

(1998) 11 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 14303 of 1990

Steel Employees' Union

APPELLANT

Vs

Managing Director, Tamil Nadu Steels Ltd.

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Payment of Wages Act, 1936 — Section 9(2)

Citation : (2000) 3 LLJ 235

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for

a writ of certiorarified mandamus to call for the concerned records from the respondent pertaining to his impugned order in Reference No. Nil

dated August 29, 1990, and to quash the order dated August 29, 1990, and consequently to direct the respondent to forbear from deducting eight

days wage from the salary of the members of the petitioner-union.

2. In support of the writ petition, the petitioner-union has filed an affidavit wherein they have narrated all the facts and circumstances that forced

them to file the present writ petition and requested this Court to allow their writ petition as prayed for. Per contra, on behalf of the respondent, a

counter-affidavit has been filed rebutting all the material allegations levelled against them, one after the other, and ultimately requested this Court to

dismiss the writ petition for want of merits.

3. Heard the arguments advanced by learned counsel appearing for the parties. I

have perused the contents of the affidavit and the counter-affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into

consideration the various points raised by learned counsel appearing for the respective parties during the course of their arguments.

The only point that arises for consideration in this case, is, as to whether there are any valid grounds to allow this writ petition or not.

4. The brief facts of the case of the petitioner-union herein is as follows:

This writ petition has been filed challenging the action of the respondent in ordering eight days penal wage cut from the salaries of the members of

the petitioner-union without any authority of law. The petitioner-union is a registered one and apart from the petitioner-union, there are six other

trade unions functioning in the respondent company. During the pay day of June, 1990, the staff-in-charge of disbursing payments delayed

payments of salary to the workmen. When questioned, the staff provoked the workmen and told them to get the salary from the managing director.

Because of such attitude of the staff, the workmen who were working right and this created a tense situation. As sequel to this incident, the

petitioner-union along with other union made a complaint dated June 5, 1990, to the respondent to take action against the staff members who were

responsible for the said incident. Instead of acting as an impartial administrator, the respondent herein suspended not only two staff members but

also suspended five workers with effect from May 26, 1990. Thereafter, since the suspension continued, the petitioner-union sent a letter dated

July 18, 1990, to the respondent and requested him to hold talks with the trade unions to end the stalemate. This was followed by all the trade

unions demanding provisions of the 12(3) settlement dated March 8, 1988, being implemented. For this purpose, the workmen started wearing

black badges with effect from August 8, 1990. The respondent was not interested in restoring the services of five workmen and also not

implementing the provisions of the 12(3) settlement. Hence, a strike notice dated August 4, 1990, was given to the respondent by all the seven

unions stating that they would go on strike with effect from August 20, 1990. In the meanwhile, in order to provoke the workmen further, another

five workers, including the secretary of the petitioner-union, were suspended on

August 14, 1990, for the alleged incident on June 5, 1990. To add fuel to the fire, the respondent restored the services of the two staff members who were originally responsible for the incident that took place on June 5, 1990. The workmen spontaneously struck work starting from the third shift on August 14, 1990, and August 15, 1990, was a holiday on account of Independence Day. On coming to know the tense situation, the Labour Officer, Vellore, called all the unions along with the respondent for negotiations on August 16, 1990. At the end of such negotiations, the labour officer gave an advice dated August 16, 1990, asking the workers to resume work and to give up the proposed hunger fast that was to commence on August 18, 1990. He also stated that if only the management was more discreet, the situation could have been avoided and that the pending issues would be resolved through peaceful negotiations. In pursuance to the above advice, all the seven trade unions approached the respondent and requested him to revoke the suspension order passed against the ten workmen, through a joint representation dated August 18, 1990. The respondent agreed to revoke the suspension of all the ten workmen and made an endorsement in their representation itself on August 18, 1990. In view of revoking of the suspension, all the workmen started attending to work starting from the third shift on August 18, 1990. All the seven trade unions, including the petitioner-union, gave a representation dated August 22, 1990, to the respondent and requested him from the payment of wages for the period from August 14, 1990, till August 18, 1990. Though he promised to look into the grievances of the workmen, he conceived an action plan by which the unity forged by all the seven unions can be broken. According to his plan, he insisted the workmen to contribute one day's wage towards school fund, collected on behalf of Steel Plant Matriculation School. The petitioner-union did not want any such donation to be collected through involuntary methods, and, therefore, refused to be a party to any such understanding which involved linking of workmen's wage issued with some funds for which the workmen has no connection whatsoever. Even otherwise the petitioner felt that such a request will have to be considered by the general body of the workmen and hence the question of committing the petitioner-union's members for such contribution did not arise. As anticipated the

respondent instructed the office to pay wages including for the strike days from August 14, 1990, till August 18, 1990, to all workmen who agreed to contribute a day's wage to the school fund. For this a letter was prepared and was signed by the all other trade unions except the petitioner-union. The respondent herein immediately on getting assurance from other trade unions put up a notice dated August 29, 1990, and stated that eight days wages will be deducted from the salary payable for the month of August, 1990, from the workmen whose names are appended to the said impugned notice. There were as many as 200 workmen whose names were found in the said list and almost all the workmen are members of the petitioner-union. It was stated that such deduction was being made in terms of Section 9(2) of the Payment of Wages Act, 1936. Immediately, on the exhibition of the impugned notice the petitioner-union gave a protest letter dated August 31, 1990, to the respondent and told him that he cannot impose any unilateral wage deduction on 200 workmen out of 530 workmen who has participated in the strike. Such an action of his part would amount to discrimination and, therefore, a request was made that wages for all the workmen should be paid. The workmen also gave individually signed representations stating that any wage deduction to be made on their salary will be objected to and that they had not been given any notice in accordance with law. Notwithstanding this objection, the respondent has given orders to impose wage cut on the members of the petitioner-union on the pay day, i.e., September 5, 1990. Hence, the impugned order dated August 29, 1990, is wholly illegal, unjust and liable to be set aside and hence this writ petition.

5. The impugned order of the respondent is challenged by the petitioner herein on the grounds that the impugned order is arbitrary and violative of Articles 14 and 16 of the Constitution, that the same is also contrary to the provisions of the Payment of Wages Act, 1936, that the impugned order referring to the provisions of Section 9(2) has got no relevance with the case on hand, since majority of the workmen are receiving wages above Rs. 1,600 per month and, therefore, the provisions of that Act has no application, in view of Section 1(6) of the Payment of Wages Act and that the respondent are adopting discriminatory practice inasmuch as out of 530 workmen they are imposing the eight days penal wage cut only on

200 workmen for the simple reason that they did not pay the amounts towards the so-called school fund. Therefore, it is their case that such an action on the part of the respondent in extracting donations on an involuntary basis is highly objectionable and not expected of an executive of a public sector institution. It is also the case of the petitioner-union that under the provisions of the Standing Orders applicable to the workmen, the workmen are entitled to have individual notices before any punishment is imposed in pursuance of disciplinary action for misconduct and the same had not been done in the instant case. It is also stated by the petitioner-union that even assuming without admitting that Section 9(2) of the Payment of Wages Act will have any application before deducting penal wage cut for eight days the respondent ought to have followed procedure prescribed under the Tamil Nadu Payment of Wages Rules and more particularly Rules 14 and 16 of the Tamil Nadu Payment of Wages Rules, 1937. It is also contended by the petitioner-union that the action of the respondent is also opposed to the principles of natural justice, inasmuch as no notice was given to the workmen before imposing any penal wage cut. It is also their case that the respondent's action will also amount to an unfair labour practice"" within the meaning of item 2 of the Schedule V prescribed u/s 2(ra) of the Industrial Disputes Act and committing of unfair labour practice has been totally prohibited by virtue of Section 25-T of the Industrial Disputes Act.

6. Per contra, it is contended by the respondent that the workmen of the petitioner-union are governed by the certified Standing Orders of the establishment, that the decision taken in passing an order for deduction of eight days wages is in terms of Clause 15(d) of the Certified Standing Orders of the establishment, that the workmen acting in concert without notice and sufficient reasons abstained from work from the third shift of August 14, 1990, and that the workmen had struck work from the third shift of August 14, 1990, before the expiry of the date of notice, viz., August 20, 1990, as specified in the notice of strike given by the union dated August 4, 1990. Further, it is denied by the respondent that the workmen's deduction of wages and voluntary donation to school fund has any nexus and both are separate and distinct issues all together. It is also the case of the respondent-management that they decided to defer the deduction of wages in respect of all workmen, including the workmen

belonging to the petitioner-union for the period August 14, 1990, to August 18, 1990. All the other unions, except the petitioner-union in the course of discussions on August 25, 1990, regretted for the incident happened on June 5, 1990, and also for going on strike from August 14, 1990, to August 18, 1990, and volunteered to contribute a day's wages as donation for school fund. It is also stated by the respondent that the names of the workmen belonging to the petitioner who have not realised and not even regretted for going on an illegal and unjustified strike were published for purposes of deduction of eight days wages in terms of Clause 15(d) of the Certified Standing Orders of the establishment. It is the categorical case of the respondent-management that in the absence of any gesture of realization on the part of the petitioner-union for having gone an illegal and unjustified strike, the management was constrained to confirm the deduction of eight days wages and also that if the same dispensation were to be meted out to workmen who have realised the ill effects of: going on strike without any justification and those workmen who were not concerned with the production loss and ill-effect of an unjustified and illegal strike, this will only breed further indiscipline and the administration of the respondent will be put to difficulties in controlling the operation of the respondent-management. It is their categorical case that the workmen who belonged to the petitioner-union were imposed the penal deductions of eight days as a measure of corrective therapy. Therefore, it is their contention that the action of the management in the deduction of eight days' wages as per the notice order dated August 29, 1990, is sustainable on facts and also maintainable legally.

7. Having seen the entire material available on record, these are the admitted facts. In the establishment of the respondent besides the petitioner-union there are seven other trade unions are functioning. There was some grievance for the workmen with the management during the pay day of June, 1990, as there was delay in the disbursement of pay. Consequent to that incident, two staff and some workmen entered into a strike from August 14, 1990, till August 18, 1990. Thereafter, on the representation of the unions, the management decided not to deduct the wages for the eight days strike period. But it was instructed by the respondent to the office to pay wages including for the strike days from August 14, 1990, till

August 18, 1990, to all workmen who agreed to contribute a day's wage to the school fund and that eight days' wages will be deducted from the salary payable for the month of August, 1990, from the workmen whose names are appended to the said impugned notice. There were as many as 200 workmen whose names were found in the said list and almost all the workmen are members of the petitioner-union. That being so, the grievance of the petitioner-union is that the respondents are adopting discriminatory practice inasmuch as out of 530 workmen they are imposing the eight days penal wage cut only on 200 for the simple reason that they did not pay the so called school fund and that, therefore, such an action on the part of the respondent in extracting donations on an involuntary basis is highly objectionable and not expected of an executive of a public sector institution. Whereas it is the case of the respondent that the workmen acting in concert without notice and sufficient reasons abstained from work from the third shift of August 14, 1990. It is the categorical contention of the respondent that the workmen had struck work from the third shift of August 14, 1990, before the expiry of the date of strike notice, viz., August 20, 1990, as specified in the notice of strike given by the union dated August 4, 1990. It is significant to note that the respondent-management is engaged in the manufacture of steel/billets and rods and is declared as an industry engaged in public utility services as per the First Schedule of Section 2(n)(vi) of the Industrial Disputes Act. In such circumstances, it is the strong case of the respondent that the striking of work on August 14, 1990, that is, before the expiry of date mentioned in the notice of strike is illegal as per Section 22 of the Industrial Disputes Act. It is also contended by the respondent that on the basis of the advice given by the Labour Officer, Vellore, all the trade unions approached the respondent-management and requested for revoking the suspension and accordingly, pending enquiry the suspension of all the ten workmen was revoked from August 19, 1990, and all the other workmen resumed duty in the third shift of August 18, 1990. It is also the case of the respondent that all the seven trade unions submitted a representation dated August 22, 1990, to the respondent-management requesting payment of wages for the period from August 14, 1990, to August 18, 1990, and accordingly the respondent-management arranged for a meeting on August 25, 1990, for a discussion with all the unions. In the said meeting, all

the unions except the petitioner-union expressed their regret for the incident that happened on June 5, 1990, and for the strike from August 14, 1990, to August 18, 1990, and realised the ill-effects on the company and came forward voluntarily to donate one day's wages towards development of the school run by the plant school committee for the benefit of employee-children including the petitioner-children/wards. It is stated by the respondent that the petitioner-union alone was obdurate and did not express any realisation of the ill-effects of the strike from August 14, 1990, to August 18, 1990. That apart it is the categorical contention of the respondent that the deduction of eight days wages has no relation for contribution of one day's wages to the school. But, it was only due to the fact that all the other six unions realised and regretted for indulging in strike from August 14, 1990, to August 18, 1990, and incidentally as a gesture of continued good relations, volunteered to donate one day's wages towards the school and that, therefore, it is strongly contended by the respondent that the members of these six unions deserve different dispensation justifying, taking a lenient view.

Further, it is also their case that the petitioner-union is obdurate and persisting in on realising the consequences of strike amounting to justify an illegal and unjustified strike thereby imposing hardship on the workmen as well as production loss to the respondent. That apart it is not the case of the petitioner-union that they had also realised for the strike and regretted for the same before the management. That being so, it is the specific contention of the respondent-management that the wage cut was made only due to such attitude of the petitioner-union and that the deduction of wages and voluntary donation to school fund has any nexus and both are separate and distinct issues altogether. Therefore, it is their clear case that in the absence of any gesture of realisation on their part for having gone on illegal and unjustified strike, the management was constrained to confirm the deduction of eight days wages and that if the same dispensation were to be meted out to workmen who have realised the ill-effects of going on strike without any justification and those workmen who were not concerned with the production loss and ill-effects of an unjustified and illegal strike, this will only breed further indiscipline and the administration of the respondent will be put to difficulties in controlling the operations of the

respondent-management. Therefore, it is the specific contention of the respondent that the workmen who belonged to the petitioner-union were imposed the penal deductions of eight days as a measure of corrective therapy. In the above facts and circumstances of this case, I see every force in the above contention and stand taken by the respondent-management. Further, it is also their strong case that the above order for deduction of eight days wages is in terms of Clause 15(d) of the Certified Standing Order of the establishment. Therefore, I am of the clear view that the impugned order of the respondent deducting eight days wages from the members of the petitioner-union is in order and in accordance with law and that has not violated any law or even the principles of natural justice.

8. Therefore, for all the above reasons and in the facts and circumstances of this case and also in the light of my above discussion with regard to the various aspects of this case and also in view of the decisions relied on by the parties, I am of the clear view that the petitioner-union herein has failed to make out any case in its favour and that, therefore, their writ fails and the same is liable to be dismissed for want of merits and consequently there is no need for any interference with the order impugned in this writ petition.

9. In the result, the writ petition is dismissed. No costs.