Court stage but later In the Supreme Court when it was contended that there ought to be three writ petitions, that objections was overruled.

13. More or less, similar, is the petition is this case.

14. In *The Management of Singareni Collieries Co. Limited Vs. The Industrial Tribunal and Others*, , the question which arose was whether a single writ petition filed by the petitioner against several respondents was maintainable for quashing the common order passed against several persons, when a common question of law or fact is involved and those persons were jointly interested in the subject-matter in dispute. That question was answered in the affirmative and there was no reason why this Court should not accept this position as correct.

15. (1963) 50 ITR 195 (SC) , is pressed into service to advance the contention that writ proceedings partake the nature of civil proceedings and therefore the procedure under the CPC must be held to be applied in this case. Hence, a single writ petition is maintainable.

16. In order to appreciate the important, question involved in this writ petition, we have to keep in the background the nature of the proceedings u/s 33C(2) of the Act. It is well-settled that they are by way of execution. In other words, where a workman is entitled, to a monetary claim under a settlement or, award or under the provisions of Chapter V-B, etc., of the Act he could move the Labour

Court to recover this money due from an employer. Armed with that order he could approach the Collector and the Collector is enabled to recover the same under the proceedings of the Revenue Recovery Act.

17. When he seeks to enforce the monetary claim against the management, it may well be open to the management to raise several contentions. If it is a case of closure involving various workmen, it is open to them to show that there has been a legal and valid closure. Then again, it may be open to the management to contend, should the Labour Court come to the conclusion that there was no legal or valid closure, yet certain of the workmen had been validly retrenched, certain of the workmen had been dismissed and yet certain other workmen had been dismissed and yet certain other workmen have not put in service of 240 days for a continuous period of one year; or again, it may be possible for the management to contend that there has been a valid settlement with few of the workers. In other words, when the workman seeks to enforce a monetary claim, the basis for his claim may be closure or retrenchment, etc., That is the one that enables him to make a claim u/s 33C(2). But the actual relief due in terms of money is distinct, and separate as far as each workman is concerned. If it is kept in the background, in our view, there will be no difficulty in appreciating that these do not involve transactions wherein common question of facts arise. No doubt, the workmen are jointly interested in seeing that they succeed in their contention regarding closure. That is all the jointness. With that it stops. But once we turn to the relief, the jointness ends. Thereafter, each has got to establish his entitlement independently of the other workmen. Normally, therefore, each one of the workmen should file a separate petition u/s 33C(2). But the Industrial Disputes Act, being an ameliorative, social legislation with an avowed objective of maintaining industrial peace and harmony, enables u/s 33C(5) the workmen to file a joint petition. That section says "where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen". The only rule to which our attention has been drawn by the learned Counsel for both sides in Rule 28. But that does not afford much, enlightenment with regard to the issue which we are called upon to decide. Therefore, by a close reading of the above sub-section it follows, by an implication, the law contemplates, apart from the general principle, independent petitions by each of the workmen which would have been absolutely necessary, but for the above sub-section. The question then in such a case would be, when the workmen are enabled to file a joint petition and under one award reliefs are afforded to each of the workmen, why there should be a bar to file a single writ petition? This argument presupposes as if proceedings under Article 226 are in any way controlled by Section 33C(5). The remedy of writ is a constitutional remedy. The Constitution being a paramount law, no other law can control it. On the contrary, other laws should be subject to the Constitution. It is not correct even to contend

that these writ proceedings are merely a continuation of the proceedings in the Labour Court.

18. Now, we may turn to the judgment of My Lord Ismail, J., rendered in *Subbiah v. Loyal Textile Mills, Kovilpatti* 46 F.J.R. 260. The learned Judge had occasion to deal with the claim arising under the Payment of Wages Act, 1936. At page 282, the observations to the following effect:

Section 16(2) of the Payment of wages Act clearly states that a single application may be presented u/s 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in Sub-section (3) of Section 15. Sub-section (3) of Section 16 states that the authority may deal with any number of separate pending applications presented u/s 15 in respect of persons belonging to the same unpaid group, as a single application presented under Sub-section (2) of that section, and the provisions of that sub-section shall apply accordingly. Consequently, these provisions in the payment of Wages Act, 1936, make it clear that for the purpose of that Act, several employees may join together and present single application. The very fact that such a statutory provision has been expressly made in the payment of Wages Act, 1936 will itself indicate that but for that statutory provision several employees cannot join together and file one application. Apart from this, the above provisions contained in the Payment of Wages Act, 1936, will not govern the proceedings before this Court under Article 226 of the Constitution of India. The proceedings before this Court under Article 226 of the Constitution of India are governed by separate provisions and the provisions in the Payment of Wages Act apply only to the proceedings taken under Act before the authorities constituted by that Act. Therefore, in my opinion, the fact that 40 persons, pursuant to the provisions contained in the Payment of Wages Act, 1936 filed a single application before the second respondent and subsequently filed a single appeal before the third respondent, both of which were competent, will have no bearing on the question as to whether the thirty seven employees in the present writ petition can maintain a single writ petition or not. Therefore, this question has to be considered independent of the provisions contained in Sections 15 and 16(2) of the Payment of Wages Act, 1936.

No doubt, the learned Judge referred to the decision of the Division Bench in *Rainbow Dyeing Factory v. Industrial Tribunal, Madras* (supra). In that case, the question arose when an order of reference was made u/s 10(1) of the Act concerning 30 managements, whether all of them could file a single writ petition. The Division Bench answered the question at page 59, "In our judgment, the interests of all the petitioners here though similar were certainly not joint". On this reasoning also a single writ petition could not lie.

19. We are of the view that the position here is the same. As we have already pointed out, there is no jointness in interest. There may be similarity. No doubt,

as laid down by their Lordships of the Supreme Court in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, writ proceedings are civil in nature. Wherever the general principles of procedure adumbrate, the CPC can be applied. One such salutary provision is what is found in Order I, Rule 8, C.P.C. As a matter of fact, their Lordships of the Supreme Court in *Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others*, in dealing with a matter relating to promotions held:

In such cases, we see no objection to the filing of writ petitions in representative capacities by aggrieved persons after taking necessary steps under Order 1, Rule 8, Civil Procedure Code, the application of which to proceedings under either Article 226 or 32 of the Constitution does not appear to us to be barred by any provision .

20. The question to be asked in the present case is, whether this provision could be invoked. Sub-rule (1) of Rule 8 says:

Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested....

In the instant case, they do not have the same interest, but only similar interest. Therefore, that provision will not apply. We may for the sake of completion refer to two other provisions. Order I, Rule I states as to who may be joined as plaintiff and it runs Thus.:

All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise .

Order I, Rule 3 states as to who may be joined as defendants.

21. If it is a case of Order I, Rule 1 all persons could be joined as plaintiffs in the suit provided the right to relief in respect of or arising out of the same act or transaction, exists. Likewise, is the test under Order I, Rule 3. As we observed earlier, closure in this case is the foundation for the cause. But the transaction does not relate to the same set of facts. Facts do vary concerning each of the workman. This is where we think the decision in *Annam Adinarayana v. State of Andhra Pradesh* (1957) II A.W.R. 345, will not apply, because that case related to discharge of two of the writ petitioners under a single order. Similarly, in *The Management of Singareni Collieries Co. Limited Vs. The Industrial Tribunal and Others*, the writ was directed against an order refusing to approve the action of the management dismissing 8 of its workers u/s 33(2)(b) of the Act. The action was one and the same. Therefore, the cause was also the same. Under those circumstances, with great respect, we should say that the single petition could be

maintained; but not in a case as the one that we have on hand. The decision in (1963) 50 ITR 195 (SC) , will not also afford any assistance to the petitioner, because that case related to payment of court-fee. More so, when the objection relating to a single writ petition was not taken up at the High Court stage.

22. Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others, is a case relating to mandamus. At page 435, it was held:

The High Court cannot only issue writ in the nature of prerogative writs as understood in England, but also issue directions, orders or writs other than prerogative writs. The High Court can mould the relief to meet the peculiar and complicated requirements of this country.

These observations came to be made with reference to a writ of mandamus directed against "Gherao" by the workmen. We do not understand the law to be, where there are distinct but similar causes available to each workman on certain stated facts, one writ petition could ever be maintained by the management. Our attention has also been drawn to the judgment of My Lord Ramaprasada Rao, J. (as he then was) in South Arcot District Co-op. M.T. Soc. v. Presiding Officer (1972) 1 M.L.J. 442, a case which arose directly u/s 33C(2) wherein the learned Judge observed:

By an issuance of writ of certiorari the order challenged is taken away from the record and it is struck down. If the award of the Labour Court is quashed by the issue of the rule as prayed for, then it would be ineffective wholly and cannot survive partially, and it, therefore, follows that the mere fact that the petitioner has filed one writ petition against the award of the Labour Court, the subject-matter in which was relatable to the reliefs asked by the three workmen, would not matter, as the result would be the same.

23. We are afraid the principle relating to certiorari has been broadly stated. No doubt, the purpose and intent of the jurisdiction of certiorari is to remove the offending order since the Latin word "certiorari" itself means to quash. But these observations can have no application to cases where different reliefs are afforded to each workman on his independent entitlement.

24. Nor again, are we impressed with the argument that it is a rule of convenience to allow the management to file writ petitions. If it is so allowed, it may succeed in part with reference to few of the workmen whose causes are totally independent of the other. Under those circumstances, this argument based on convenience cannot also be projected.

25. For all these reasons, we hold that the single writ petition seeking to displace different reliefs afforded to different workmen on independent consideration of the merits relating to each of them, could not be maintained. In the result, we conclude that the preliminary objection raised by Mr. A.L. Somayaji is well-founded. In view of our decision upholding the preliminary objection, Miss O.K. Sridevi, the learned Counsel for the management pray for a week's time to get

instructions from the client as to whether it would be feasible to prefer independent writ petitions or in the alternative to confine to any one of the workmen. Call next week.

26. This petition coming on for further orders on this day the Court made the following Order. To be made that of the order already pronounced. (The order of the Court was pronounced by Mohan, J.)

27. Counsel for petitioner to day reports that since this writ petition is confined to Murugan, the first workman, who was the first petitioner in the Labour Court. The only question that is argued before us is that the finding that there was no valid closure is incorrect. In fact, on 2.9.1970 a notice was exhibited on the notice board of the Saw Mill. We are unable to agree. As rightly found by the Labour Court, if really there was an exhibition of the notice, the workmen would not have sought re-employment. They would have demanded closure compensation and contested the closure. Their conduct itself is proof positive that there was no notice exhibited. Besides, there is absolutely no evidence in this case that the workman was served with notice of closure that the management has failed to prove. For all these reasons, we dismiss this writ petition. No costs.