
(2008) 12 MAD CK 0047
In the Madras High Court
Case No : W.A. No. 1708 of 2001

Rajamanickam T.

APPELLANT

Vs

Binny Ltd. (B and C Mills) and Another

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 9A

Citation : (2009) 2 LLJ 142

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Mohammed Shabeer, for the Appellant; Raveendran, for T.S. Gopalan and Co., for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Appellant/workman has filed this appeal, aggrieved over the order passed by a learned single Judge in W.P. No.

18519/1990, setting aside the award of the III Additional Labour Court, Chennai, in I.D. No. 317/1985, ordering reinstatement.

2. Appellant was employed as a Fitter in Engineering Department of the first respondent mill on May 22, 1958. As a result of strike, the

respondent Mill was closed from January 14, 1984 till December 28, 1984. Thereafter, the Mill started functioning from December 29, 1984. On

reopening of the Mill, the appellant, along with several others, was asked to report to Weaving Department on December 29, 1984, but the

appellant did not report for work on that day. As the appellant did not report for work for eight consecutive working days, the management

terminated him from service. Thereafter, the petitioner raised an industrial dispute before the Conciliation Officer and the matter was referred to the

III Additional Labour Court, Madras, vide I.D. No. 317/1985.

3. The Labour Court, on an appraisal of the evidence, both oral and documentary, ordered reinstatement of the appellant, holding that Section 9-A of the Industrial Disputes Act, 1947, in short, "the Act", was not complied with by the management, over which, the management preferred the writ petition, wherein the learned single Judge allowed the said writ petition, setting aside the award of the Labour Court. Hence, this writ appeal, at the instance of the appellant.

4. At this juncture, the only question, that arises for consideration, is, whether the termination of the appellant by the management is vitiated by violation of Section 9-A of the Industrial Disputes Act?

5. To decide the said main question, two more sub-questions are required to be answered and they are:

(i) Whether the change in the conditions of service is effected pursuant to Settlement u/s 12(3) of the Act?

(ii) Whether there is any reduction in emoluments of the appellant, pursuant to the change?

6. Section 9-A of the Act reads as under:

9-A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of

any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be effected by such change a notice in the prescribed manner of the nature of the change proposed to

be effected; or

(b) within twenty-one days of giving such change:

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any settlement or award.

(b) xxxx

7. In this connection, this Court has gone through the Settlement, Exhibit M-1, entered into between the management and the workmen, including

the appellant. Though as per Clause 2(a) of the terms of settlement stipulates that according to exigencies the workmen will be deployed on other

side/set of looms/machines, such an exercise has to be made without affecting the pay structure, namely, wages, including the period and mode of

payment, classification of grade etc. If any change is effected with regard to the above, Section 9-A notice in the prescribed manner has to be issued to the workmen concerned.

8. In this case, as could be seen from Exhibit W-4, Wage Receipt, dated November 7, 1981, the monthly emoluments of the appellant were fixed

at Rs. 862.58. However, in Exhibit M-18, Salary Register, the wages of the appellant for the month of January, 1985, i.e., after the Mill was

reopened, were fixed at Rs. 828.04, which clearly indicates a change in the conditions of service. Though the change in condition of service,

transferring the appellant from Engineering Department to Weaving Section was effected as per the settlement, which did not require compliance of

Section 9-A, the other change with regard to reduction of wages, which was not stipulated in the settlement, was done by the management without

causing notice u/s 9-A.

9. M.W.1, in his cross-examination, had stated that the wage of a Mazdoor's was Rs. 1100 per month while that of a Fitter was Rs. 1200/- per

month. Further, he admitted that if the Fitter was shifted to some other department as Mazdoor, he would be paid only mazdoor's salary and not

that of the fitter. There was also a categorical acceptance by M.W.1 that there was change in the salary of the appellant, pursuant to his transfer

from Engineering Department to Weaving Department. In addition, as could be seen from Exhibit M-10, Attendance Register for the month of

January, 1985, in the column "Occupation", against the name of the appellant, it is indicated as "Mazdoor", which would clearly show the change in

the condition of service. Therefore, it can safely be concluded that the termination of the appellant by the management was in violation of Section

9-A of the Act.

10. The workman, who is likely to be affected by change in the condition of service, has to be given a notice in the prescribed manner of the nature

of the change proposed to be effected. In the instant case, we have noticed a change of condition of service with regard to status and emoluments

of the appellant. Therefore, in our considered opinion, the management has violated the provisions of Section 9-A of the Act.

11. Though the learned single Judge had dealt with the aspect of transfer from one department to another, he, relying on the counter statement filed

by the management before the Labour Court that the appellant was never asked to work as a Coolie in the Weaving Department and that there

was no reduction in his earnings whatsoever, held that there was no reduction in the emoluments of the appellant, which, in our considered view, is,

ex facie, against the law and the provisions u/s 9-A of the Act. On the other hand, the Labour Court, analysing the material, both oral and

documentary, had come to the correct conclusion, which ought not to have been warranted interference by the learned single Judge.

12. Under the circumstances, this writ appeal is allowed, setting aside the order of the learned single Judge and confirming the award of the III

Additional Labour Court, Chennai. No costs.