

(2008) 12 MAD CK 0315
In the Madras High Court
Case No : Writ Appeal No. 1708 of 2001

T. Rajamanickam

APPELLANT

Vs

Binny Ltd. (B and C. Mills), Madras and another

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Citation : (2009) 120 FLR 886

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Mohammed Shabeer, for the Appellant; Raveendran for M/s. T.S. Gopalan and Co., for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Appellant/workman has filed this appeal, aggrieved over the order passed by a learned single Judge in W.P. No. 18519 of 1990, setting aside the award of the III Additional Labour Court, Chennai, in I.D. No. 317 of 1985, ordering reinstatement.

Appellant was employed as a Fitter in Engineering Department of the first respondent mill on 22.5.1958. As a result of strike, the respondent-Mill was closed from 14.1.1984 till 28.12.1984. Thereafter, the Mill started functioning from 29.12.1984. On reopening of the Mill, the appellant, along with several others, was asked to report to Weaving Department on 29.12.1984, but the appellant did not report for work on that day. As the appellant did not report for work for eight consecutive working days, the management terminated him from service. Thereafter, the petitioner raised an industrial dispute before the Conciliation Officer and the matter was referred to the III Additional Labour Court, Madras, vide I.D. No. 317 of 1985.

2. The Labour Court, on an appraisal of the evidence, both oral and documentary, ordered reinstatement of the appellant, holding that section 9-A of the Industrial Disputes Act, 1947, in short, "the Act" was not complied with by

the management, over which, the management preferred the writ petition, wherein the learned single Judge allowed the said writ petition, setting aside the award of the Labour Court. Hence, this writ appeal, at the instance of the appellant.

3. At this juncture, the only question, that arises for consideration, is, whether the termination of the appellant by the management is vitiated by violation of section 9-A of the Industrial Disputes Act?

4. To decide the said main question, two more sub-questions are required to be answered and they are:

(i) Whether the change in the conditions of service is effected pursuant to Settlement u/s 12(3) of the Act?

(ii) Whether there is any reduction in emoluments of the appellant, pursuant to the change?

5. Section 9-A of the Act reads as under:

9-A. Notice of change.--No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workmen likely to be effected by such change in the notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such change:

Provided that no notice shall be required for effecting any such change--

(a) where the change is effected in pursuance of any settlement or award

(b) xxxx

6. In this connection, this Court has gone through the Settlement, Br, -1, entered into between the management and the workmen, including the appellant. Though as per Clause 2 (a) of the terms of settlement stipulates that according to exigencies the workmen will be deployed on other side/set of looms/machines, such an exercise has to be made without affecting the pay structure, namely, wages, including the period and mode of payment section 9-A notice in the prescribed manner has to be issued to the workmen concerned.

7. In this case, as could be seen from Ex.W-4, Wage Receipt dated 7.11.1981, the monthly emoluments of the appellant were fixed at Rs. 862.58 However, in Ex.M-18, Salary Register, the wages of the appellant for the month of January, 1985, i.e., after the Mill was reopened, were fixed at Rs. 82804 which clearly indicates a change in the conditions of service. Though the change condition of service, transferring the appellant from Engineering Department to Weaving section was effected as per the settlement, which did not require compliance of

section 9-A, the other change with regard to reduction of wages, which was not stipulated in the settlement, was done by the management without causing notice u/s 9-A.

8. M.W.1, in his cross-examination, had stated that the wage of a Mazdoor's was Rs. 1100 per month while that of a Fitter was Rs. 1200/- per month. Further, he admitted that if the fitter was shifted to some other department as mazdoor, he would be paid only mazdoor's salary and not that of the fitter. There was also a categorical acceptance by M.W.1 that there was change in the salary of the appellant, pursuant to his transfer from Engineering Department to Weaving Department. In addition, as could be seen from Ex.M-10 Attendance Register for the month of January, 1985, in the column "occupation", against the name of the appellant, it is indicated as "Mazdoor", which would clearly show the change in the condition of service. Therefore, it can safely be concluded that the termination of the appellant by the management was in violation of section 9-A of the Act.

9. The workman, who is likely to be affected by change in the condition of service, has to be given a notice in the prescribed manner of the nature of the change proposed to be effected, in the instant case, we have noticed a change of condition of service with regard to status and emoluments of the appellant. Therefore, in our considered opinion, the management has violated the provisions of section 9-A of the Act.

10. Though the learned single Judge had dealt with the aspect of transfer from one department to another, he relying on the counter statement filed by the management before the Labour Court that the appellant was never asked to work as a Coolie in the Weaving Department and that there was no reduction in his earnings whatsoever, held that there was no reduction in the emoluments of the appellant, which, in our considered view, is, ex facie, against the law and the provisions u/s 9-A of the Act. On the other hand, the Labour Court, analysing the material, both oral and documentary, had come to the correct conclusion, which ought not to have been warranted interference by the learned single Judge.

11. Under the circumstances, this writ appeal is allowed, setting aside the order of the learned Single Judge and confirming the award of the III Additional Labour Court, Chennai. No costs.