

(1997) 03 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 2123 of 1994 and WMP. No"s. 3458/94 and 120/95

Rukmani

APPELLANT

Vs

The Divisional Manager, Marapalam Tea Division, Nadugani,
Gudalur, Nilgiris District

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 38(d2), 39, 39(a)

Citation : (1997) 03 MAD CK 0012

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; Ibrahim Kalifullah, for the Respondent

Judgement

E. Padmanabhan, J.—The petitioner seeks for the issue of a Writ of Certiorarified Mandamus to call for the records of the respondent in

Na.Ka. No. 1259/90 dated 8-5-1993 and quash to same and direct the respondent to provide continuous employment to the petitioner. The

respondent has entered appearance, but had not filed counter and hence this Court had to decide this Writ Petition on the basis of affidavit filed by

the petitioner and the material papers placed by her.

2. The impugned order passed by the respondent reads thus:

Admittedly, the petitioner is a permanent woman plantation laborer in the employment of the respondent. It is totally unknown to services as well

as industrial law as to how the petitioner, could be compelled or required to secure "No Objection" certificate from her former husband

(mentioned as . It is rather unexpected, a Divisional Manager of Government of Tamil Nadu undertaking to have issued such a direction even at the

end of 20th century. The attitude of the respondent in directing and insisting for production of "No Objection" certificate of this nature is nothing

but a social evil, which requires to be eradicated. This attitude of the respondent is a sample of what exists and condition that prevails among the

plantation labourers. Even after 50 years of the framing of the Constitution, justice neither social nor economic nor political has been achieved,

much less Liberty or Equality or Fraternity to this section of society.

3. At this juncture, it has to be pointed out that this impugned condition set out in the intimation is highly objectionable, arbitrary and uncalled for. In

terms of Standing Order or Service Regulations governing the respondent, only a relieving order of former employer or medical certificate is

required apart from attendance at the working spot and not a "No Objection" certificate from "former" husband.

4. This Court is unable to comprehend as to the circumstances under which the respondent had called "upon the petitioner produce "No

Objection" certificate from the former husband. There has been misunderstanding between the petitioner and one Ramasamy and the said

Ramasamy, who according to the petitioner is having access and exercise influence over the respondent, as a man with power of muscle. It is also

alleged by the petitioner that the said Ramasamy had caused certain notice, even objecting to the transfer of the petitioner from Cherambadi

Division to Marapalam Division, which transfer the petitioner had to seek for personal reasons. Even, thereafter the respondent had denied the

employment to the petitioner by insisting for production of "No Objection" certificate from her former husband by the impugned communication

dated 08.4.1993.

5. This Court after perusal of the order called upon the counsel for the respondent to suitably advise the respondent. Mr. Ibrahim Kalifullah,

learned counsel appearing for the respondent was fair in his action and suitably advised the respondent. On receipt of the letter from learned

counsel Mr. Kalifullah, the respondent had sent a letter on 12.03.1997, to the petitioner. The copy of letter was placed before this Court and the

said letter reads thus:

6. This Court is unable to appreciate the manner and attitude with which the respondent had acted, even after the learned counsel advising the

respondent. The respondent with a calculated motive had chosen to throw the blame on the petitioner to avoid the consequences of his action

while referring to the earlier communication dated 06.09.1996. The attitude of the respondent, as an Officer of the State Government Undertaking

is to be deprecated as the respondent is still continuing the colonial attitude and not prepared to free the woman laborer from the bondage of an

unconnected man and male chauvinism.

7. The petitioner had been denied employment and livelihood on and from 8-5-1993 and the reason for denial is shocking. The petitioner had also

represented that there is no such requirement for her to secure a "No Objection" certificate from her former husband, either for her continuance in

employment in or joining at the place to which she was transferred. It was admitted that the petitioner was working in the respondent's

establishment for a number of years as a regular plantation laborer. The petitioner had also gone before the Labour Officer, but the Labour Officer

advised the petitioner to approach the respondent. The Labour Officer had also failed to discharge the functions expected of him.

8. The action of the respondent is per as arbitrary. The petitioner a poor worker in the plantation, a Government of Tamilnadu Undertaking had

been deprived of her livelihood, atleast from 08.05.1993. The action of the respondent is totally uncalled for and against all basic principles of law

and derogatory of the Womanhood, which is to be respected. Further the petitioner is a poor plantation of labourer and she should not have been

driven from pillar to post. The petitioner had been deprived of her livelihood by the arbitrary action of the respondent.

9. Article 51-A (e) makes it fundamental duty of every citizen, to denounce practices derogatory to women. Article 38 (d2) mandates equal pay

for equal work for both men and women. Article 42 enjoins the State to make provision for securing just and humane conditions of work and for

maternity relief.

10. The attitude of the respondent in insisting the production of "No Objection" certificate is nothing but a social evil, which is to be eradicated.

11. State actions, including acts of the instrumentalities and agencies of the State, such as the respondent, must not only be in conformity with the

Fundamental Rights guaranteed by Part III but must also be in accordance with

the Directive Principles of State Policy prescribed by Part IV of the Constitution. Therefore, the action of the respondent, the instrumentality of the State in insisting on production of "No Objection" certificate by the petitioner from another, who is totally unconnected, much less, for that matter her former husband, would be not only violative of Article 14, but also very much contrary to Article 39(a) of the Constitution.

12. The right to live with dignity enshrined in Article 21 derives its life-breath, from Directive Principles of State Policy, particularly Clauses (e) and (f) of Article 39, Article 41 and Article 42. It includes protection of health and strength of workers and children and protection against abuse.

Hence, the respondent should have ensured that the petitioner, a plantation labourer is not being abused or subjected to bondage in the hands of Ramasamy, who was the petitioner's former husband. Even after cessation of relationship, the former husband had successfully abused his position and subjected the petitioner, to bondage to which the respondent had given active support and assistance.

13. In these days when the State has been taking steps by introducing suitable legislations to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry in terms of Article 43A, it is rather surprising and shocking as to how the respondent had issued such a direction to secure "No Objection" Certificate. It is also essential to emphasise that in terms of Article 51A, it is not only the duty of every citizen, but also the respondent, an instrumentality of the State to denounce practices derogatory to the dignity of women, as provided for in Article 51A (a)(c). The impugned communication is quashed and the respondent is directed to reinstate the petitioner as a permanent labourer in which category she was working in the respondent undertaking prior to 08.05.1993, with full back wages as the petitioner had been deprived of her livelihood from 08.05.1993 onwards. The respondent shall reinstate the petitioner within two weeks from the date of communication of this Order. The respondent shall work out the arrears and pay the arrears to the petitioner within eight weeks from the communication of this order. In the result, the Writ Petition is allowed with a cost of Rs. 1,000/- (Rupees one Thousand Only). Consequently, W.M.P. Nos. 3458 of 1994 and W.M.P. No. 120 of 1995 are dismissed.