

(2008) 09 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No. 20616 of 1999

Sree Meenakshi Mills Ltd. and Another	APPELLANT
Vs	
Workmen, Madurai Workers Union, CITU and Another	RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(4), 25M

Citation : (2009) 2 LLJ 50

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : K.V. Vani, for Rangarajan and Prabhakaran, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This writ petition is directed against the award of the second respondent dated February 18, 1999 in I.D. No. 111/1999 whereby the petitioner was directed to make all badli workers as permanent employees from the date of the award.

2. The factual matrix necessary for the disposal of the writ petition are as under:

Contention in the writ petition

(a) The petitioner is a Company engaged in the manufacture and sale of various textile yarns and the Company has got three units at Madurai, Paravai and Manaparai. The workmen of Madurai and Paravai Units raised an industrial dispute u/s 10(1)(d) of the I.D. Act, 1947. The dispute was in relation to frequent lay off in respect of badli workers in the mill and it was the contention of the union that lay off should be properly regulated.

(b) In respect of the said dispute, conciliation proceedings were taken up before the Assistant Commissioner of Labour, Madurai in the year 1992 which ultimately ended in failure and accordingly, failure report was submitted by the Conciliation Officer in the year 1989. The said report was considered by the Government as

per G.O. Ms. No. 2088 dated November 30, 1989 and the dispute was referred for adjudication.

(c) As per the point for adjudication, the Industrial Tribunal was expected to consider as to "whether the demand that the management should avoid frequent lay off of badli workers in the mills and that lay off should be regulated was justified." Before the Industrial Tribunal, the first respondent filed a statement of claim demanding that badli workers should be continuously engaged without giving them any kind of break and without engaging casuals or temporary workers in their place. They have also contended that the management should not resort to lay off without seeking permission u/s 25-M of I.D. Act, 1947.

Contention of the employer before Tribunal

(d) In the counter affidavit filed on behalf of petitioner, they have contended that the requirement of the work force depends upon several imponderable factors such as periodical changes in the textile policy of the Government, changes in textile market, availability of raw materials etc. It was also pointed out that the Unit at Paravai was an export oriented unit and therefore, the employment opportunities and the requirement of the work force would vary according to the fluctuations in export market conditions. They have also taken up a contention that strength of the workmen both at Madurai and Paravai Units were much more than the actual requirement in both the units.

3. The Industrial Tribunal as per award dated February 18, 1999, directed the petitioner to make all badlis as permanent employees from the date of the award and aggrieved by the said award, the management has filed the present writ petition.

Nil Defence:

4. This writ petition was admitted and rule nisi was issued on January 3, 2000. However, the first respondent has not filed counter affidavit in answer to the contentions raised in the writ petition.

5. The learned Counsel appearing for the petitioner contended that the Industrial Tribunal clearly erred in issuing the impugned direction overlooking the term of reference and as such, the impugned order is liable to be set aside.

6. None appeared for the first respondent.

7. The following dispute was referred for adjudication before the Industrial Tribunal as found from the order of reference in G.O. No. 2088 dated November 30, 1999:

Whether the demand that the Management should avoid frequent Layoffs of Badli workers in the mills and that the lay-offs should be properly regulated and justified? If so, to give appropriate directions.

8. The reference was taken up by the Industrial Tribunal and the point for

consideration was determined by the Tribunal thus:

Whether the demand that the management should avoid frequent lay-off to badli workers of the mill and the lay off should be properly regulated is justified? If so, to give appropriate directions.

9. The Tribunal considered the contentions of the respective parties and found that number of badlis engaged by the respondent was more than 3/4th strength of the permanent workmen at Madurai and about 60% at Paravai Unit and observed that the respondent was not justified in keeping the workmen as badlis continuously for sufficient days without confirming them as permanent workers. Ultimately, the Tribunal passed an award directing the management to make all badlis as permanent employees from the date of award.

10. While issuing direction to the management to regularize the service of badlis, the Tribunal ignored the fact that the dispute which was referred to the Tribunal was in respect of the demand that the management should avoid frequent lay off of badli workers of the mill and as to whether lay off should be properly regulated.

Analysis

11. Reference in question has been made by the Government in exercise of the powers u/s 10(1)(d) of the Industrial Disputes Act. While making the reference, it was obligatory on the part of the Government to specify the points for adjudication by the Labour Court/Industrial Tribunal. The Tribunal was not expected to travel beyond the brief and it was only to put the Tribunal within the purview of the reference that Section 10(4) mandates that the Tribunal shall confine its adjudication to those points referred to it and the matters incidental thereto. The matters incidental thereto cannot be given an extended and liberal meaning by the Industrial Tribunal and incidental adjudication should be confined to those matters which are necessary for the disposal of the main dispute for adjudication. It was not open to the Tribunal to travel beyond the scope of reference and embark on enquiry into foreign matters treating them as incidental matters. In the matter of adjudication for disposal by the Tribunal or the Labour Court, the scope of enquiry should be within the circumscribed limits and that was the reason why the issue that should be framed by the Tribunal would be indicated in the reference itself. The particular point of dispute for adjudication as indicated in the reference would be the issue to be framed by the lower Court or Tribunal.

12. The Courts and Tribunals adjudicating the labour dispute are creature of statute. The Industrial Disputes Act conferred jurisdiction to the Tribunals and Labour Courts or adjudication of the dispute between the management and employees and the scope and ambit of jurisdiction has also been prescribed by the statute. Though the endeavour of the Courts and Tribunals should be to do justice to the parties by resolution of their disputes, they cannot enlarge their jurisdiction under the guise of effective adjudication or the disposal of the matter

once for all. The jurisdiction being given only to the Government to make the reference, it is only for the Government to decide the nature of reference to be made. It is not within the jurisdiction of the Courts to direct the Government to make reference in a particular manner. The Government has got the machinery to assess the situation in the context of labour disputes and as such, it was within the province of the Government to refer the dispute to the machinery provided under the Industrial Disputes Act. Therefore, in such cases of jurisdiction and extent of jurisdiction fixed by the statute itself, the Tribunal shall respect the wisdom of law maker and try to confine within their jurisdiction.

Legal position

13. In *Mukand Ltd. Vs. Mukand Staff and Officers' Association*, reference to the Tribunal was with respect to the dispute between the management and the workmen employed by them. But the award of the Tribunal treated the non-workmen also as workmen and in that factual context, the Apex Court observed thus at p. 14 of MLJ:

23. ...The dispute referred to by the order of reference is only in respect of workmen employed by the appellant Company. It is therefore, clear that the Tribunal, being a creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of reference. In the facts and circumstances of the present case, the Tribunal could not have adjudicated the issue of salaries of the employees who are not workmen under the Act nor could it have covered such employees by its award. Even assuming, without admitting, that the reference covered the non-workmen, the Tribunal, acting within its jurisdiction under the Act, could not have adjudicated the dispute insofar as it related to the "non-workmen."

14. It is true that the issue framed by the Tribunal was one relating to the reference made by the Government but while deciding the matter, the said issue was given a go by and the petitioner was directed to regularize the service of all the badli workers. The said relief being one not referred to" by the Government for adjudication, the learned Tribunal clearly exceeded in its jurisdiction.

Direction

15. For the reasons aforesaid, I am of the view that the impugned award is liable to be set aside. Accordingly, the award dated February 18, 1999 in I.D. No. 111/1989 is set aside and the matter is remitted to the Industrial Tribunal for fresh consideration of the reference made by the Government. Since the award is of the year 1999, the Tribunal is expected to dispose of the matter as expeditiously as possible. No costs.