
(1992) 01 MAD CK 0018
In the Madras High Court

Rajendran

APPELLANT

Vs

The Presiding Officer, Principal Labour Court and Another

RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 2(A), 2(s), 25F

Citation : (1992) 1 MLJ 551

Judgement

1. The petitioner challenges an award of the Principal Labour Court, Madras passed in I.D. N6.11 of 1990, dated 31.5.1991.

2. The facts which led to the filing of this writ petition are:

The petitioner alleges in the affidavit that he was appointed as Sub Editor on 15.2.1982 under the second respondent management of a popular

Tamil Daily "Dina Malar" and that he was allowed to sign the daily attendance register of Proof Reading Section of the second respondent. It

seems the petitioner herein is an M.A. Degree-holder and has passed two years course of Diploma in Journalism and he paid a sum of Rs. 500 to

the second respondent management as security deposit and a receipt therefore was given to him. It seems the petitioner was not allowed to enter

into the office of the second respondent management on 15.10.1982 and. on 19.10.1982 the petitioner issued a lawyer's notice to the second

respondent. Thereafter the petitioner raised an industrial dispute u/s 2(A) of the Industrial Disputes Act before the Labour Officer, Kuralagam,

Madras and a Conciliation failure report was filed by the concerned Conciliation Officer on 4.3.1982. When the Government refused to refer the

case of the petitioner u/s 10 of the Industrial Disputes Act, the petitioner approached this Court by filing a writ petition in W.p.No.8143 of 1983

and the said writ petition was allowed by a Division Bench of this Court consisting of Nainarsundaram, J. (as he then was) and Bellie, J. by order

dated 19.9.1989. In view of the directions given by the Division Bench of this Court in the abovementioned writ petition the Government referred

the dispute of the petitioner before the Labour Court on 21.11.1989. After reference, the petitioner examined himself as a witness and one witness

has been examined on the side of the second respondent Management. The petitioner filed 13 exhibits on his side and the respondent management

filed 15 exhibits before the Labour Court, Madras. Upon a perusal of the oral and documentary evidence, the Labour Court, Madras has come to

the conclusion that the petitioner was only an apprentice in the management of the second respondent and that he has not worked to the

satisfaction of the management and on those grounds the Labour Court has decided that the non-employment of the petitioner is correct.

3. The petitioner further alleges in the affidavit filed in support of the writ petition that he was appointed as Sub Editor that he was allowed to sign

the daily attendance register of proof reading section, that he has not been taken by the second respondent management as an apprentice or a

probationer that before the termination he had put in 242 days of continuous uninterrupted service and that he should be deemed to be a

permanent employee of the second respondent. It is further alleged in the affidavit that the order of termination is illegal since no enquiry was

conducted nor one month notice as required by law was given before termination. It is further stated in the affidavit that the award of the first

respondent is illegal since it is against the provisions of Section 25F of the Industrial Disputes Act (hereinafter referred to as the "Act" that the

order of the termination is illegal u/s 25F of the Act since no notice was served or enquiry was conducted and that the award of the first

respondent is not correct in the absence of any documentary evidence to prove that the petitioner is an apprentice. It is further stated that even

assuming that he is an apprentice he is a workman under Industrial Disputes Act and he has completed a year of continuous service under the

second respondent management. It is further stated that the Labour Court has failed to consider the motive of the second respondent management

in the termination. It is further stated that he was appointed on 15.2.1982, that the receipt which was given by the respondent management bears

the date and as such the date 15.2.1982 has to be taken as the date of appointment. With regard to the charges levelled against him the petitioner alleges in the affidavit that he is not responsible for them since they were created for the purpose of the case and that if the principles followed in the case of journalism are looked upon it cannot be said that the reasons are correct warranting termination. It is also stated that the second respondent did not submit the real attendance registers signed by the petitioner employee that the petitioner was given E.S.I. benefit from 1.4.1982 P.F. benefit from 1.6.1982 by the second respondent and as such the termination of the petitioner from service is illegal. With these allegations, the petitioner is before me.

4. A counter affidavit has been filed by the second respondent management. It was claimed in the counter affidavit that the petitioner was engaged as a Proof Reader Apprentice on a monthly stipend of Rs. 330 that he was given training as a Proof Reader in the Department of Proof Reading, that during the period of apprenticeship the petitioner was not regular in his attendance and that he did not perform his duties to the satisfaction of the second respondent management. It is further claimed in the counter affidavit that the petitioner habitually absented himself without prior permission that he extended his leave unilaterally without prior sanction of the second respondent management that he was issued warning that by letters dated 11.9.1982 and 25.9.1982 he expressed his regret for extending his leave and for remaining absent without permission and that the work of the petitioner as an apprentice in the Department of Proof Reading was far from satisfactory. It is mentioned in the counter affidavit that on one occasion, one of the news item regarding the donation of Rs. 45,000 by the Bank of Madura to Government's Nutritious Noon Meals Scheme due to carelessness and negligence of the petitioner the matter was published as a donation of Rs. 4,500. Another mistake which was also similar to the abovementioned matter was mentioned in the counter affidavit. It is further claimed in the counter affidavit that the petitioner was continuously absent from 11.10.1982, that he did not report for duty for quite some time and that in view of the continuous inefficiency exhibited by the petitioner in carrying out his duties, the second respondent management on 28.10.1982 informed the petitioner that his apprenticeship

stands terminated with effect from 30.10.1982. It is further claimed in the counter affidavit that the petitioner was requested to collect all the certificates entrusted with the second respondent management at the time of his appointment. It is further claimed in the counter affidavit that the first respondent herein after considering the evidence both oral and documentary came to the conclusion that the petitioner was employed only as apprentice from 1.4.1982 and that his performance was not satisfactory during the period of apprenticeship. It is categorically stated in the counter affidavit that the petitioner was not appointed as sub-editor that he was taking as only as apprentice from 1.4.1982 and that his performance was not satisfactory during the period of employment. It is also claimed that all the certificates of the petitioner have been returned that no certificates are presently in the custody of the second respondent management With regard to the allegation made in the affidavit that the second respondent threatened the petitioner when he refused to sign the salary register is purely an afterthought and without any basis. It is pointed out in the counter affidavit that the petitioner received the payment of stipend and that he was appointed only as an apprentice and not in any other manner. It is further claimed in the counter affidavit that the Labour Court the first respondent herein has correctly held after considering the Exs.M-1, M-2, M-9, M-10 and M-11 came to the conclusion that the petitioner was working as Proof Reader Apprentice and was paid only stipend monthly from 1.4.1982. The allegation that the petitioner has put in service for 240 days continuous service is denied in the counter affidavit. It is categorically stated in the counter affidavit that the services of the petitioner were terminated only because of his unsatisfactory performance during the period of his apprenticeship and that is fully justified. It is further stated in the counter affidavit that on the basis of appreciation of evidence both oral and documentary the first respondent has come to the conclusion that the petitioner was working only as an apprentice and that it is legal and valid.

5. Mr. R. Rajendran the petitioner in person argues the matter, He relied on many decisions to support his case. He argues that the attendance

registers produced before the Labour Court are not real and that the management has not produced the original attendance registers. He pointed

out that he joined duty in the month of February and not in April, 1982. The petitioner appearing in person took pains and argued that the benefits

under E.S.I. and E.P.F. have been granted to him and that if he had been only an apprentice those benefits would not have been extended to him.

He further argues that even assuming for a moment that he is only an apprentice no enquiry has been conducted and his apprenticeship has been

given an end abruptly. According to the petitioner the act of management is contrary to the principles of natural justice. He further argues that no

contract of appointment has been entered into between himself and the second respondent management and that no appointment order has been

produced by the second respondent management. He further submits that only a deposit of a sum of Rs. 500 was received by the management and

that a receipt was given by the management to that effect. According to the petitioner the Labour Court ought not to have come to the conclusion

that the petitioner is only an apprentice. He contends that the he was taken as sub-editor.

6. Mr. S. Ramasubramaniam the learned Counsel appearing for the second respondent contends that the Labour Court the first respondent herein

has come to the right conclusion that the petitioner is Articles apprentice after appreciating the evidence both oral and documentary, that the

conclusion arrived at by the Labour Court is purely on the question of fact as to whether (he petitioner is an apprentice or taken as Sub editor and

as such this Court, sitting under Article 226 of the Constitution of India should not interfere with the award of the Labour Court as if sitting on

appeal. The learned Counsel submits that this Court under Article 226 of the Constitution of India, cannot re-appreciate or re-weigh the evidence

which had been considered by the Labour Court, though a different conclusion can be arrived at on the same evidence.

7. I have given my careful consideration to the arguments of Mr. R. Rajendran the party appearing in person and of Mr. S. Ramasubramaniam the

learned Counsel appearing for the second respondent management. The petitioner has produced before the Labour Court a receipt dated

15.2.1982 issued by the respondent management which has been marked as Ex.W-3. The receipt reads thus:

...Received a sum of Rs. 500 (Rupees five hundred only) from Mr. R. Rajendran towards security deposit. Certificate is also received and it is

under our custody....

According to the facts of the case on hand, the short question that arose for consideration before the Labour Court was whether the petitioner herein was appointed as sub editor or as an apprentice on 15.2.1982. The stipend register which has been produced before the Labour Court shows that the petitioner has been receiving Rs. 350 per month. Other documents with regard to E.M.P. and E.S.I. have been produced which show that the date of joining was only 1.4.1982. Almost in all the documents produced before the Labour Court it is seen that the petitioner was working as an apprentice trainee. On the basis of the materials produced before the Labour Court it came to the conclusion that the petitioner worked in the second respondent management as an apprentice from 1.4.1982 and not from 15.2.1982. The contention of the petitioner that he was working as sub editor from 15.2.1982 has been rejected by the Labour Court the first respondent herein. The register Ex.M.W. 11 which has been produced before the Labour Court had been duly considered by the Labour Court and it is seen that the petitioner's name did not find place in the said register till March, 1982. An argument was put forth before the Labour Court that the second respondent management has got a right to terminate the apprenticeship of the petitioner and the second respondent management has come to the conclusion only after considering the performance of the petitioner's work during the period of apprenticeship. For that purpose certain letters of the petitioner which have been marked as Exs.M-3, M-4 and M-5 have been produced before the Labour Court. According to the learned Counsel for the second respondent management those letters would prove that the petitioner was not working properly. The above mentioned letters related to the leave i.e., weekly holidays. Ex.M-3 is the letter written by the petitioner stating that he was not able to attend the office on 10.9.1982 and other two letters Exs.M-4 and M-5 related to weekly holidays. The second respondent management has also produced Ex.M-6 with regard to the wrong publication of the news item stating that it is due to carelessness of the petitioner. Another letter Ex.M-8 produced before the Labour Court would show that in view of the aforesaid news item all advertisement to the second respondent management have been stopped. On this basis the Labour Court has come to the conclusion that the petitioner has not worked properly as Proof Reader. On the ground that the petitioner has not performed his duties

satisfactorily and efficiently as proof reader and also has" not performed his work with due care the Labour Court came to the conclusion that the petitioner's apprenticeship had been terminated by the second respondent. In my view, the Labour Court has come to the conclusion only after weighing the evidence adduced and on analysing the fact that in view of the petitioner's carelessness as proof reader he has been terminated from the apprenticeship and there is nothing wrong in the order passed by the second respondent terminating the services of the petitioner. Therefore I am of the view that the Labour Court has come to the correct conclusion that the non-employment of the petitioner is correct. Also I am not able to agree with the arguments of the petitioner, who argues as party in person that his employment with the second respondent management was in the month of February, 1982 and not in April, 1982. On the materials produced before the Labour Court in my view the Labour Court has come to the correct conclusion that the petitioner had joined only as apprentice in the month of April, 1982 and had received only stipend and that due to the unsatisfactory performance of the petitioner his apprenticeship had been terminated by the second respondent management.

8. As I have already stated the Labour Court has given its findings only on facts. It is well settled that this Court sitting under Article 226 of the Constitution is not an appellate forum as if sitting on appeal over the findings of the Labour Court. Under Article 226 of the Constitution of India this Court's jurisdiction to interfere with the order of the Labour Court is very limited. As such, I think it is not possible for this Court on the facts and circumstances of the case on hand to interfere with the findings of the Labour Court on facts.

9. Mr. S. Ramasubramaniam the learned Counsel appearing for the respondent management fairly states that it is true that there is no contract between the petitioner and the second respondent management except the receipt given to the petitioner. At the same time, the learned Counsel states that no other material is available to prove that the petitioner has been appointed as sub editor of the second respondent management. So I am not able to agree with the petitioner's contention that he was appointed as sub-editor in the second respondent management. There is no iota of evidence to show that the petitioner has been appointed as sub editor. It is seen from the receipt produced before the Labour Court that the

same has been given by the second respondent management in the month of February, 1982. Though the method adopted by the second

respondent management may not be correct to appoint a journalist diploma holder as an apprentice, I am not able to agree with the contention of

the petitioner that he was appointed in the month of February, 1982 itself as sub editor.

10. u/s 2(s) of the Industrial Disputes Act, 1947 the petitioner is a workman because the said provision includes an apprentice also as a workman.

Assuming for a minute that the petitioner is entitled to get any of the benefits under the provisions of the Industrial Disputes Act, he has not worked

for the required number of days which is prescribed in any other sections of the Act. I do not think that the petitioner is entitled to the benefits

enshrined u/s 25F of the Industrial Disputes Act since he has worked less than a year. Even if a workman who is retrenched u/s 25F of the

Industrial Disputes Act to get the benefits he ought to have worked for a period of not less than a year. It is not the case here. As such I am fully

satisfied that the conclusion arrived at by the Labour Court is quite legal and valid; So the decisions cited by the petitioner are not relevant to the

facts of this case.

11. With regard to the contention as to want of notice and the argument built upon by the petitioner on the principles of natural justice, I am of the

view that the Labour Court has given sufficient opportunity to the petitioner and the second respondent management and has considered the

evidence both oral and documentary and has come to the right conclusion. As such I do not think the petitioner can ask for anything more than

what has been done by the Labour Court on the facts of the case. There are no merits in the writ petition and accordingly it is dismissed. No costs.