

(2012) 11 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 14735 of 2012 and M.P. No's. 1 and 2 of 2012

S. Atralarasun, Mr. V. Rjacanabady and S. Pasupathy

APPELLANT

Vs

The Labour Officer (Conciliation), Puducherry, Office of the
Labour Officer Conciliation, The Management of Larsen and
Toubro Limited and Larsen and Toubro Pattali Thozil Sangam

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(3), 2A, 2A(2), 2A(3)

Citation : (2013) 1 MLJ 110

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P.R. Thiruneelakandan, for the Appellant; Rita Chandrasekar for M/s. Aiyar and Dolia for R2 and Mr. D. Muthukumar for R3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. In this writ petition, the petitioners seek for a direction restraining the third respondent Management from entering or counter signing any 12(3) settlement with the respondents 2 and 3 with regard to the industrial dispute of petitioners' non-employment which is a subject matter of an industrial dispute u/s 2A of the Industrial Disputes Act dated 08.05.2012 between the petitioners and second respondent and consequently, for a direction to the first respondent to give a failure report on the individual dispute dated 08.05.2012 raised by the petitioners u/s 2A of the Industrial Disputes Act, within a stipulated time. When the matter came up on 11.06.2012, notice of motion was ordered. Pending the notice of motion, an interim injunction was granted for a period of four weeks. The said interim order came to be extended from time to time. Aggrieved by the interim order, the second respondent has filed a vacate injunction application in M.P. No. 2/2012, together with a counter affidavit dated 27.09.2012. The third respondent Trade Union has also filed a counter affidavit dated 12.11.2012.

2. In the petition sent by the petitioners on 08.05.2012 to the first respondent, Conciliation Officer, Puducherry, the petitioners claim that they have been denied employment and the denial of employment was illegal and they are entitled for all benefits including backwages and service continuity. It is the case of the petitioners that since they have declined promotion and thereafter, entitled to be continuity in service, they have been struggling without any payment. In the identical statement made before the Conciliation Officer, the petitioners also informed that they are no longer the members of the third respondent Union and they have resigned from the Union with effect from 05.05.2012 and if any settlement was reached, the said settlement is not binding on them. The petitioners also caused legal notice to the respondents through their counsel dated 29.05.2012 and only thereafter, the writ petition came to be filed.

3. However, it is fairly admitted that subsequent to the filing of petitions before the Labour Officer, the petitioners taken advantage of Section 2A(2) of the Industrial Disputes Act, wherein it is stated that the petitioners in respect of their non-employment can go before the Labour Court after 45 days from the date they move the Conciliation Officer. In such cases, the Labour Court has power to adjudicate the said dispute as if it was a dispute referred to the Labour Court by the appropriate Government. The said 2A(3) provision has been introduced notwithstanding the provision u/s 10(1) wherein appropriate Government will have to make order of reference even in case of individual non-employment. Taking advantage of the default provision, the petitioners filed claim statements before the Labour Court and their industrial disputes have been taken on file in I.D. Nos. 26, 27 and 28/2012. Therefore, the question of this Court directing the Conciliation Officer to issue failure report has become infructuous.

4. The only other question is whether the third respondent is to be refrained from entering into any settlement u/s 12(3) of the I.D. Act. In the counter affidavit filed by the second respondent, it was contended that 12(3) settlement was signed by the third respondent on 25.05.2012. They have settled the disputes, namely, I.D. No. 127/2012 regarding violation of Section 12(3) settlement, I.D. No. 801/2012 regarding unfair labour practice and breach of 12(3) settlement and I.D. No. 857/2012 regarding non-employment of Thiru. V. Rajendran and six others. It was also stated by them that the said settlement has been signed even before the order of injunction was received by them. It was further stated that the petitioners refused to report in the new locations and therefore, the second respondent resorted to the concept of No work No pay and there is no question of non-employment, since 12(3) settlement has already been arrived and as such, the writ petition has become infructuous.

5. In the counter affidavit filed by the third respondent Union, in Paras 7 and 8, it was averred as follows:

6. I submit that the said settlement dated 25.05.2012 never intended to sign to supersede 12(3) settlement dated 10.08.2009. The 12(3) settlement dated 25.05.2012 was signed as special case to accept the proposal of the

management offered in respect of the said 4 individual workers alone. The 12(3) settlement dated 10.08.2009 is bound by all workers, and 3rd respondent union and minority union also. In fact rival union members are also promoted against the 12(3) settlement dated 10.08.2009 and we have given to understand that they are challenging the illegal promotion cum transfer order before the Court by law. It is also pertinent to mention here that our union filed standing order appeal SOA No. 1 & 2 of 2012 challenging Transfer clause and other clauses included in the certified standing order, now in the said appeal order is reversed by the Labour Court, Puducherry. Therefore, the 3rd respondent never gives up the issue of illegal promotion and transfer of the workers from Puducherry to other state. The said settlement dated 25.05.2012 is signed by the Union only for individual workers who had agreed the proposal of the 2nd respondent not for others, and the said settlement will not bind the other workers of our union including the petitioners.

7. Hence the apprehension of the petitioners that the 3rd respondent union signed a settlement and withdrew their individual dispute are false and it is a mere apprehension of the petitioners, since the petitioners raised the industrial dispute before the Labour Court, Puducherry, it is not appropriate to the 3rd respondent union to express any view on merit of the writ petition.

8. In this writ petition, settlement u/s 12(3) is not under challenge and on the other hand, apprehending that the Union may enter into settlement u/s 12(3) and also apprehending that the Conciliation Officer will not give failure report and in anticipation, the writ petition came to be filed. As stated above, the petitioners already had the advantage of the default clause u/s 2A(2) and raised the dispute, which is pending before the Labour Court. Admittedly, while the order of injunction was granted by this Court on 11.06.2012, the 12(3) settlement was signed on 25.05.2012 itself. Therefore, the second relief claimed in the writ petition has also become infructuous.

9. Hence it is open to the petitioners to raise their contentions before the Labour Court as and when the Management raises any counter before the Labour Court and the Labour Court is competent to go into all those issues. If still the petitioner has any apprehension about the terms of settlement, the terms of settlement will have to be separately challenged in the manner known to law.

10. However, Mr. P.R. Thiruneelakandan, learned counsel appearing for the petitioners stated that since he has already filed the writ petition, he need not challenge the terms of settlement. But this Court is unable to agree. unless the terms of settlement is put as an issue, the writ petition filed before signing of the settlement will not be of any assistance to the petitioners. In the light of the above, there is no case made out. Accordingly, the writ petition stands dismissed. It is for the petitioners to work out their remedy in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.