

(1959) 09 MAD CK 0051
In the Madras High Court

Sandanasami Pillai

APPELLANT

Vs

C. Ponnuswami and Others

RESPONDENT

Date of Decision : 01-09-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 25E, 25F, 33, 33A, 33C

Citation : (1960) 1 MLJ 87

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The petitioner is the proprietor of a cheroot manufacturing business in Poraiyar, Tanjore District. Respondents 1 to 4 were employees under him. On or about 7th October, 1957, these four persons together with some others who were working as cheroot rollers under the petitioner demanded increased wages and to enforce that demand they staged a stay-in-strike. On 23rd October, 1957, a settlement was arrived at between the petitioner and the eight workers in question in the presence of the President of the Panchayat Board, Poraiyar. The parties agreed that wages at a certain rate should be paid and received. It was also agreed that, on account of the loss which the petitioner had been sustaining he would be free to discharge four of the eight workers at the end of one month commencing from 23rd October, 1957. By G.O. 3765, dated 15th November, 1957, the Government of Madras referred to the Labour Court at Madras the following question for adjudication:

Whether the rate of wages paid to the workers for the manufacture of cigars require any revision and if so to what extent.

The reference was a general one which concerned seven factories. On 23rd November, 1957, in pursuance of the settlement that had been arrived at on 23rd October, 1957, before the President of the Panchayat Board of Poraiyar the petitioner retrenched the first four respondents from his service. On 31st March, 1958, the Labour Court, Madras, passed an award on the question the Government had referred to it, in G.O. 3765. Meanwhile, that is to say, on 25th

March, 1958, the first four respondents complained to the Labour Court that they had been wrongfully discharged from service. In the complaint which the respondents preferred they did not specify under what Section of the Industrial Disputes Act they invoked the jurisdiction of the Labour Court. But the Court presumed that it was u/s 33A. The petitioner filed a counter setting out his version of the case. The Labour Court found:

Though there is only interested oral evidence on both sides I am inclined to believe the case of the Respondent (Petitioner in this Court). He appeared to be an honest and truth speaking witness.

In other words the Labour Court found that the first four respondents had been discharged in accordance with the settlement which had been arrived at on 23rd October, 1957, in the presence of the President of the Panchayat Board. Nonetheless it held that Section 25E of the Industrial Disputes Act had been contravened since notices of retrenchment had not been given in writing and retrenchment compensation had not been paid. He therefore held that the retrenchment was illegal and directed that various sums should be paid by the petitioner to the first four respondents as retrenchment compensation. The present petition has been filed for the issue of an appropriate writ to quash this order of the Labour Court.

2. The complaint of Mr. Kuppuswami Iyer, the learned advocate for the petitioner, that the order of the Court below was completely without jurisdiction appears to me to be well founded. Section 33A of the Industrial Disputes Act no doubt provides that where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Labour Court any employee aggrieved by such contravention may make a complaint in writing to that Labour Court. Thereupon the Labour Court acquires jurisdiction to pass a proper award. But then when we come to Section 33 it will be found that it does not prohibit the retrenchment or discharge of workmen during the pendency of any proceedings before the Labour Court. That section so far as it is now material runs as follows:

During the pendency of...any proceeding before the Labour Court...in respect of an industrial dispute, no employer shall....

(2) in regard to any matter connected with the dispute alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them.

It will be noticed that it is not every alteration in the conditions of service that the section prohibits. What is prohibited is the alteration of the conditions of service in regard to any matter connected with the dispute. That is to say, there must be some point of connection between the dispute and the act in respect of which a complaint may be made u/s 33A. As already stated, the question referred by the Government to the Labour Court in G.O. 3765 was a general question of the level of wages. No other question was referred to the Labour Court. Retrenchment of individual workers in particular establishments was

outside the scope of the reference. Section 33A could not have therefore been called in aid by the first four respondents.

3. Mr. Sundaralingam, the learned Counsel for the respondents, contended that the retrenchment was illegal and that in any case the Labour Court has only given effect to the provisions of Section 25F. In these proceedings I cannot investigate the question whether the retrenchment was justified or not. If it was done in pursuance of the settlement effected before the President of the Panchayat Board, Poraiyar, as the Labour Court itself found it is very difficult to say that any contravention of the law was involved in such discharge. Besides even assuming that the retrenchment contravened Section 25F, the Labour Court acquired no jurisdiction to make any order. If the workers were aggrieved they should have gone to the appropriate authority u/s 33C of the Act. As the order made is one without jurisdiction it is hereby quashed. There will be no order as to costs.