
(1969) 03 MAD CK 0041
In the Madras High Court

Singh (H.S.)

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 13-03-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 33C

Citation : (1969) 2 LLJ 370

Hon'ble Judges : Sadasivam, J

Bench : Single Bench

Judgement

Sadasivam, J.—Petition by H.S. Singh, engineer and contractor, Coimbatore, for the issue of a writ of certiorari or other appropriate writ to quash the preliminary and final orders of the labour court, Coimbatore, dated 16 February and 12 May 1966, respectively. Respondent 2, R. Krishnaswami Pillai, filed Civil Petition No. 905 of 1965 on the file of the labour court, Coimbatore, u/s 33C(2) of the Industrial Disputes Act, hereinafter called the Act, claiming Rs. 1,708.02 as benefits accrued to him by reason of retrenchment of his services by the management, the petitioner herein. The petitioner herein raised a preliminary objection that respondent 2, Krishnaswami Pillai, was only a manager and not a workman within the meaning of Section 2(s) of the Act. The labour court overruled this preliminary objection by its preliminary order dated 16 February 1966 after considering the evidence of both the petitioner and respondent 2 and the documents filed by them. The petitioner relied on the fact that respondent 2 was described as manager and also in the terms of the power of attorney granted to him. But the mere fact that respondent 2 is described as manager does not conclude the matter. It is clear, from the evidence that respondent 2 was only employed as a clerk and he had no power to appoint or dismiss or even grant leave to the other workmen. The presiding officer, labour court, Coimbatore, has considered the evidence and found that respondent 2 was a workman within the meaning of Section 2(s) of the Act and it could not be said that it is not possible to arrive at the finding on the evidence in this case. There is therefore, no ground to interfere with this finding in writ proceedings.

2. Respondent 2 was admittedly in the service of the petitioner for eleven years. The presiding officer, labour court, has computed the benefit of notice-pay and retrenchment compensation at Rs. 1,025.50 and the arrears of salary at Rs. 381 and negated the rest of the claim relating to leave-salary and bonus. So far as arrears of pay of Rs. 381 is concerned, the petitioner did not object to the same even before the presiding officer, labour court, though he contended that the Court had no jurisdiction to compute the said benefit u/s 33C(2) of the Act. But the said contention was not accepted by the presiding officer of the labour court and there is no error of law in the said decision.

3. So far as the payment of notice and retrenchment compensation of Rs. 1,025.50 is concerned, the contention of the learned advocate for the petitioner is that this is not a case of retrenchment as defined in Section 2(oo) of the Act to justify the computation of the benefit u/s 25F of the Act. Respondent 2 filed the petition before the labour court, on the ground that he was retrenched from the services of the petitioner herein. In his counter before the labour court the petitioner has pleaded that respondent 2 herein left the services of his own accord. The learned advocate for the petitioner relied on the decisions in *Barsi Light Railway Co., Ltd., and Anr. v. Joglekar (K.N.) and Ors.* 1957 I .L.J. 243 ; *Murugesu Naicker Co. v. Labour Court, Madras,* and Ors. 1963 I.L.J. 495 and *Rathinaswami Nadar (E.C.P.) v. Labour Court, Madurai,* and Anr. 1964 I.L.J. 86 in support of his contention that the termination in order to be retrenchment should be of surplus labour or staff and it should be in an industry, which is continuing and not closed or transferred. He particularly relied on the decision in *Rathinaswami Nadar (E.C.P.) v. Labour Court, Madurai,* and Anr. 1964 I.L.J. 86 (vide supra) that where an employee claims retrenchment compensation he must prove that he was retrenched from service and that it is not for the employer to prove that the discharge or termination of the services of the employee was otherwise than by way of retrenchment. He relied on the fact that no evidence was adduced after the preliminary order was passed by the presiding officer of the labour court. The evidence given by the parties, though prior to the preliminary order, was before the labour court. Respondent 2 herein has given evidence as to how he was entitled to retrenchment compensation. The petitioner examined himself and stated that there were nine employees in MB establishment including respondent 2 herein and that at the time of giving evidence there were only six employees under him and that there was no manager. According to him, respondent 2 was originally the manager. The labour court has relied on the documentary evidence in this case. In Ex. W. 1 the petitioner has stated that he has decided to effect drastic retrenchment in the staff. He has considered the offer of respondent 2 and observed that it would also help him economically. In Ex. W. 2, a certificate given by the petitioner to respondent 2 complimenting him about his prompt and regular work, he has stated that his services are dispensed with due to retrenchment. The decision in *Desikachari (P.S.) and Ors. v. the "Mail" [by the proprietors of Associated Publishers, Madras (Private), Ltd.],* and Anr. 1961 I.L.J. 771 clearly supports the

contention of the learned advocate for respondent 2 that the documents Exs. W. 1 and W. 2 afford strong pieces of evidence that respondent 2 had been retrenched from service. The petitioner has not adduced any evidence to show that the word "retrenchment" was used in the above documents on account of any misapprehension. The finding of the labour court accepting the case of respondent 2 that he was retrenched from service within the meaning of Section 2(oo) of the Act is correct and there is no ground to Interfere with it in a writ of certiorari.

4. For the foregoing reasons the petition is liable to be dismissed and it is hereby dismissed with costs.

5. Respondent 2's advocate's fee Rs. 150.