

(1969) 02 MAD CK 0023
In the Madras High Court

Sri Meenakshi Mills Ltd. and Another	Vs	APPELLANT
Labour Court and Another		RESPONDENT

Date of Decision : 28-02-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 62
Industrial Disputes Act, 1947 — Section 2, 25C, 33C

Citation : (1969) 02 MAD CK 0023

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—This petition is filed by the management of Sri Meenakshi Mills Ltd., Madurai, for the issue of a writ of certiorari to call for

the records of the Labour Court, Madurai, in C.P. No. 362 of 1965 and to quash "its order dated 26th March, 1966, holding that the badli

workers who had been in continuous employment for more than one year are entitled to lay-off compensation on the dates when they were not

provided work, as there was no absence of permanent workers.

2. In the mills, during the five months from December, 1964 to April, 1965, the second respondent, Maruthu Servai, was not given work for 39

days by the management. The second respondent was admittedly a badli workman in the mills. He filed a petition u/s 33-C(2) of the Industrial

Disputes Act claiming that he would be entitled to lay-off compensation for 39 days u/s 25-C of the Industrial Disputes Act. The plea on behalf of

the petitioner-mills is that as all the permanent workmen had turned up on all the 39 days, work could not be provided for badli workers and the

denial of the work to the second respondent was not due to lay-off and as such

the claim for lay-off compensation is unsustainable in law.

3. The question that falls to be determined in the writ petition is whether a badli worker who had completed one year of continuous service in the

establishment is entitled to lay-off compensation when he is refused work due to the permanent workers turning up in full strength and there being

no scope for employment of badlis.

4. The question raised is a very important one and the decision of it is not free from difficulty, The relevant provisions of law may, at the outset, be

referred to.

Section 2(kkk) defines "lay-off" as follows:

"Lay-off" (with its grammatical variations and cognate expressions) means, the failure, refusal or inability of an employer on account of shortage of

coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a

workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

The definition makes it clear that the failure to give work by the employer should be on account of shortage of coal, power or raw materials or the

accumulation of stocks or the breakdown of machinery or for any other reason. The Supreme Court in *Kairbetta Estates, Kotagiri v.*

Rajamanickam [1960] 18 F.J.R. 241, in construing the expression "any other reason" in Section 2(kkk) of the Industrial Disputes Act held that the

expression "any other reason" should be construed to mean, reason similar or analogous to the preceding reasons specified in the definition. The

Court, in construing Section 2(kkk), held that "lay-off" takes place for one or more of the reasons specified in the definition and that "any other

reason" to which the definition refers must be a reason which is allied or analogous to the reasons already specified. Another condition that is

necessary to come under the definition of "lay-off" is that the name of the workman should be borne on the muster rolls of his industrial

establishment, and that he should not have been retrenched. Reading this definition by itself, it excludes refusal or failure of the employer to give

work for reasons other than stated in the section and obviously the refusal by the management to give work to a badli workman because of there

being no absentees amongst the permanent workers will not attract the

definition of "lay-off". So also unless the badli workman claims to be a workman whose name is borne on the muster rolls of his industrial establishment, he cannot claim the benefit of this definition. Whether the name of the badli workman is or should be borne on the muster rolls of the industrial establishment, will be considered later.

5. The explanation to Section 2(kkk) is important and may be set out in full. It runs as follows:

Explanation.--Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the

establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within

two hours of his so presenting himself shall be deemed to have been laid-off for that day.

6. Even though there may not be a lay-off strictly within the definition, the explanation deems that the workman whose name is borne on the muster

rolls of the industrial establishment is deemed to have been laid-off if he presents himself for work at the establishment at the time appointed for the

purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself. The

explanation does not require that the refusal of the work should be under the circumstances mentioned in the definition, but states that every

workman whose name is borne on the muster rolls and who presents himself for work and is not given employment, shall be deemed to have been

laid-off. The explanation, therefore, widens the meaning of the definition of the word "lay-off", and a worker, though there had been no lay-off due

to reasons stated in the definition, can claim to have been laid-off if his name is on the muster rolls and he presents himself for work and he is not

given any employment, But, in order to attract the explanation, it is necessary that the name of the workman should be borne on the muster rolls of

the industrial establishment. The question arises whether a badli worker can claim the benefit of the explanation to this section. The explanation

standing by itself would not benefit the badli worker, unless the badli worker is a person whose name is borne on the muster rolls of the industrial

establishment. In deciding the question as to which of the persons who are laid-off are entitled to compensation, Section 25-C of the Act will have

to be read along with the definition and the explanation. Section 25-C provides that, ""When-ever a workman (other than a badli workman or a

casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of

continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which

he is so laid-off, compensation"". Section 25-C standing by itself excludes badli workmen and casual workmen. It also requires that the names of

workmen should be borne on the muster rolls of an industrial establishment. The badli worker as such, under the section, cannot claim any

compensation. But an explanation is introduced to this section which runs as follows:

"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the

muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous

service in the establishment.

By this explanation, within the term of badli workman is included, a workman employed in an industrial establishment in the place of another

workman whose name is on the muster rolls of the establishment. If his name is not in the muster rolls of the establishment as workman, he is

excluded from the benefits conferred by Section 25-C of the Industrial Disputes Act. But the explanation proceeds to include badli workman

within the meaning of Section 25-C if he had completed one year of continuous service in an establishment. Reading the explanation along with the

main Section 25-C, though all badli workmen are excluded from the benefits u/s 25-C, a badli workman shall, under the explanation, for the

purpose of the benefits u/s 25-C be included if he had completed one year of continuous service in the establishment. u/s 25-C, the workmen that

are entitled to lay-off compensation should be workmen whose names are borne on the muster rolls of an industrial establishment. For determining

the question as to who amongst the workmen are entitled to lay-off compensation, the scheme adopted by the Act is to define what is lay-off and

then to determine the question u/s 25-C and the explanation thereof. The definition u/s 2(kkk) includes workman whose name is borne on the

muster rolls of the industrial establishment and who has been refused employment by the employer on the ground of breakdown of machinery or on account of shortage of coal, etc., as stated in the definition. The explanation deems that a workman whose name is borne on the muster rolls of the industrial establishment and who presented himself for work and is not given employment is deemed to have been laid-off. As already stated, under the explanation, a worker would be deemed to have been laid-off, even though not for the reasons stated in the definition, if he presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself. But to come under the definition, the name of the workman should be borne on the muster rolls of the industrial establishment. During the course of arguments it was stated that it is the practice of the industrial establishment to keep a muster roll of the permanent workmen as well as for the badlis separately for the various departments. In some cases, it is stated that the names of the casual workers are also kept by the industrial establishment. The question that arises is whether a badli workman whose name is borne on the muster rolls of the industrial establishment as badli and not as permanent worker should be excluded from the definition as well as the explanation to Section 2(kkk). If all badli workmen are to be construed as persons borne on the muster rolls of the industrial establishment, they will come within the definition and will be entitled to compensation if they presented themselves for work as specified in the explanation. This would result in the inclusion of all badli workers within the definition of a "lay-off" if the lay-off is due to reasons given in the definition, and under the explanation if they presented themselves for work as mentioned in the explanation. It may also be noted that badli workers have no right to demand work except when the permanent workers are absent. Badli workers are only substitutes in the place of other workmen whose names are borne on the muster rolls of the industrial establishment. In construing the definition in Section 2(kkk), Section 25-C and the explanation thereto, the procedure appears to be to define the word "lay-off" and then to determine u/s 25-C the classes of persons who are entitled to layoff compensation. Section 25-C excludes all badli workmen who have put in one year of service for the benefits of the lay-off compensation. If it is held that the badli workers

whose names are borne on the muster rolls of the industrial establishment are only badlis and not workmen whose names are borne in the muster rolls of the industrial establishment as required by the definition and the explanation, they cannot be included within the definition of Section 25-C, and as such even though they had completed one year of continuous service in the industrial establishment, they will not be entitled to lay-off compensation. Such construction would nullify the effect of the explanation to Section 25-C and badli workmen who had completed one year of continuous service though excluded by the explanation will not be entitled to compensation as Section 25-C requires that the names of the workmen must be borne on the muster rolls of the industrial establishment.

7. It was submitted on behalf of the management that a workman whose name is borne on the muster rolls of the industrial establishment only as a badli workman is not intended to be given the benefit as the explanation to Section 25-C provides that the badli workman should be employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment. From this it is sought to be contended that the badli workman is a person whose name is not included on the muster rolls of the establishment while that of the permanent workman alone is included. Though the wording of the explanation to Section 25-C would seem to support this interpretation, reading the explanation in the context in which it appears, it looks as if the explanation was not intended to exclude the badli workmen as being workmen whose names are not borne on the muster rolls of the establishment. But the intention of the explanation was to include badli workmen who are employed in the place of permanent workmen.

8. In support of the contention that a badli workman will not be a workman whose name is borne on the muster rolls of the industrial establishment, reference was made to the provisions of the Factories Act. Section 62 of the Factories Act provides that the management should maintain a register of adult workers, giving particulars about the name of each adult worker in the factory, the nature of his work, the group, if any, in which he is included where his group works on shifts, the relay to which he is allotted and such other particulars as may be prescribed and reference to muster roll or register maintained as part of the routine of a factory. Chapter VIII

of the Factories Act provides for annual leave with wages of the workers. Rule 80 provides that a worker shall be paid wages during the leave period at a rate equal to the daily average of his total full time earnings as provided for under Rule 8. A form, Form No. 12, is also prescribed under Rule 80 which requires that the serial number, name and residential address of the worker, the nature of work he is doing and the letter of group as in Form 11 should be given. Form 11 prescribes that the particulars of men, women and children employed with the group letter and nature of work of the workmen should be given. The various provisions of the Act and the rules do not in any way help to decide the question as to whether persons whose names are included in the muster rolls as badli workers can also be regarded as workmen whose names are borne on the muster rolls of the industrial establishment as required in the definition in Section 2(kkk). As a list of badli workmen in respect of various departments is maintained, it cannot be said that the various provisions of the Act and the Rules made thereunder exclude the badli workmen. In order to give effect to the intention of the enactment, it is necessary to construe badli workmen whose names are borne on the muster rolls of the industrial establishment as workmen falling within the definition of Section 2(kkk) and the explanation to it and u/s 25-C. The result of such construction would be that persons whose names are borne on the muster rolls as badlis and as casual workmen will fall within the definition, and they will be workmen who are "laid-off within the meaning of the definition. But all of them will not be entitled to compensation. Though u/s 25-C badli workers are excluded, their right to lay-off compensation is saved under the explanation, if they had completed one year of continuous service in the establishment. If so construed, it would mean that though badli workmen who had completed one year of continuous service in the establishment, can claim work only as badlis in the place of permanent workmen in the case of lay-off u/s 2(kkk), they would be entitled to lay-off compensation. Such a construction would lead to the strange result that even though the workman has no right to employment, he has a right to compensation. Though only a few of the badlis would be employed in the industrial establishment as workmen, in the case of a lay-off all the badlis would be entitled to compensation. If it is found that all

the badlis are entitled to lay-off compensation, not only will the industry be put to a great strain, but the labour also would be affected as the

industry may refuse to maintain a roll of badli workers, for there is no provision in the industrial law which requires that a list of badli workers

should be maintained. A clue to the solution of this problem may be found in the explanation to Section 25-C of the Industrial Disputes Act. The

explanation to Section 25-C provides that "badli workman" means a workman who is employed in an industrial establishment in the place of

another workman whose name is borne on the muster rolls of the establishment. Two conditions require to be fulfilled, namely, that the badli

workman should be a workman employed in the industrial establishment, and he must be working in the place of another workman whose name is

borne on the muster rolls of the establishment. The word "employed" cannot be construed as having been actually employed in the place of another

"workman", for "workman" is defined in Section 2(s) as meaning any person employed in any industry and the definition may also include a badli

workman if he had completed one year of continuous service in the industrial establishment. But the explanation to Section 25-C further requires

that he must be employed in the place of another workman whose name is borne on the muster rolls of the establishment. A badli workman is a

person who is employed when a workman whose name is on the muster rolls of the establishment as a permanent workman is absent. The industry

keeps a list of badli workmen for several of its departments and when a permanent workman in any one of the departments is absent, a badli

workman is given employment in that department. The words "employed in the place of another workman" would mean that the person should

actually be employed when a permanent worker is absent. So construed, it would mean that when a permanent workman is absent and when a

badli in that department is employed or is entitled to employment and when he presents himself for work, he would fulfil the requirements under the

explanation to Section 25-C. Thus, a badli workman who is entitled to employment in the absence of a permanent workman would fall within the

explanation to Section 2(kkk) and if he had completed one year of continuous service in the employment, he will be entitled to compensation. It

was pointed out that there will be some difficulty in applying this principle in the case of a lay-off under the definition in Section 2(kkk) for, when

there is a lay-off due to power failure, etc., several of the permanent workmen themselves could not be given work and, therefore, payment of lay-off compensation would not arise. The failure to provide work for permanent workmen due to lay-off may not be a ground for refusal of payment of compensation to badlis if the badli would have been employed in the place of a permanent workman. Any difficulty in finding out the persons who would have been entitled to lay-off compensation when there has been a lay-off u/s 2(kkk) cannot deprive the badlis of their right. To construe it as meaning that all badlis would be entitled to compensation would not be correct, as persons who are not entitled to claim work will then become entitled to compensation. On a consideration of the relevant provisions of the Act, I am satisfied that a badli worker who had completed one year of continuous service in the establishment and who was denied work on the ground that there was no absentee amongst the permanent workmen is not entitled to lay-off compensation because he does not fall within the explanation to Section 25-C since he cannot be employed in the place of another workman whose name is borne on the muster rolls of the establishment.

9. Mr. Dolia, learned Counsel for the respondent, attempted to get over the difficulty by suggesting that the benefits of lay-off compensation are available to all persons other than badli workmen or casual workmen. According to the learned Counsel, if a workman is not borne on the muster rolls as a badli or as a casual workman, he will not be excluded u/s 25-C and, therefore, will be entitled to compensation. He also submitted that though the explanation would include badli workmen who had completed one year of continuous service, persons who are not included in the muster rolls as badlis would be entitled to compensation. I am unable to accept the contention, for it would result in excluding the benefits to badli workmen however long they might have been in the service of the industrial establishment if they had not completed one year of continuous service, while it will include workmen who are not included in the establishment's badli workers or casual workers.

10. It is necessary to refer to a few decisions cited. In *Vijayakumar Mills Ltd. v. Labour Court, Madurai* [1960] 18 F.J.R. 286, the learned Judge was considering the question as to whether a workman whose name was found in the list of badli workmen and who was laid-off due to cut in

electricity was entitled to compensation. The learned Judge at the outset observed that the case was one in which the discretionary jurisdiction of the Court under Article 226 of the Constitution should not be exercised as the subject-matter of the dispute is only a sum of Rs. 33.88 nP. and the question related to a single worker. The case also proceeded on the basis that the workman had in fact been laid-off. The effect of the explanation to Section 25-C that before there could be a lay-off of a badli workman, he should be entitled to work in the place of another workman whose name is borne in the muster rolls of the industrial establishment was not presented before the learned Judge. As already pointed out, the case went on the concession that there had been a lay-off. In determining the question whether he is entitled to lay-off compensation, the learned Judge held thus:

As I pointed out above, the explanation to Section 25-C indicates that a worker in order to come within the term "badli workman" should not be one whose name is found in the muster rolls. What, therefore, decides the right to lay-off compensation is the fact of the particular worker's name being found in the muster rolls and not how he is described therein.

While there can be no doubt that the badli workers' names should be taken as having been found in the muster rolls of the establishment, the question whether the explanation requires that they should be employed in the place of persons whose names are found on the muster rolls was not argued before the learned Judge. In *Lakshmi Mills Co. v. Labour Court* 1965 I.L.J. 92, a worker who had completed one year of service was shown in the muster rolls of the company as a badli. On account of cut in electricity supply, the badli workers along with the permanent workmen in the establishment were not given work. The badli workman claimed lay-off compensation u/s 25-C of the Act. The Court held that the primary cause for the non-employment of the concerned worker was the electricity cut. But for the cut, the concerned worker would have been employed continuously as he had been before the relevant date when the first cut was imposed. In this view, the Court declined to examine the question whether any permanent worker was on leave and whether the concerned worker found himself without employment through the absence of a leave vacancy. When it is found that the concerned worker would have been

continuously employed on those dates when he was laid-off, there can be no difficulty in coming to the conclusion that he would be entitled to the layoff compensation. This decision will not, therefore, be of any use to the respondent. In *Ghirdharlal Laljibhai v. Nagrashna* [1964] 31 F.J.R. 156, the Gujarat High Court held that the badli worker is not entitled to lay-off compensation when the badli worker was not given work as no permanent workman or probationer was absent on certain dates. This decision was strongly relied on by the learned counsel for the petitioner in support of his contention. The Court held that from the very nature of his employment the badli worker was not entitled to work, unless a permanent workman or a probationer was absent and that the question of refusal or failure to give him employment could only arise when a permanent workman or a probationer was absent and that the explanation to Sub-section (1) of Section 25-C would not change the very nature of his employment under which he has a right to get employment only in the vacancies. The Court further observed that the effect of the explanation is that when a badli worker is available, the employer must provide a badli worker with work if he had completed one year's continuous service, and that there could be no right of any lay-off compensation in the absence of a right to get employment on the day in question as per the terms of contract of employment. Though the construction put upon the word "employed", that the explanation to Section 25-C will cover only badli worker whose actual substitution has taken place, may be rather too restricted, I am in agreement with the view that a badli worker before he could claim Compensation should be entitled to claim that he should be employed in the place of a permanent worker.

11. In the result, the writ petition is allowed and the order of the Labour Court, Madurai, is set aside. There will be no order as to costs.