
(1996) 09 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No. 11175 of 1987

Sambandamurthy and Others

APPELLANT

Vs

The II Additional Labour Court, Madras and Another

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1997) 1 LLJ 485

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Judgement

S.M. Abdul Wahab, J.—This writ petition is for certiorari mandamus to quash the order of the first respondent dated November 13,

1986 in C.P. Nos. 696 of 1984, and 58 & 59 of 1985 and to direct reinstatement of the petitioners in the second respondent factory.

2. The short facts of the case are as follows :

Petitioners 1 to 3 herein raised an industrial dispute before the first respondent herein. It was heard by the Second Additional Labour Court in I.D.

No. 191 of 1981. The Labour Court adjudicated in favour of the first petitioner ordering reinstatement. Similarly, the second petitioner raised

industrial dispute, I.D. No. 410 of 1981. In the said petition also it was held that the termination of the services was not justified. Hence, declared

continuance of service with backwages and other attendant benefits. With reference to the third petitioner also in I.D. No. 411 of 1981, the same

order was passed. Thereafter, the petitioners sent registered notice to the second respondent claiming the consequential benefits, since the second

respondent failed to comply with the award passed in the I.D. petition. Therefore, the petitioners 1 to 3 filed three claim petitions C.P. Nos. 696 of

1984, and 58 & 59 of 1985 before the first respondent Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947. The II Additional Labour

Court rejected the claim petitions by a common order. Hence, the petitioners have filed this writ petition, challenging the common order passed by

the first respondent.

3. During the pendency of the writ petition, third petitioner, Andrews died and his legal heirs petitioners 4 to 6 are brought on record as legal heirs

of the deceased as per order passed in W.M.P. No. 8116 of 1991 dated August 21, 1991.

4. No counter-affidavit has been filed on behalf of the respondents.

5. The contentions urged by the learned counsel for the petitioners are many fold. The first and foremost one is that the Labour Court was wrong in

holding that the petitioners did not make a request for reinstatement and therefore they were not entitled to the other benefits. According to the

learned counsel for the petitioners, Exhibits W 1 to W3 were sent after the order was passed in the earlier petitions. Exhibits W1 to W3 have been

returned with an endorsement ""Refused"". Therefore, the Labour Court was wrong in holding that there was no demand on the part of the

petitioners for reinstatement. Before the Labour Court Exhibits W1 to W3 have been produced; they have been addressed to No. 96, Pondy

Bazaar, T.Nagar, Madras-17. M.W. 1 has stated that their office is situated at No. 6, Somasundaram Street, only show-room is functioning at

No. 96, Pondy Bazaar T.Nagar, Madras-17. Based on the said evidence, the Labour Court has come to the conclusion that there was no demand

on the part of the petitioners. Learned counsel for the petitioners pointed out in the earlier statement filed by the management, before the Labour

Court wherein their head office was shown as 96, Pondy Bazaar, T.Nagar, Madras-17. Further, she pointed out that during the course of the

judgment also in para 13, the Labour Court has held that the petitioners have addressed letters to No. 96, Pondy Bazaar, T.Nagar, Madras-17.

These letters have been acknowledged. The said letter is marked as Ex.W-2. In the earlier case the petitioners have demanded reinstatement with

all benefits. Of course, letters have been addressed to both 96, Pondy Bazaar, T.Nagar, Madras 17 as well as No. 6, Somasundaram Street, but

it has been admitted that the second respondent has acknowledged the letters

sent to No. 96, Pondy Bazaar, T.Nagar, Madras 17. Now the postal endorsement is ""Refusal"". In the said circumstances, the petitioners should be deemed to have demanded for reinstatement.

6. That apart, learned counsel for the respondent contended that there was no demand on the part of the petitioners immediately after the earlier order was passed. The petitioners have filed claim petitions before the Labour Court. These petitions are dated December 13, 1984 and January 16, 1985. The second respondent has received the same. In paragraph 3 of the claim petition it is stated that the petitioners sent registered letters on August 6, 1984 and the same have been returned with an endorsement ""Refusal"". The claim petitions have been served upon the second respondents and they have filed counter also. Therefore, even if the registered notices have not been received by them, filing of the applications are sufficient, indicating their intention for the reinstatement. Nothing prevented the second respondent from reinstating the petitioners in service after it was served with the claim petitions.

7. Learned counsel for the second respondent contended that there is no specific prayer for reinstatement in the claim petitions. There is also no averment to show that the petitioners were ready to join the service. I am not in a position to agree with the counsel for the respondent, that since there is no specific demand in the claim petition for reinstatement, the management was justified in not reinstating the petitioners even after filing of the claim petitions, u/s 33-C(2) of the Industrial Disputes Act, 1947. In the claim petition, there is also a claim for backwages. This claim is also covered by the earlier decision in three I.D. petitions. In the orders passed in the earlier three petitions backwages and attendant benefits have been granted. For Labour Court has retired upon the circumstances that there was no demand on the part of petitioners and they are sending letters to the wrong address. As I have stated earlier, the letters have been sent to the Head Office in Pondy Bazaar, T.Nagar, Madras 17, but they have been refused. I have already stated the present claim petitions u/s 33-C(2) are sufficient indications for claiming 15 the backwages.

Since after receipt of the notice, nothing prevented the management from paying the backwages.

8. Another contention by the learned counsel is that the Labour Court has

rejected the backwages, bonus and increments, since there was (sic) no evidence of daily wages. With respect to the daily wages, W.W. 1 has stated that they were paid Rs. 50/- once in a week. It is true that there is no mention about the daily wages in the earlier award. Even if the evidence of W.W. 1 is not acceptable with reference to the figure, nothing prevented the second respondent to show the actual wages paid when they were terminated from service. That apart as rightly contended by the learned counsel for the petitioners, the minimum wages could have been adopted for payment of wages and calculating other benefits. Learned counsel for the second respondent contended that there was no evidence produced by the petitioners before Labour Court as to what was the minimum wages. It is the duty of the Labour Court to ascertain the minimum wages. Further when the petitioners have given the figures of Rs. 15/- and 14/- as daily wages, that could have been accepted. The Labour Court states that in the salary certificate he has claimed Rs. 200/- as his earning in the earlier petitions. The figure of Rs. 200/- atleast could have been adopted for the purpose of calculating backwages, increments and other benefits. It is not the case of the management or anybody that the petitioners have agreed to work without any wages and rendering free services.

9. In this connection, it is also worthwhile to mention that when the petitioners have filed petitions for production of documents like wage registers, bonus register, leave register, the same has been rejected on the ground that the years have not been mentioned in the petitions. In the notice sent to the management for production of documents i.e., enclosed in the typed set of papers in page 58, the period for which the registers are required is also mentioned. Similarly, the year of bonus register, wage register etc., have also been mentioned. Therefore, rejecting the claims of the petitioners is unjustified on the ground that the daily wage earned by the petitioners before termination was not proved. As I have stated earlier, the Labour Court was not justified in doing so.

10. Learned counsel for the respondent contended that it is the duty of the petitioners to claim reinstatement etc., and as there was no demand from them, the management was not bound to comply with the demands contained in the claim petitions. He cited a decision in Peer Mohammed

& Company, Madras v Mohammed Hussain And Another 1968 XI LLJ 98 (Mad). In the said case, the employee reported for reinstatement after

nearly a year. Hence, the learned single Judge of this Court rejected the claim for wages. But in this case, the petitioners have sent a registered

letter under Exhibits W.W. 1 and W.W. 2 and they were refused. That apart, the petitions u/s 33-C(2) have been filed on December 13, 1984

and January 16, 1985. It is also worthwhile to mention here that even before the publication of the Award in the Gazette the notice has been sent.

The learned counsel for the respondent himself stated that the publication of the award was on September 19, 1984 but the notice was sent on

August 1, 1984 itself. Therefore, in this case the petitioners were ready for reinstatement, as is evidenced in Exhibits M.1 to M.3. Hence, the said

case is not helpful to the second respondent.

11. Learned counsel for the respondent contended that only in the evidence before the Labour Court letters have been marked and it was not

brought to the notice of the management earlier. Whatever it is, the petitioners have made an attempt to get reinstatement and other benefits. As I

have stated earlier nothing prevented them to comply with the demand, after they have received the notice in the claim petition u/s 33-C(2) of the

Industrial Disputes Act, 1947.

12. Another contention raised by the learned counsel for the respondent that Section 33-C(2) has to be construed only as a provision for

execution and not for declaration of any right. In this case, the rights of the petitioners have been already established and accepted by the Labour

Court in the earlier award. Therefore, the present petition u/s 33-C(2) of the Industrial Disputes Act, 1947 in substance is an execution petition.

13. Learned counsel for the petitioners contended that the petitioners have not indicated their intention for reinstatement not only in the claim, but

also in the writ petition. As I have stated earlier, sending of the notice, filing of the claim petition and the filing of the writ petition are sufficient

indications that they want reinstatement and backwages. Even after filing of the writ petition, there was no indication on the part of the second

respondent to take them back in service and pay wages.

For the foregoing reasons, I am of the view that the petitioners are entitled to succeed in this writ petition. Therefore, the writ petition is allowed.

However, there will be no order as to costs.

14. As regards the third petitioner, since he is dead, petitioners 4 to 6 his legal heirs are entitled to the monetary benefit till his death. As regards the petitioners 1 and 3, they are entitled to succeed as prayed for.