
(2002) 03 MAD CK 0008
In the Madras High Court
Case No : Writ Petition No. 19198 of 1994

Ramaratnam K.S.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 12-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 9A

Citation : (2002) 2 LLJ 1166

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; P. Sam, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—This writ petition is for issue of a writ of certiorari to call for the records on the file of the first respondent in I.D. No. 1109

of 1991, dated May 5, 1994, and to quash the same.

2. The petitioner was an employee under the second respondent. He was working in the company in the package division. He joined as godown-

in-charge originally. After a long number of years, on July 31, 1991, the second respondent issued a letter, terminating the services of the

petitioner. He was not informed about the closure of the package Section earlier. Therefore, an industrial dispute was raised by the petitioner

before the Labour Court in I.D. No. 1109 of 1991. The Labour Court, after recording the evidence and considering the arguments of both sides,

passed an award, holding that the termination of the petitioner was legal, and therefore, this writ petition has been filed, challenging the award of the

Labour Court.

3. Learned counsel for the petitioner submitted that the termination of the agreement between the second respondent-firm and another firm is not correct inasmuch as in both the partnership firms, the partners are one and the same, and, therefore, that cannot be a ground to terminate the employees. Further, it is submitted that this termination amounts to retrenchment and that the package division was not closed at all. He has also preferred an application before the Labour Court that in his place, a person by name Ramachandran of Nanganallur was appointed after his termination. Therefore, there is no actual closure of package Section.

4. According to Section 2(cc) of the Industrial Disputes Act, closure means permanent closure of the business and it does not mean temporary closure. The contention that subsequently somebody else was appointed goes to prove that there was no closure at all. He relies on the decision in

The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, wherein, the: Supreme Court has held that

closure, as defined u/s 2(cc) of the Industrial Disputes Act means Closure of business and not closure of a particular place of business.

5. Counsel contended that the Labour Court has relied upon the evidence of the Labour Inspector, who is said to have inspected the premises on

September 13, 1992, and has stated that at the time of his visit, the package Section was closed and there were no employees in that Section. He

further contends that the termination of the petitioner was made on July 31, 1991 and that the inspection was made more than one year thereafter,

i.e., on September 13, 1992.

6. It is contended that the Labour Officer had come to the conclusion that the package division, which was said to have been closed in July, 1991,

was still kept under lock and key in September, 1992. If really the package Section had been closed, a closure notice should have been given,

which has not been done. Therefore, it appears that the evidence of the Labour Inspector cannot be relied upon to come to a conclusion that the

package Section was closed even with effect from July 31, 1991, onwards.

7. Learned counsel for the petitioner contends that the Labour Court has mainly relied upon the evidence of the Labour Inspector to come to the

conclusion that the Section was closed from July 31, 1991. This conclusion arrived at cannot be said to be based on evidence, and, therefore, it is

liable to be set aside.

8. Further, learned counsel for the petitioner submitted that the claim of the second respondent is that they decided to rationalise their business. He

referred to the Fourth Schedule to the Industrial Disputes Act, in which, entry No. 10 refers to rationalisation. Therefore, when rationalisation is

done, it is required to be done u/s 9-A of the Industrial Disputes Act. Section 9A of the Industrial Disputes Act reads as follows:

Section 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 workman likely to be affected 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 notice:

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 ;

or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services

(Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in

Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may

be notified in this behalf by the appropriate Government in the Official Gazette, apply.

9. Therefore, rationalisation cannot be done, except after giving notice, as contemplated under Industrial Disputes Act. Admittedly, no notice was

given before termination of the employee. u/s 9-A of the Industrial Disputes Act, a notice has to be given to the workmen, who are likely to be

affected by the change prescribed. Admittedly, no notice was given to the petitioner before termination. Therefore, the mandatory provisions of

Section 9-A of the Industrial Disputes Act has not been complied with, and on that ground alone, this writ petition is liable to be allowed.

10. Learned counsel for the second respondent argued that this ground was not raised before the Labour Court or argued at any point of time, and

now the same has been raised, and therefore, such a ground is not available. This argument of learned counsel for the second respondent is not acceptable inasmuch as it is a mandatory provision of law, which confers a right on the employee, and the non-compliance with the mandatory provisions vitiates the order, and, therefore, merely because that point was not raised before the Labour Court, it does not prevent or prohibit the learned counsel for the petitioner to argue that point now, inasmuch as the mandatory provisions of Section 9-A of the Industrial Disputes Act were not followed and notice of retrenchment or rationalisation was not given to the petitioner herein. The termination has to be set aside on the ground of violation of Section 9-A of the Industrial Disputes Act.

11. Learned counsel for the second respondent argued that the Supreme Court in *Mukunda Bore Vs. Bangshidhar Buragohain and Others*, has laid down the principle as to what circumstances the award of the Labour Court can be set aside by the High Court under Article 226 of the Constitution of India. He referred to paragraph 16 of the said order, wherein, the Supreme Court has held that (page 1256): "the High Court, in the exercise of its special jurisdiction does not act as a Court of appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic Tribunal. A finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law." Therefore the award falls within the ambit of error of law, in view of the decision referred to, as held by the Supreme Court, and hence, it is set aside.

12. Considering the facts of the case that the writ petitioner, at the time of termination of service, was aged about 62 and it is more than eight years now since the writ petition is of the year 1994 and the petitioner is aged about 70 years, this Court suggested the parties to arrive at a settlement. In spite of the best efforts made by counsel for both sides, it was not possible to arrive at any settlement, and therefore, this decision is now given on the merits.

13. In the case of employment such as this, there is no age of retirement, and therefore, the petitioner cannot be compelled to retire even at the age of 70. He can work as long as he is able to work, and, therefore the order of

termination is set aside and he is directed to be reinstated with back wages. In the result, this writ petition is allowed.