

(2002) 07 MAD CK 0207

In the Madras High Court

Case No : Writ Petition No. 7086 of 2002 and Contempt Petition No. 166 of 2002

R. Ramachandran, K. Murthy, R. Ravi, K.R. Murthy, B. Manoharan, B. Haldorai, K. Raman and L. Singaran

APPELLANT

Vs

The Management of Kinnakorai, Industrial Co-op. Tea Factory Ltd.

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 2A, 33(1), 9A
Industrial Disputes Rules, 1958 — Rule 62

Citation : (2002) 07 MAD CK 0207

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; Vijay Narayan, for the Respondent

Final Decision : Dismissed

Judgement

1. The writ petitioners are employees of the respondent Co-operative Tea Factory. All of them have put in about 10 to 15 years of service. According to the petitioners, they have been in continuous service for over 10 years without any break and are confirmed employees. On 20.2.2002 the management displayed a notice in the Factory Notice Board proposing to retrench them from service with effect from 1.3.2002. According to them, there was no justification for the proposed retrenchment. The proposed retrenchment was also in violation of the principle of "last come first go" as several juniors of the petitioners are allowed to remain in service while the petitioners being seniors have been singled out for retrenchment. The petitioners were constrained to raise an Industrial Dispute before the Labour Officer at Udthagamandalam on 22.2.2002 and hearings were posted on 12.3.2002. The respondent had also received the notice issued by the Labour Officer. It is further stated that considering the tendency of the Industrial Dispute the respondent was required to maintain status quo. But the respondent was trying to alter the status quo by giving effect to the impugned retrenchment notice and proposing to retrench the petitioner, with effect from 1.3.2002. It is

further stated that as the Industrial Dispute was pending, the management is bound to maintain status quo. It is further contended that the notice is also violative of Section 25F and 25G of the Industrial Disputes Act.

2. In the counter filed by the respondent/Society the respondent has furnished the service particulars of each of the petitioners. It is further stated that all the seven petitioners except the fourth petitioner, have rendered continued service for more than 10 years. But their services were not confirmed by the respondent and no orders were issued confirming their services. Therefore, the contention that the petitioners were confirmed employees was contrary to the truth.

3. The respondent further submits that they had implemented the recommendations of the V Pay Commission in the context of the revision of Pay Scales. However, with effect from 1.4.1999 the respondent incurred heavy loss month after month. The factory was also not running to full capacity and utilisation. With the result, the cumulative loss as on 28.02.2002 was about 1.02 crores. Therefore, the respondent is facing increased economic and financial burden. 30 to 70 per cent of total cost of production was being spent on establishment and contingencies and therefore, the present financial condition warranted immediate action plan to curtail the various over-heads. Urgent measures had to be taken to overcome the financial crisis which if not avoided would lead to the closure of the factory. Therefore, an action plan was drawn to put the factory on a profit basis by adopting several proposals which included abolition of 11 posts among the total cadre of 23 employees as they were found to be surplus. Before taking such decision, in fact the Board has explored other alternatives such as diversion of staff to other sister concern, to receive financial assistance eligible to sick units, implementing Voluntary Retirement Scheme, option to continue from revised scale of pay etc. But none of the proposals yielded any positive results. Therefore, the management was forced to take the decision of abolition of 11 posts as laid down under the Act and Rules. The financial requirements of the establishment deserves vital consideration and abolition of posts was intended to reduce the economic burden. There is no basis for the contention of the petitioners that such action was based on any vindictive reasons. The statutory requirements to be complied with before effecting retrenchment are provided under Sections 25F and 25G and Rule 62 of the Industrial Disputes Rules 1958. The said requirements have been strictly complied with and a notice in the prescribed manner had been served on the Commissioner of Labour, Chennai, Labour Officer, Udhagamandaam and all the statutory requirements have been duly complied with. The choice of the personnel was also based on the seniority of all the employees in each category. The list was also sent to the respective Unions. Therefore, the contention that there was violation of principles of natural justice or that there was violation of "last come first go" have no basis at all. With the result, respondent contends that there is no basis to sustain the writ as prayed for by the petitioners.

4. Mr. V. Prakash, learned counsel for the petitioners has raised the following

points for consideration: -

(i) u/s 2A of the Industrial Disputes Act, (hereinafter called "the Act") among other acts of management, retrenchment of workmen is also an Industrial Dispute. An Industrial Dispute has been raised before the Conciliation Officer and considering the tendency of the dispute, the employer shall not alter the conditions of service as provided u/s 33(1) of the Act. But the respondents are seeking to give effect to the order of retrenchment.

(ii) No notice has been given as required u/s 9A of the Act. The respondent is pleading that retrenchment was resorted to as a result of rationalisation of the conditions and working pattern of the Society and the requirements of the Society and hence covered under Entry 10 of IV Schedule which would require notice u/s 9A of the Act.

(iii) The principle of "last come first go" which has to be complied with while resorting retrenchment, has not been complied with. Several juniors to the petitioners are undisturbed.

5. Per contra, Mr. Vijay Narayan learned counsel for the respondent contends as follows:-

(i) The writ petition itself being against a Co-operative Society, is not maintainable and the action which is called in question, is not that of any official, but only the internal affair of the Co-operative Society and hence not amenable to writ jurisdiction. Even other wise the availability of alternative remedy to raise a dispute under the Act would bar the entertaining of the writ petition.

(ii) No notice u/s 9A of the Act is required. The right of the management to retrench is governed by Sections 25F, 25G of the Act read with Rule 62 and as all the statutory requirements there under have been complied with, it was not necessary to give notice u/s 9A of the Act.

(iii) The principle of "last come first go" had been strictly complied with and the claim of seniority by the petitioners is based on misconception and not correct. In terms of the Rules, seniority in the respective category has been taken into account. The claim of the petitioners of being seniors is without any basis.

6. I have considered the submissions of both sides. On the issue of maintainability of the writs against Co-operative Societies or even as against private company or individuals, I have already dealt with the said issue in detail at least in two judgments as follows:-

(i) W.P.Nos.4884 to 4887 to 2002 dated 21.3.2002. (ANAMALAI ESTATE WORKERS" UNION & OTHERS v. PLANTERS" ASSOCIATION OF TAMIL NADU & OTHERS)

(ii) W.P.No.20270 of 2002 dated 10.06.2002 (M.R.F. EMPLOYEES UNION V. MANAGMENT OF M.R.F.LTD. & OTHERS)

7. I have held that there is no question of any bar of jurisdiction of this Court under Article 226 of the Constitution of India to issue a writ against any private individual, company or co-operative society, if there was grave violation of fundamental rights, statutory provisions or any violation of public duty or if the situation involves any monstrosity or grave injustice to the aggrieved party. In those circumstances, even the availability of the alternative remedy will not be a bar to the issue of a writ. It is not necessary to go through the same issue again and I am inclined to reject the said objection of the respondent.

8. Now coming to the issue of giving notice u/s 9A of the Act, it is true that Entry No.10 of the IV Schedule, deals with retrenchment of workmen under certain circumstances. But in so far as right of the management to cause retrenchment is concerned, the same is controlled by special and specific provisions under Sections 25F and 25G of the Act. It is needless to point out that if there are two provisions dealing with the same issue, then the special provision shall prevail. If the requirements under Sections 25F and 25G of the Act are satisfactorily complied with, then it would be a redundant exercise to require the management to issue notice u/s 9A of the Act also and I am inclined to hold this issue against the petitioner.

9. At this juncture, it may be stated that the petitioners have also come forward with a Contempt Petition No.166 of 2002 complaining violation of the interim orders of this Court dated 6.3.2002.

10. In the counter filed by the management in the said Contempt Petition, the management has stated that the cumulative loss to the factory as on 31.1.2002 was Rs.99.81 lakhs and hence immediate action was warranted to reduce the over-heads. The Board of management resolved to alter the cadre strength and which was approved by the Deputy Registrar for Industrial Co-operatives. As per the revised subsidiary regulations, 14 posts were abolished and out of 14 posts, three posts were vacant. It had therefore become necessary to retrench 11 persons on account of surplus strength. But prior to passing of the retrenchment order, two persons were transferred to the sister concern and another person could not be retrenched as he fell in a different category and also owes a huge amount to the Society and therefore, it was decided not to retrench him as it would become impossible to recover the amounts. It was further stated that as per Rule 62 of the Tamil Nadu Industrial Disputes Rules, a seniority list was maintained in each category. Retrenchment was complied with only in terms of the said seniority list and was perfectly legal. On 20.2.2002, notice was given to all the Unions enclosing the list of workmen. Retrenchment order was issued on 28.2.2002 and the said orders were refused to be received by the employees. The retrenchment took effect on 1.3.2002. The said order of retrenchment which was sent by Registered Post with acknowledgement due, on the same day, were also returned on 7.3.2002, as refused by the employees. In the mean time, the petitioners had raised a dispute before the Labour Officer for which notice of enquiry was issued by the Labour Officer on 22.02.2002 and the petitioners had

also filed the above writ petition. Interim orders were issued by this Court on 6.3.2002. Since the retrenchment had already taken effect on 1.3.2002, the interim order granted on 6.3.2002 could not have any effect of reinstating them.

11. The petitioners had filed a rejoinder affidavit denying the said allegations and contended that no salary in lieu of notice had been paid by the respondent. What the management attempted to do was after putting up notice of termination on 20.2.2002 and after receiving notice from the Conciliation Officer on 23.2.2002, the respondent had tendered a cheque on 1.3.2002. The petitioners refused to receive the cheque on the ground that the dispute was pending before the Conciliation Officer and therefore, the management should maintain status quo. It is further stated that several claims made in the counter-affidavit were untrue statements to the knowledge of the management.

12. In the background of these facts, we have to examine as to whether the conduct of the management is such that it would warrant interference by this Court. The management has furnished certain statistics containing details of the cumulative loss suffered by the Factory as on 31.1.2002 of about one crore rupees. Therefore, the decision to retrench the workers was justified, according to them. If retrenchment were not resorted to, the Society would be left with no other alternative except to close down its activities. It is true that there is a controversy over the claim of the eight petitioners as being seniors in service, which according to the management is not correct. A further issue which arises for consideration is as to whether in terms of the Standing Orders of the Society and Rule 62 of the Tamil Nadu Industrial Disputes Rules, 1958 the seniority was to be determined in the concerned category or as from the original entry into service. Both these issues namely, as to whether retrenchment was justified or not in the background of the financial statistics furnished by the Society and whether the eight petitioners are seniors to the others retained in service in terms of Rule 62 of the Rules, are mixed questions of fact and law. They are therefore, matters which could be adjudicated first properly only by the Labour Court and not by this Court in writ jurisdiction. Therefore, these issues are best adjudicated before the Conciliation Officer and thereafter by the Labour Court. This Court cannot permit one of the parties to raise such disputes which involve consideration of facts and evidence by filing a writ petition.

13. I have given my consideration as to whether the conduct of the management is prima facie satisfactory or not or whether their conduct should be termed as monstrous enough to justify interference by this Court. As stated earlier, notice u/s 25F of the Act had been put up on the Notice Board and individual notices have also been dispatched giving effect to retrenchment on 1.3.2002. The writ petition is filed only on 1.3.2002 on which date retrenchment was to take effect and interim orders are obtained only on 6.3.2002. In the mean time, the petitioners had refused to receive the orders and also refused to receive retrenchment compensation. I am unable to appreciate such conduct on the part of the workmen. When the statute gives the right to the management to retrench the

workers by giving notice, that right of the management cannot be ignored or denied by the mere conduct of the workers immediately rushing before the Conciliation Officer and the writ Court after refusing to receive notice. A statutory right thus conferred on the management cannot be stripped by the worker merely by refusing to receive the notice or by immediate approach to the Conciliation Officer. I have never been able to appreciate the conduct of any party in any proceeding refusing to receive statutory or legal notices and at the same time plead that there was no proper compliance of the statutory requirements by the opposite party.

14. The fact that the petitioners had proceeded before the Conciliation Officer on 22.2.2002, cannot also be assumed in favour of the petitioners to hold that in terms of Section 33(1) of the Act the management would be disabled from proceeding further to implement the retrenchment proceedings. If such interpretation or approach is adopted, then the statutory right of the management under Sections 25F and 25G of the Act would be rendered ineffective and meaningless and the management will have to await for the conclusion of the proceedings. Such is not the scheme of the Act in the case of the retrenchment. The obligations arising u/s 33(1) of the Act has to be viewed in a manner consistent with the provisions of the Act and the nature of dispute between the parties. Section 25F and 25G provide a right to the management to forthwith give effect to retrenchment by giving notice and by complying with the other requirements. If the retrenchment is found to be unjustified the right of the worker is safeguarded by raising a dispute and he would be entitled to full wages even without working if he succeeds in the proceedings. This right is given to the management in recognition of its right to take an immediate action if the situation warrants retrenchment. If so, to accept the contention that on the worker rushing before the Conciliation Officer immediately on receipt of notice of retrenchment status quo shall be maintained, would result in rendering Sections 25F and 25G of the Act ineffective and meaningless.

15. I did interfere in two writ petitions as mentioned above on the ground of non-compliance of Section 33(1) and also the conduct of the management indulging in a spree of dismissals and held that the workers in the circumstances of the said case cannot be compelled to invoke the alternative remedy u/s 33A of the Act. Those were extraordinary cases of unconscionable, mala fide and illegal conduct on the part of the management, resulting in grave injustice and flagrant violations of statutory obligations. In W.P.Nos.4884 to 4887 of 2002, the attempt was to reduce the existing wages in relation to thousands of workers and the management in spite of themselves having gone before the Conciliation Officer did not seek permission u/s 33(1) of the Act. In W.P.No.20270 of 2001, it was a case of an arbitrary and motivated spree of dismissals of 200 workmen as a result of the workmen forming a Trade Union for themselves. Both were cases of glaring injustice and flagrant violations of statutory obligations and basic rights of the workers and the facts were shocking to the judicial conscience and monstrous. Therefore, the reasons behind the issue of writs in those two writ

petitions cannot be applied to the present case. In the background of the facts in the present case, this Court has to take into account that the management pleads certain reasons of financial constraints and the institution running under great loss. The management had also genuinely tried to comply with the requirements u/s 25F and 25G of the Act. The workers cannot be allowed to outwit the normal statutory rights of the management by immediately rushing before either the Conciliation Officer or before this Court. If such conduct is permitted, it would render Sections 25F and 25G of the Act ineffective. It would also render the alternative statutory remedies meaningless and inoperative. Even the issue relating to seniority is in controversy which has to be dealt with on the basis of facts and evidence and is fit enough to be dealt with by the Labour Court. Therefore, I am inclined to hold that the facts of the case, do not justify any plea of monstrosity or any glaring violation of the fundamental provisions of the Industrial Disputes Act and hence not a fit case in which this Court should exercise its discretionary and extraordinary powers.

16. As far as the Contempt Petition is concerned, it is seen that the retrenchment was ordered to take effect from 1.3.2002 and interim orders were granted by this Court only on 6.3.2002. Apart from the said feature, for the aforesaid reasons resulting in dismissal of the writ petition itself, the Contempt Petition also stands closed.

17. In the result, the writ petition is dismissed and the Contempt Petition is closed. No costs. Connected miscellaneous petitions are closed as unnecessary.