
(1997) 09 MAD CK 0095
In the Madras High Court
Case No : W.A. No. 1345 of 1993

The Divisional Manager, Pandiyar Tea Division	APPELLANT
Vs	
Plantation Labour Association	RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Payment of Wages Act, 1936 — Section 10, 7

Citation : (1997) 09 MAD CK 0095

Hon'ble Judges : M. Karpagavinayagam, J;A.R. Lakshmanan, J

Bench : Division Bench

Judgement

A.R. Lakshmanan, J.—The management of Pandiyar Tea Division filed the above writ appeal against the order of J. Kanakaraj, J. dated September 13, 1993 in W.P. No. 2362 of 1993.

2. The Secretary of the Plantation Labour Association filed the writ petition on behalf of Padmanabhan (No. 46), Ramaswami (No. 462), Duraiswami (No. 212), Muthuswami (No. 325), Natesan (No. 192) and Thanickachalam, challenging the discriminatory treatment and disciplinary action taken against them without domestic enquiry by the management. There was a complaint of theft of dynamo and sprinkler clearing engine on October 18, 1991 and a criminal complaint given by the management was registered by Devela Police in Crime No. 314 of 1991. The complaint is under investigation. While so, one Suresh, who is the son of an Accountant of the management was arrested. In the writ petition it has been specifically alleged that the appellant without any enquiry fixed the responsibility on the six workmen and passed an order to deduct Rs. 2,000/- from each workman at the rate of Rs. 100/- per month from the wages of each workman concerned. The said punitive action without conducting a domestic enquiry is violative of fair-play and principles of natural justice. Therefore, the union filed the writ petition to call for the records of the appellant in 2039/91 dated March 14, 1992 and quash the same.

3. The writ petition was resisted by the management by filing a counter through

their Divisional Manager. The appellant is a part of the Tamil Nadu Tea Plantation Corporation Limited, which is a Government of Tamil Nadu Undertaking. It is stated that there is no workman by name Thanikachalam in the rolls of the appellants. Worker Duraiswami was relieved of his duties on April 27, 1992 and all the terminal benefits due to him had also been settled. Therefore it is not known on what basis the writ petition was filed on their behalf. All the six workmen were issued a show cause notice charging them with misconduct of neglect of work and ,calling upon them to show cause why disciplinary action shall not be taken against them. All of them gave identical replies owning the responsibility for the theft of the items and agreed to make good the loss of the value of the stolen items being deducted from their earned wages. It is also submitted that orders for recovery of the amount were passed on March 14, 1992, that they were signed by the appellant on July 3, 1992 and that ultimately the order was served on the concerned workmen on December 29, 1992, by which each of them was directed to pay Rs. 2,000/-, which was to be recovered in monthly installments of Rs. 100/-. Accordingly, recoveries were made from the wages payable for December, 1992 and January, 1993. It is represented that because of the stay granted by this Court, further recoveries were not made from the workmen.

4. Before the learned single Judge the order was challenged on two major grounds. The first is, that the punishment being a major penalty as contemplated by Clause 26 of the Standing Orders, a departmental enquiry should have been held. The second is, for the same occurrence, a criminal case has been initiated and therefore without waiting for finalisation of the same, the management should not have passed the impugned order.

5. In the counter affidavit filed by the appellant it is stated that the workmen had admitted their guilt in having been negligent and allowing the two dynamo motors to be stolen. They had agreed to bear the loss by way of deduction in their monthly wages. It is also contended by the management that it is not at all a case of disciplinary proceedings but it is only a recovery in respect of the admitted loss caused to the company.

6. J. Kanakaraj, J., on a consideration of the arguments advanced by both sides, gave the following ruling :

"The writ petition was admitted and interim stay was granted on February 9, 1993. The respondent-management has now filed a petition to vacate the stay. It is at this stage, the parties agree for final disposal of the writ petition. A perusal of the impugned order shows that the impugned proceedings are undoubtedly disciplinary proceedings and not a mere order for recovery on the basis of the statement of the workmen. Once we come to the conclusion, it goes without saying that the provisions of the Standing Orders should have been followed. Clause 26(b) suggests that recovery from the salary is one of the major penalties. Therefore, strictly speaking, a proper enquiry should have been conducted. The impugned order certainly fastens a culpable negligence on the

workmen and results in grave consequences. Such an order is certainly an order of punishment and the alleged admission of guilt will not obviate the necessity to hold a proper enquiry as contemplated under the Standing Orders. The contention of the respondent that the petitioner can approach the authority under Payment of Wages Act is totally misconceived. Certainly that authority cannot direct payment of an amount withheld by way of an order of punishment. The impugned order cannot be sustained. In this view of the matter, it is not necessary for me to consider the point based on the criminal" proceedings. The writ petition is allowed. The impugned order is quashed. It is open to the respondent to take fresh proceedings in accordance with law."

7. Aggrieved by the said order, the management has filed the above writ appeal. It is contended on behalf of the management that the deduction for damage to or loss of goods expressly entrusted to the employed person for custody is a permissible deduction u/s 7(2)(i) of the Payment of Wages Act and such deduction can be made in accordance with Section 10 of the said Act. Therefore, the, learned Judge ought to have held that for making such deduction, it was not necessary to hold an enquiry and it was sufficient if an opportunity was given to the person employed to show cause against the proposed deduction, consider his representation and pass orders thereon. In as much as the concerned workmen admitted their guilt and also agreed for recovery of loss, there was no need for the appellant to hold an enquiry. It is further urged that the recovery of amount towards loss of goods would not amount to a fine. It is submitted that Clause 26 of the Certified Standing Orders covers deduction of loss of goods from the employed person. Therefore, no enquiry need be conducted as provided under Clause 27 of the Certified Standing Orders.

8. Our attention was drawn to Clauses 25, 26 and 27 of the Certified Standing Orders. Clause 25 deals with major misconduct. Clause 25(b) relates to negligence on the part of the workman, dereliction of duty, causing loss to the management, habitual negligence and not attending to regular work assigned.

9. According to the management, the workmen were charged with the misconduct of neglect of work and therefore, they were called upon to show cause as to why disciplinary action should not be taken against them since two numbers of dynamo motors and one self motor of Sprinkler engine were found missing near the Central Godown premises of the appellant and six of the workmen who were deployed for watch and ward work and one outsider were found to have been involved in the theft of the above items. All of them gave identical replies owning their responsibility for the theft and agreed to make good the loss, the value of the same being deducted from their earned wages. Since the workers have given a reply to the show cause notice admitting the guilt, there was no need or necessity for the management to frame charges against the workmen and conduct a regular enquiry.

10. We are unable to countenance the above contention of the management. In this case, under Clause 26 (b) of the Certified Standing Orders the fine by way of

recovery of the value of the lost goods is sought to be recovered under the provisions of the Payment of Wages Act, which is a major penalty. A perusal of the order impugned in the writ petition shows that the impugned proceedings are undoubtedly disciplinary proceedings and not a mere order of recovery on the basis of the statement of the workmen. Before imposing a fine under Clause 26(b), the procedure contemplated by Clause 27 of the Certified Standing Orders should have been strictly followed and complied with. Clause 26(b) suggests that recovery from the salary is one of the major penalties. Therefore, as rightly pointed out by the learned Single Judge, a proper enquiry should have been conducted by the management.

11. The learned counsel for the management is not in a position to tell us as to the present stage of the criminal investigation and as to whether the lost goods have been recovered by the police authorities or not. By the order impugned in the writ petition, recovery at the rate of Rs. 100/- per month for 20 months from the salary of the six workmen has been ordered. In the event of the stolen goods being recovered by the police authorities, the management would not be justified in recovering the value of the machineries stolen. Under such circumstances, the management would be in a position to impose some punishment subject to the result of the enquiry that may be conducted against the workmen concerned. Therefore, in our opinion, it is a fit case for conducting an enquiry on the fastened negligence of the workmen and impose appropriate punishment depending upon the gravity of the offence committed by them and proved in the enquiry. The alleged admission of guilt, though in writing in our opinion, will not obviate the necessity to hold a proper enquiry as contemplated under the Certified Standing Orders. The contention of the management that the workmen can approach the authority under the Payment of Wages Act is totally misconceived. Certainly that authority cannot direct payment of an amount withheld by way of an order of punishment. As rightly pointed out by the learned Judge, the order impugned in the writ petition cannot be sustained. We are, therefore, of the view that the writ petition has been rightly allowed by the learned single Judge.

12. For the fore-going reasons, the writ appeal fails and is dismissed by reserving liberty to the appellant/management to take fresh proceedings against the workmen concerned in accordance with law. The management has already issued the show cause notice and the workmen had also submitted their explanation to the same. The workmen are at liberty to furnish any further explanation. On receipt of the same, the management shall immediately proceed with the enquiry and complete the same within three months from the date of commencement. No costs.