
(2013) 06 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No's. 6249 to 6251 of 2005

Sri Ramanarayan Mills Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Citation : (2013) 3 LLJ 577

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : C. Manohar Gupta, for the Appellant; R. Sunilkumar, for the Respondent

Judgement

S. Nagamuthu, J.—These three writ petitions have been filed by the management challenging the common award dated 04.08.2004 passed

by the Labour Court, Coimbatore, in I.D. Nos. 455, 457 and 458 of 2000. Therefore, all these writ petitions were taken up and heard together

and they are disposed of by means of this common order. The 2nd petitioner in each writ petition was working in the winding department of the

petitioner industry. On 24.12.1999, they were all transferred to spinning department. The workmen did not comply with the said order and instead

they raised industrial disputes through an unrecognized trade union. In the mean while, the management issued charge memorandum to them on

20.01.2010 alleging that they did not obey the orders of transfer. An enquiry was held into the charges against the workmen in which the workmen

were afforded sufficient opportunity. On enquiry, the enquiry officer held that the charges were proved. Based on the said report of the enquiry

officer, the workmen were dismissed from service by independent orders dated 21.04.2000. Thereafter, they raised industrial disputes before the

conciliation officer. The conciliation officer issued a notice of hearing to the workmen on 02.05.2000. The conciliation ultimately failed on

16.05.2000. Thereafter, challenging the termination orders, they raised industrial disputes in I.D. Nos. 455, 457 and 458 of 2000 before the

Labour Court, Coimbatore. During the pendency of the above industrial disputes, the workmen filed I.A. Nos. 464 to 467 of 2003 raising

preliminary issue stating that the dismissal was wrongful since no permission was obtained before such dismissal orders were issued as required u/s

33(2)(b) of the Industrial Disputes Act [hereinafter referred to as "the ID Act"]. The Labour Court allowed all the interlocutory applications and

accordingly allowed the I.D. Nos. 455, 457 and 458 of 2000 thereby directing the management to reinstate the workmen into service with

continuity of service and back wages. Challenging the same, the petitioner management is now before this court with the present writ petitions.

2. I have heard the learned counsel for the petitioner management and the learned counsel for the workmen and also perused the records carefully.

3. Admittedly, in this case, the workmen were all dismissed from service on 21.04.2000. As on 21.04.2000, the conciliation proceeding was

pending before the conciliation officer. The conciliation proceeding was pending from January 2000 onwards. Admittedly, before passing the

orders of termination on 21.04.2000 no permission was obtained from the conciliation officer u/s 33(2)(b) of the ID Act. Thus, according to the

workmen, the orders of dismissal are wrongful and, therefore, the same are liable to be set aside. The labour accepted the said contention.

4. In this regard, we may refer to two important judgments of the Hon"ble Supreme Court. The first one is in Punjab Beverages (P) Ltd v. Suresh

Chand, (1993) 3 SCC 144. That was a case where the Hon"ble Supreme Court took the view that an order of dismissal is not wrongful simply

because no permission was obtained u/s 33(2)(b) of the ID Act. Instead, according to the Hon"ble Supreme Court, the failure to apply for

approval u/s 33(2)(b) of the ID Act would not render the punishment inoperative u/s 31(1) of the ID Act and the remedy available for the

employee is either by way of a complaint u/s 33A of the ID Act or by way of reference u/s 10(1)(d) of the ID Act. Thus, relying on the said

judgment, according to the learned counsel for the petitioner, on 21.04.2000 the orders of dismissal were issued without applying for permission

u/s 33(2)(b) of the ID Act.

5. Subsequently, the said judgment in Punjab Beverages (P) Ltd v. Suresh Chand (supra) came to be considered by a larger bench of the Hon"ble

Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . In that case, the Hon"ble Supreme Court

over ruled the judgment in Punjab Beverages (P) Ltd v. Suresh Chand case, cited supra and held that such orders of dismissal without applying for

permission u/s 33(2)(b) of the ID Act are wrongful and the same are not sustainable. The said judgment is not a prospective over ruling.

6. In view of the said decision, the labour court was right in holding that the dismissal of the workmen without getting permission u/s 33(2)(b) of the

ID Act is not sustainable in law. Thus, the award of the labour court setting aside the dismissal of the workmen cannot be found fault with in any

manner.

7. Even before this court, the learned counsel for the petitioner is not in a position to say that the award of the labour court setting aside the orders

of dismissal is not sustainable. The only contention of the learned counsel for the petitioner is that having ordered for reinstatement, the labour court

ought not to have ordered for payment of back wages. It is the contention of the learned counsel for the petitioner that ordering payment of back

wages is not automatic. According to him, it is the duty of the workmen to plead and prove to the satisfaction of the labour court that they were not

elsewhere employed gainfully during the interregnum period. For this purpose, the learned counsel relies on a judgment of the Hon"ble Supreme

Court in United Bank of India Vs. Sidhartha Chakraborty, . In the said case, according to the learned counsel, there was neither any pleading nor

any proof that the workmen were gainfully employed elsewhere during the interregnum period. Therefore, the labour court was not right in ordering

payment of back wages. But, the learned counsel for the workmen would contend that the dismissal of the workmen in contravention of Section

33(2)(b) of the ID act would make the order void ab initio. If the order of dismissal is set aside on any other ground, then, it may be contended

that payment of back wages is not automatic. According to the learned counsel, in the instant cases, where the dismissal is not void ab initio for

contravention of Section 33(2)(b) of the ID Act, the payment of back wages is

automatic.

8. In my considered opinion, the said contention of the learned counsel for the workmen cannot be accepted. In Jaipur Zila Sahakari Bhoomi

Vikas Bank Ltd v. Ram Gopal Sharma case cited supra, the question referred for answer by the Constitution Bench as found in paragraph 1 is as

follows:-

If the approval is not granted u/s 33(2)(b) of the Industrial Disputes Act, 1947, whether the order of dismissal becomes ineffective from the date it

was passed or from the date of non-approval of the order of dismissal and whether failure to make application u/s 33(2)(b) would not render the

order of dismissal inoperative?

2. Finding conflict of views expressed by Benches of three learned Judges of this court on the question, the Reference is made.

9. The said question has been answered in paragraph 18 as follows:-

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of Straw Board and Tata Iron & Steel Co.

and further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this

judgment is answered accordingly.

Thus the Hon"ble Supreme Court has not held in the said case that the order of dismissal passed in contravention of Section 33(2)(b) of the ID

Act is void ab initio and instead, the Hon"ble Supreme Court has held that it is only inoperative and the same is, therefore, liable to be set aside. In

view of the said decision, I hold that while setting aside the orders of dismissal passed in contravention of Section 33(2)(b) of the ID Act, the

labour court is required to further see whether the workmen had pleaded and proved that they were not employed elsewhere gainfully for the

purposes of a direction for payment of back wages. In this case, admittedly, there is neither pleading nor proof that the workmen were not

employed gainfully. Therefore, the award of the labour court directing the management to pay back wages is liable to be interfered with.

In the result, all the writ petitions are allowed in part in the following terms:-

(i) the award of the labour court setting aside the orders of dismissal of the workmen and ordering reinstatement with continuity of service is

confirmed.

(ii) that part of the award directing the management to pay back wages to the workmen for the interregnum period alone is set aside.

No costs.