
(2010) 06 MAD CK 0139
In the Madras High Court
Case No : Writ Petition No. 16196 of 2000

RIETER-LMW Machinery Ltd.

APPELLANT

Vs

R. Ranganathan and The Appellate Authority under Tamil Nadu Shops and Establishments Act (Dy. Commissioner of Labour)

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 2, 2(12)
Industrial Disputes Act, 1947 — Section 25F
Tamil Nadu Shops and Establishments Act, 1947 — Section 41(2), 6

Citation : (2010) 4 LLJ 131

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Vijay, for S. Ramasubramanian Associates, for the Appellant; V. Ajay Ghose, for R1 and N. Ramamoorthy, for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the management. They have filed the present writ petition seeking to challenge the order of the second respondent Appellate Authority made in TNSE Case No. 3 of 1999, dated 13.09.2000.

2. By the impugned order, the second respondent, who is the appellate authority u/s 41(2) of the Tamil Nadu Shops & Establishments Act, 1947 (for short TNSE Act) set aside the order of termination passed by the petitioner against the first respondent, dated 27.2.1999 and directed reinstatement of the first respondent. The writ petition was admitted on 22.09.2000. Pending the writ petition, an interim stay was granted for a limited period. Subsequently, it came to be extended from time to time and was finally made absolute after the workman filed the vacate stay application.

3. The facts leading to the case are as follows:

The first respondent was appointed as a Technical Officer-II in the factory premises at Sulur Railway Feeder Road, Coimbatore, by an order, dated 15.11.1993. It is the case of the first respondent that he was forced to submit his resignation and quit his employment with three months' salary. He was not allowed to work beyond 18.2.1999. Even though he wrote a letter to the petitioner management, after certain correspondence, the management terminated his service with effect from 27.2.1999.

4. The first respondent filed an appeal u/s 41(2) of the TNSE Act before the second respondent appellate authority. The said appeal was taken on file as TNSE Case No. 3/1999 and that a notice was ordered to the management. The management had filed a counter statement before the authority, dated 09.08.1999. In the counter statement, principally they took two contentions. The first one was that the first respondent was employed as a Technical Officer in the electrical department of the factory and the premises was registered under the Factories Act, 1948. Therefore, by virtue of G.O.Ms. No. 545, Development Department, dated 10.2.1950, the State Government u/s 6 of the TNSE Act had granted exemption from the application of the provisions of the TNSE Act to employees if they do work in a factory and are governed by the Factories Act. They had further contended that from the nature of duties and responsibilities entrusted to him, the work involved incidentally to the manufacturing process as defined u/s 2(k) of the Factories Act. On the merit of the case, in the counter statement they have not adduced any reasonable cause. The authority framed two issues, i.e. whether the appeal filed by the first respondent is maintainable under the TNSE Act and whether there was any reasonable cause for terminating the service of the first respondent.

5. Before the authority, the first respondent examined himself as P.W.1. On behalf of the petitioner, one Balakrishnan was examined as R.W.1. On the side of the first respondent, five documents were filed and they were marked as Exs.P.1 to P.5. On the side of the petitioner, 15 documents were filed and they were marked as Exs.R.1 to R.15. Ex.R.11 is the factory licence granted by the authorities. The authority on the basis of the records, came to the conclusion that the first respondent was working in the staff category, but however labelled as a Technical Officer. There are 50 persons working with the same designation in the premises of the petitioner and there was no connection for him to work in the power house.

6. Therefore, placing reliance upon the judgment of the division bench of this Court in Automac (M) (P) Ltd. v. Deputy Commissioner of Labour and Anr. reported in 1992 (I) LLJ 15 it was held that since the fact that the first respondent was directly connected with the manufacturing process has not been proved and he was working in the administrative capacity, the provisions of the Factories Act will not apply to him. Hence the appeal is maintainable. With reference to the second issue, the authority found that since there was no reasonable cause for terminating his service and even if there was any

misconduct, no enquiry was held to prove the same, it was a clear case of infraction of Section 41(2) of the TNSE Act. In that view of the matter, the appellate authority set aside the order of termination. It is against this order, the present writ petition was filed as noted already.

7. When the matter came up on 15.2.2010, this Court directed the petitioner to file documents which were filed before the Shops Act authorities. Accordingly, they were filed. In support of his contentions, Mr. T. Vijay, learned Counsel for the petitioner placed reliance upon the judgment of this Court in *Management of Binny Ltd. (B and C Mills), Madras-12 Vs. K. Elumalai and Asst. Commissioner of Labour, Madras-6*, . In that case, the workman was in the fire brigade attached to the mill. It was found that such an employment was directly connected with the factory premises and therefore, G.O.Ms. No. 545, Development, dated 10.2.1950 will apply.

8. The learned Counsel further placed reliance upon the judgment of the division bench of this Court which was also relied by the authority in the impugned order in *Automac (M) (P) Ltd. v. Deputy Commissioner of Labour and Anr.* reported in 1992 (I) LLJ 15. In that case, it was held by the division bench that it is not enough to show that a clerk carries on his work in the area registered under the Factories Act, but it must also be shown that he was governed by the provisions of the Factories Act. The learned Counsel contended that there was evidence to show that the first respondent was governed by the provisions of the Factories Act.

9. The counsel also placed reliance upon the another division bench judgment of this Court in *Management of E.I.D. Parry (India) Ltd. v. Commissioner of Labour and Ors.* reported in 2001 (II) LLJ 1074 (Mad) wherein the division bench held that the Assistant Works Manager (Production) employed in the Fertilizer factory of the management was covered by the provisions of the Factories Act and hence TNSE Act will not apply by virtue of exemption. In that case, as a matter of fact, the division bench found that the workman was all along in-charge of Fertilizer plant and throughout the working of factory at Ennore. Therefore, in the light of the legal precedents, the learned Counsel sought for setting aside the order passed by the second respondent appellate authority.

10. Mr. V. Ajoy Khose, learned Counsel for the first respondent contended that the management had failed to establish before the authority that the first respondent was governed by the provisions of the Factories Act. Therefore, in the absence of any reasonable cause, the order of the authority does not suffer from any illegality or infirmity. For this purpose, the learned Counsel also placed reliance upon the judgment of this Court in *S. Ramanathan v. Saroja mills Ltd. Madurai and Ors.* reported in 1977 (II) LLJ 202. In that case, a person employed defined u/s 2(12) will include a person who was working as an Officer and therefore, the provisions of the TNSE Act will apply, since he was employed in connection with the business of commercial establishment.

11. The learned Counsel also relied upon the judgment of this Court in Neyveli Lignite Corporation Ltd. and J. Satagopan and Anr. reported in 1979 (II) LLJ 163 to contend that if a person works in a clerical establishment inside the factory, he is governed by the provisions of the Shops Act. The petitioner was though labelled as a technical officer like him there were more than 50 employees, they were only the work of a glorified clerks and they belong to the clerical department of the petitioner factory and hence covered by the provisions of the TNSE Act.

12. The learned Counsel for the first respondent employee also placed reliance upon the same judgment in Automac (M) (P) Ltd. case (cited supra) and referred to the following passage found in paragraphs 8 and 9, which are as follows:

8. In the instant case, it has been found that none of the provisions of the Factories Act has been made applicable to second respondent and right from the beginning, his service conditions had been governed by the Tamil Nadu Shops and Establishments Act. As stated earlier, the Office premises had been shifted more than once to different places, and finally, it started functioning in the administrative block in the factory premises. Hence, the contention of the learned Counsel for the appellant that because it is located within the area which is registered under the Factories Act, the administrative office could straightway become factory premises, cannot be accepted. It is the particular nature of duties which are discharged and which alone could be taken into account. The State of U.P. v. M.P. Singh 1960 (I) LLJ 270 the Supreme Court held that field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane used in the factory are not employed either in the precincts of the factory or in the premises of the factory, and therefore, the provisions of the Factories Act would not apply. Once it is made out that the provisions of the Factories Act are not applicable to the second respondent, and when the appellant had not varied his service conditions, the provisions of the aforesaid G.O. cannot be applied to the instant case.

9. As far as G.O.Ms. No. 543 is concerned the exemption could be made applicable only in respect of persons who are employed on any kind of work in a factory, and "governed by the Factories Act 1948". It is not merely sufficient to show that a clerk carries on work within the area registered under the Factories Act, but it must also be shown that he is "governed" by the provisions of the Factories Act. The expression "or any kind of work" would not straightway get included within its field any other kind of person employed by a factory. As referred to in the last of the decisions of the Supreme Court, even though the field workers are employed in the factory, they are not working in the precincts of the factory. A clerk or an Accountant may be found physically working in the administrative block inside the factory campus, but it must also be shown that the provisions of the Factories Act had been applied to those persons. Unless the Management shows that the persons who are working in a factory registered under that Act are "governed" by the provisions of the Factories Act; the said

G.O. cannot be invoked by the Management.

13. He further submitted that once the finding of fact is recorded regarding the status of the work, this Court under Article 226 of the Constitution of India cannot interfere with the said finding of fact. For this purpose, he further placed reliance upon the judgment of this Court in *Shaw Wallace and Company Ltd. v. Presiding Officer, Second Additional Labour Court, Madras* and Anr. reported in 2002 (1) LLN 317. The following passage found in paragraph 6 of the said judgment may be usefully extracted below:

6. ...When the evidence of the management witness himself speaks to the nature of duties of the second respondent as technical one also, the Labour Court on appreciating the nature of duties of the second respondent both as a supervisor and as technical, had come to the conclusion that the second respondent is a workman only taking into the dominant nature of technical work. The power of this Court under Article 226 of the Constitution to consider the appreciation of the evidence of the Labour Court and to re-appreciate the same is very limited. When the Labour Court on facts concluded as to the nature of the work of the second respondent as a workman within the meaning of Section 2(s) of "the Act", this Court exercising powers of judicial review under Article 226 will not interfere with that finding as to whether the nature of duties of the second respondent is supervisory or technical as the same is based on evidence which could be appreciated by the Labour Court as has been done in this case....

14. In the present case, nothing prevented the management to lead evidence with regard to the reasonable cause or in support of dismissal for any misconduct. Therefore, they are not entitled to any indulgence on that score.

15. The learned Counsel for the first respondent also contended that if termination amounts to retrenchment within the meaning of Section 25F of the ID Act, even such an issue can be gone into by the appellate authority u/s 41(2). For this purpose, he also placed reliance upon two judgments of this Court in *M. Arunagiri v. Bata India Ltd. and Ors.* reported in 1992 (II) LLJ 46 and *Miss T.N. Chandra v. South India Corp (Agencies) Ltd. and Anr.* reported in 1992 (I) LLJ 739.

16. In the light of the rival contentions, it must be seen whether the order of the second respondent suffers from any legal infirmity which requires any interference from this Court under Article 226 of the Constitution of India.

17. As rightly contended by the learned Counsel for the first respondent employee, it is the petitioner who did not satisfy the authority about the status of the first respondent being governed by the provisions of the Factories Act. It may be true that he was employed in the premises for which there is a Factory license. But there is no evidence to show that he was governed by the provisions of the Factories Act. He was only appointed as a Technical Officer like many other persons whose primary job was to do various clerical duties as set out in the list of duties furnished by the management. Therefore, it is not a case where the Act

can be said to be not applicable to the case of the first respondent, as he is not an employee governed by the provisions of the Factories Act. When once that finding went against the petitioner management and there being no reasonable cause for dispensation of the service of the first respondent, the order of termination is clearly an ultra vires to the provisions of Section 41(2) of the TNSE Act. The appellate authority was correct in setting aside the order of termination. The impugned order does not suffer from any infirmity or illegality.

18. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs.