

**(1967) 12 MAD CK 0049**  
**In the Madras High Court**

Tamlinad Transports (Private) Ltd.

APPELLANT

Vs

Mariappan (M.) and Others <BR>Mariappan (M.) and Others  
Vs Tamlinad Transports (Private) Ltd.

RESPONDENT

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**Date of Decision :** 11-12-1967

**Acts Referred:**

Constitution of India, 1950 — Article 221  
Industrial Disputes Act, 1947 — Section 10, 25, 25F, 25G

**Citation :** (1970) 1 LLJ 90

**Hon'ble Judges :** Ramakrishnan, J

**Bench :** Single Bench

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**Judgement**

Ramakrishnan, J.—These two writ petitions for the relief of certiorari are filed by the management and the union or workers respectively under Article 221 of the Constitution under the following circumstances.

2. The Tamilnadu Transports, Coimbatore (Private), Ltd., the management in these cases, claim to have suffered loss in their earnings, when the number of permits for buses which they were enjoying was reduced. Thereupon they took steps to retrench certain workers whom they found to be surplus. By a notice Ex. M. 10 which was published in accordance with Rule 62 of the Industrial Disputes Rules they prepared a list of persons proposed to be retrenched mentioning 5 March 1964 as the date of retrenchment. Individual notices were also sent to the workers proposed to be retrenched wherein they were told that they could go over to the office of the management on 7 March 1964 to collect the arrears of salary and other amounts which would be due to them under the rules as a consequence of the retrenchment. Several workers were retrenched in this way. We are now concerned in these writ petitions only with three persons, namely.

- (1) Sendurvel,
- (2) Perumal, and
- (3) Guruswami.

The union contended that there was really no need for the retrenchment, that the retrenchment amounted to victimization and that the retrenchment was not in accordance with the law. At their instance, the State Government referred to the labour court, Coimbatore, for adjudication u/s 10 of the Industrial Disputes Act, the following points:

(1) Whether the non-employment of N. Sendurvel, conductor, K.R. Perumal, blacksmith cum tinker, and K. Guruswami, helper, is Justified and to what relief each would be entitled ?

(2) To compute the relief, if any, Awarded in terms of money if it can be so computed.

The labour court found in the case of Sendurvel that the normal rule of retrenchment, that is, "last come, first go," enunciated in Section 25G of the Industrial Disputes Act had not been admittedly followed. The special reasons which the management relied upon for departing from that rule in his case were not held to be satisfactory reasons by the labour court. In fact, the alleged prior conduct which the management urged as a ground for Sendurvel's retrenchment after retaining in service his juniors appeared to the labour court to be only petty acts of default and for which the prior management at whose time the default had occurred had merely warned the worker, or accepted his apology. Therefore, in Sendurvel's case, the labour court held that his non employment was not Justified. But in view of the strained relationship between him and the management (it is alleged that he is the treasurer of the labour union) the labour court directed the management to pay him compensation of five years' pay in lieu of reinstatement. Against this decision of the labour court, the management have filed the Writ Petition No. 1100 of 1965.

3. In respect of the workers K.R. Perumal and K. Guruswami the labour court found that their non-employment was justified, that they had been properly retrenched and that on that account they were not entitled to any relief. The labour union is attacking this finding of the labour court in Writ Petition No. 3354 of 1965.

4. Taking up first for consideration Writ Petition No. 1100 of 1965 filed by the management, it is urged by the learned Counsel for the petitioner-management that even though in the case of Sendurvel the rule of "last come, first go," had not been followed, there were data before the labour court from the prior personal files of Sendurvel to show that he had a bad personal record and this would be an adequate ground for departing from the rule. The law, however, on this point has been clearly laid down by the Supreme Court in *Workmen of Bhajrang Jute Mills, Ltd. Vs. Bhajrang Jute Mills, Ltd. and Others*, . At p. 507 therein, the Supreme Court observed that for departing from the rule, which would normally apply only when other things are equal, the employer, for the purpose of arriving at the specific reasons which the statute has made it necessary to be recorded (S. 25G of the Act) may take into account

consideration of efficiency and trustworthy character of the employees and that when he is satisfied that a person with a long service is inefficient, unreliable or habitually irregular in the discharge of his duties, it would be open to him to retrench his services, while retaining in his employment, employees who are more efficient, reliable and regular, though they may be juniors in service to the retrenched workman. Normally when the rule is thus departed from, there should be reliable evidence preferably in the recorded history of the workman showing his inefficiency, unreliability or habitual irregularity. It therefore follows that wherever it is proved that the rule in question has been departed from, the employer must satisfy the labour court or tribunal whether the departure was justified. In that sense the onus would be on the employer undoubtedly. The employer should be able to justify the departure before the labour court or tribunal whenever an Industrial dispute is raised by retrenched workmen on the ground that the retrenchment amounts to unfair labour practice or victimization.

5. In this case the union had contended that Sendurvel being the treasurer of the union had been singled out for retrenchment in violation of the rule. The above decision has made it clear that the employer, when he proposed to depart from the rule in Section 25G of the Industrial Disputes Act, must afford reliable evidence to the satisfaction of the labour court or tribunal. The onus of adducing such evidence is on the employer. In the present case the employer has adduced evidence by producing the history sheet of Sendurvel. The labour court, however, has considered the evidence and given its finding that the evidence relates only to petty contraventions of the rule, which took place at the time of the previous management before the present management took over the administration, and in such circumstances, it was not proper for the management to rely upon these minor contraventions for departing from the rule of "last come, first go." This is a finding of fact and it cannot be agitated further in writ proceedings so that this Court can come to a different conclusion. The data on which the labour court has relied for holding that this contravention appeared to be venial, and not sufficiently serious for terminating his employment, while retaining his juniors, seems to be adequate for the purpose. It cannot be held that the labour court acted without evidence for coming to the conclusion it did, as to whether the management was justified in deviating from the rule. Consequently I am of the opinion that the management's contention in the writ petition, Writ Petition No. 1100 of 1965, that the order of the labour court, in the case of Sendurvel is improper must fall and that writ petition is dismissed.

6. Though in writ petition, Writ Petition No. 1100 of 1965, the management had also challenged the order of the labour court in regard to two other workers, Mariappan and Lakshmanan, at the time of the hearing of the writ petition, it was represented by the learned Counsel for the petitioner-management that they had implemented the award as regards the above workers and they do not propose to attack the finding of the labour court in their cases. Therefore no orders are necessary in regard to these persons in Writ Petition No. 1100 of 1965.

7. In the cases of Perumal and Guruswami, workers concerned in Writ Petition No. 3351 of 1965, the learned Counsel, appearing for the labour union (petitioner), urges what appears to me to be a substantial ground which has been ignored by the labour court in its approach to the case. The specific contention of the union before the labour court was that these workers were retrenched on 5 March 1964. They also relied upon the notice issued to the individual workers which intimated to them that they could receive the arrears of salary and other amounts due to them on account of retrenchment by going to the office of the management on 7 March 1964 or on subsequent days. The contention that 5 March 1964 was the date of retrenchment was not controverted by the management. In fact, my attention was drawn at the time of the hearing of the writ petition to a counter-statement filed by the management before the labour court on 27 July 1961 wherein the management has stated in Para. 4 that the retrenchment was effected on 5 March 1964. The learned Counsel appearing for the petitioners stated that before there could be a valid retrenchment as defined in Section 25F of the Industrial Disputes Act, the management is required to comply with the requirements of Clauses (a), (b) and (c) in particular the requirement of Clause (d) under which the workman has to be paid at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Equally under Clause (a) of Section 25F the workman has to be given either one month's notice or in lieu of notice one month's salary at the time of retrenchment. The decisions of the Supreme Court have dealt with the interpretation to be given to the requirements under the section, in particular the requirement of payment at the time of retrenchment compensation equivalent to fifteen days' average pay for every year of service. In *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another*, following their earlier decision in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, the Supreme Court held that it would not suffice to meet the requirement of Section 25F of the Industrial Disputes Act, if the worker after being retrenched with effect from a particular date is told that he would be given compensation under the statute on a subsequent date. In the case in 1987 II L.L.J. 23 (vide supra) by a notice dated 15 November 1958 the services of the concerned workman were retrenched with effect from 17 November 1958 and he was asked to collect his dues and one month's wages in lieu of notice on or after 20 November 1958. The industrial tribunal held that the retrenchment was illegal as it was in violation of the provisions of Section 25 of the Industrial Disputes Act. The Supreme Court held that the award of the industrial tribunal was correct and expressed its view that if a workman was asked to go forthwith, he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. The above ruling applies to the present case where the workmen were admittedly asked to leave the services of the employer on account of retrenchment on 5 March 1964 and they were asked to go to the office of the management on or after 7 March 1964 to collect their dues. Following the decision of the Supreme Court, it must be held that the

retrenchment of Perumal and Guruswami not being in accordance with the requirements of the status is illegal.

8. The order of the labour court as regards Perumal and Guruswami is set aside and the matter is remitted to the labour court, Coimbatore, for deciding the further question (in view of the finding now given by this Court, namely, that the retrenchment of Perumal and Guruswami was not Justified), as to what relief should be given to them according to the circumstances of the case, for the purpose of deciding (?) the second point referred to labour court for decision, namely, to compute the relief if any awarded in terms of money, If it can be so computed.

9. In the result, Writ Petition No. 1100 of 1965 is dismissed and Writ Petition No. 3354 of 1965 is allowed in part. There will be no order as to costs.