(1990) 07 MAD CK 0118

In the Madras High Court

Case No : Writ Petition No. 5740 of 1981

Sugunaraj C.T. and Others APPELLANT

Vs

Syndicate Bank and Others RESPONDENT

Date of Decision : 06-07-1990

Acts Referred:
Payment of Wages Act, 1936 — Section 7(2)

Citation : (1999) 3 LLJ 1198

Hon'ble Judges : Kanagaraj, J

Bench : Single Bench

Advocate : J.B. Dolia, for the Appellant; S. Sampath Kumar, for the Respondent

Judgement

Kanagaraj, J.—The petitioners are the staff members of the Erode Branch of the Syndicate Bank which is a nationalised bank and is a creature of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1971. It is not disputed that the petitioners were absenting themselves for about 15 minutes every day between the dates July 2, 1981 and July 14, 1981 excepting the holidays. The petitioners, however, stated that they had attended office on all these days except for the short duration mentioned above. The respondents issued a show-cause notice by referring to the Circulars dated April 24, 1981 and July 1, 1981 directing that no employee shall leave his or her seat during the office hours without the permission of the concerned officer and calling upon the petitioners to submit their explanation as to why the full day''s wages should not be deducted. The notice was affixed in the Staff Notice Board with a direction that it shall be treated as individual intimation. There was no explanation on behalf of the petitioners to the said show-cause notice. It is under these circumstances, the petitioners have come forward with this writ petition seeking the issue of writ of mandamus to direct the respondents to forbear from deducting full day''s wage for the days July 2, to July 4, July 6 to July 10 and again July 13 and July 14, 1981 from the salaries payable to the petitioners.

2. The respondents have filed a counter-affidavit. The case of the respondent is

that the petitioners were absenting themselves as a group solely with a view to disrupt the normal working of the bank. The public at large had been put to inconvenience and the Manager was subjected to embarrassment while facing the indignation of the public. The respondents had issued circulars clearly informing the employees that unauthorised absence will email deduction of the full day''s wages, in spite of such warnings, the petitioners did absent themselves for a short duration every day and they did so as a group, thus causing hardship and prejudice to the bank. The bank therefore says that they are entitled to deduct the full day''s wages. The bank made it clear to the employees both orally and in writing that after their unauthorised absence, they need not report back to duty for the rest of the day. If the employees have chosen to resume their seats, it is on their own accord and not at the instance of the management.

3. The short question that arises for consideration is whether under the circumstances, the respondents can deduct the wages and if so whether it should be pro rata for the duration of the absence or whether it can be for the full day.

4. Mr. J. B. Dolia learned counsel appearing for the petitioners, argues that it is customary for the staff members to go out for coffee at about 12 O''clock. Inasmuch as they had resumed duty after such absence, it is not open to the respondents to deduct the entire day''s wages. Having permitted the staff members to work even after the short duration of absence, the Bank has no right to deny wages to the employees. It is also contended that no individual show-cause notice was given. It is also contended that either under the Desai or Sashtri Award or under the bipartite settlement, there is any provision for effecting full day''s wage cut for an absence of few minutes.

5. The learned counsel for the respondents argues that the petitioners were indulging in group absence solely with a view to harass the management. Therefore, they are entitled to deduct the full day''s wages because by absenting themselves during peak hours, the entire business of the bank had been brought to a grinding halt. The fact that they later on resumed their work did not help the management.

6. The issue involved in this case is no longer res integra in view of the recent judgment of the Supreme Court in Bank of India v. T.S. Kelawala 1990-II-LLJ-39 (SC) . It is therefore not necessary for me to refer to the earlier decisions referred to by the learned counsel for the petitioners. The only question that I will have to decide is whether the wages can be cut and if so whether it should only be pro rata for the duration of absence or the wages can be cut for the entire day. The Supreme Court was concerned with two incidents of strike for a short period and resort to "go slow" attitude by way of protest. I will extract the relevant passages from the said judgment.

"22. The principles which emerge from the aforesaid authorities may now be stated. Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. Whether the deduction from wages will be pro rata for the period of absence only or will be for a longer period will depend upon the facts of each case such as whether there was any, work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc."

"23. It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid. For the same reason, if the employees put in the allotted work but do not, for some reason -- may be even as a protest -- comply with the formalities such as signing the attendance register, no deduction can be effected from their wages. When there is a dispute as to whether the employees attended the place of work or put in the allotted work or not and if they have not, the reasons therefore etc., the dispute has to be investigated by holding an inquiry into the matter. In such cases, no deduction from the wages can be made without establishing the omission and/or commission on the part of the employees concerned."

"24. When the contract Standing Orders, or the service rules/regulations are silent, but enactment such as the Payment of Wages Act providing for wage-cuts for the absence from duty is applicable to the establishment concerned, the wages can be deducted even under the provisions of such enactment."

7. On the facts of this case, it is clear that the petitioners absented themselves only for a short duration and later on they resumed duty. Even though the management says that they did not call upon the petitioners to continue their work for the rest of the day, it is clear that the respondents have acquiesced in resumption of duties by the petitioners, after the unauthorised absence for 15 minutes. Therefore, having regard to the dictum of the Supreme Court, I am clearly of the opinion that full day''s wages cannot be cut. I am also clearly of the opinion that the petitioners have absented themselves as a group contrary to the circulars. The conduct of the petitioners definitely deserves punishment. Nothing prevented them from seeking permission of their respective superiors for going out for a cup of coffee. The petitioners had defied the circulars of the superiors. Indiscipline in any manner can never be tolerated.

8. I therefore direct the respondents to deduct only pro rata wages for the duration of the absence of each of the petitioners. The writ petition is ordered in the above terms. There will be, however, no order as to costs.

