
(2011) 07 MAD CK 0116

In the Madras High Court

Case No : Writ Petition No"s. 6231 to 6237 of 2009, 16905 of 2011, M.P. No"s. 1, 2, 2, 2, 2 and 2 of 2009 and 1, 1, 1, 1, 1, 1 of 2010

The General Manager (Law)

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 33, 33(1), 33(2), 33(3)

Citation : (2011) 07 MAD CK 0116

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Su. Srinivasan, for the Appellant; S.T. Varadajulu and Court, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—In the first batch of writ petitions, the Petitioner is the General Manager(Law),Southern Railway, Chennai and they are

aggrieved by a common order passed by the Central Labour Court in complaint Nos. 2 to 8 of 2000 dated 29/11/2008.

2. The first Respondent, Central Government Labour Court entertained the complaint at the instance of the contesting second Respondents in

terms of and after adjudicating the said complaint, it felt that the non-employment of the contesting Respondents was illegal and contrary to Section

25F of the I.D Act, inasmuch as the contesting Respondents have completed 240 days of continuous work, the Petitioner-Railways have not

followed the procedure, while dismissing them from service. The termination was illegal and they are entitled to get Rs. 1 lakh as compensation in

lieu of reinstatement. It is this order dated 29.11.2008 is the subject matter of

challenge in the first batch of writ petitions.

3. The writ petition was admitted on 23.04.2009. Pending the writ petition, this Court granted interim stay. Subsequently, the said order was

modified directing the Petitioner-railways to deposit 50% of the award amount to the credit of each complaint before the Central Government

Labour Court, within a period of six weeks.

4. Mr. Su. Srinivasan, learned Standing counsel for the Railways submitted that they have complied with the interim order.

5. Though the contesting Respondents filed an application for vacating the order, the said interim order has not been vacated.

6. When this miscellaneous petition came up for hearing on 14.07.2011, S.T. Varadhajulu, learned Counsel appearing for the workmen took time

and hence the matter was directed to be listed today for final disposal.

7. In the meantime, he had filed a writ petition in WP. No. 16905 of 2011 on behalf of the seven workman challenging the very same award dated

29.11.2008 wherein, by which, the Labour Court has ordered only retrenchment compensation and not reinstatement with continuity of service.

Therefore, they wanted the award to be set aside and also for a direction to the Petitioner Railways/second Respondent to reinstate them in service

with continuity of service.

8. Mr. Su. Srinivasan, learned standing counsel appearing for the railways takes notice on behalf of the second Respondent in that writ petition.

9. It must be noted that hereinafter the parties are referred to as the "Management of the railways" and the "workmen". The workmen involved in

these writ petitions were engaged as "box boy". They have filed a claim petition before the Labour Court being C.C.P. No. 25 of 1995 claiming

difference of pay, weekly rest wages, particulars of leave salary and wages for public and National festival holidays. The Labour Court computed

a sum of Rs. 3960/- as due and payable to the workmen. It also transpires that the said claim petition came to be challenged by the management of

the railways in W.P. No. 1857 of 2000 and this Court by order dated 30.1.2009 set aside the order passed by the Labour Court and held that

unless and until there is a pre existing right for the workman, the question of maintainability u/s 33-C(2) of the I.D. Act claiming difference in wages

will not arise.

10. It is when those claim petitions were pending, curiously the workmen have filed complaints u/s 33A of the I.D. Act before the same Labour

Court. The said complaints were entertained in terms of Section 33A of the I.D. Act. It is not clear as to how such complaints are maintainable. u/s

33A of the I.D. Act, if an employer contravenes the provisions of Section 33 of the Act during the pendency of proceedings before a Conciliation

officer or Board, or an Arbitrator or a Labour Court and if the employee is aggrieved by such contravention, he can make a complaint in writing in

the prescribed manner. Upon receipt of the complaint, the Labour Court or the Tribunal, as the case may be, shall adjudicate upon the complaint,

as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the

appropriate Government. Therefore a pre-request for making such a complaint is the contravention of Section 33 of the I.D. Act. Section 33

comprised of 3 Sub-sections. The said provision is intended to protect the workmen to have his service conditions remain unchanged during the

pendency of the proceedings before the Conciliation officer or before the adjudicating Court.

11. Section 33(1) of the I.D. Act related to contravention or alteration of service regarding a matter connected with the dispute is pending before

the authority. In those cases, the express permission in writing of the authority is required before which the proceeding is pending. If the matter is

unconnected with the dispute pending then u/s 33(2) of the Act, and during the pendency of any such proceeding in respect of an Industrial

Dispute, the employer is entitled to alter the service conditions in accordance with law. But only in case of punishment given to a workman covered

by the dispute then the provision requires post approval. Section 33(3) of the Act gives protection to the workmen by declaring certain workmen

as ""Protected workmen"". In such cases u/s 33(3) of the Act, if a protected workmen is sought to be punished then prior approval is required for

the authority before whom the proceedings are pending.

12. Therefore, Section 33(1) & (2), pre supposed a dispute pending before the conciliation authority or before an adjudicating forum. But, insofar

as Section 33A is concerned, for making a complaint, the dispute must be pending before the Labour Court or Tribunal which are adjudicating

authorities. The Industrial Dispute Act do not empower a complaint to be entertained by a conciliation officer. The reason is obvious. Because, a

complaint u/s 33A will have to be adjudicated, as if it were a dispute referred to the adjudicating authority and an award will have to be passed in

terms of 33A(b) of the I.D. Act. Therefore the legislature did not think fit to give such a power to entertain a complaint by the conciliation officer.

For the purpose of maintaining such a complaint u/s 33A of the Act, the Court which receives the complaint, must render a finding that the

employer had contravened the provision of Section 33 of the Act.

13. In the present case, when the workman filed a complaint before the Tribunal, merely referring only a claim petition filed u/s 33C(2) of the Act.

Therefore when notice was received on the complaint, the management of the Railways filed a counter stating that such a complaint is not

maintainable. Even otherwise on the date of filing of the complaint, CCP. No. 25 of 1995 was already disposed of on 29.11.1989. Therefore,

even assuming a proceeding pending u/s 33C(2) of the Act, a complaint can be maintainable, such a proceedings was not pending on the date of

the complaint. The Labour Court in dealing with the objections of the Railways in paragraphs 15 to 17, dealt with the same. Unfortunately, the

Labour Court did not keep in mind the prerequisite for lodging a complaint u/s 33 of the Act, which contemplates pendency of proceedings u/s 33

of the Act. If the pendency of proceedings u/s 33C(2) of the Act, is held to be sufficient for maintaining a complaint, then it will amount to rewriting

the provisions of the Industrial Disputes Act. Reference to pendency of petition u/s 33C(2) is thoroughly misconceived and it will be misreading the

correct legal provision.

14. Though before the Labour Court, the railways raised other issues relating to the workman not being a "workman" within the meaning of 2(s) of

the Industrial Disputes Act and that they have not completed 240 days of service and there was no employer and employee relationship between

the railways and workman, in view of the decision to be rendered by this Court, with reference to maintainability of the complaints, this Court

decides not to go into the merits of the other issues. The complaints filed by the workmen, cannot be entertained by the Labour Court on the

premises that Section 33-C(2) of the I.D. Act is pending is a sufficient pre-

requisite for receiving complaints u/s 33-A is understandable. Hence, the impugned awards stand set aside.

15. Mr. S.T. Varadarajulu, learned Counsel appearing for workman submits that he may be given liberty to raise Industrial Disputes, with

reference to the non-employment of the workmen, this Court is not inclined to state anything further except to state that in the present writ

petitions, the only question that arose for consideration was whether the complaints u/s 33-A of the Act about the non-employment of the

Petitioner was maintainable or not. Only that issue had been answered against the workman, it is for the workman to take appropriate steps.

16. It is rather unfortunate that from the year 1995, for the last sixteen years, the workman are before wrong forums all the time. It may be due to

the wrong advise given to them. First they moved the Labour Court with claim petitions, without their being any pre-existing right. Secondly, they

moved the very same Labour Court, with complaints u/s 33A, which are not maintainable. But, as they were put to hardship for the last 16 years

and have filed two sets of proceedings before the Labour Court as well as before this Court, this Court is inclined to award certain amounts as the

litigation expenses. Since 50% of the award amounts are lying with the Labour Court, each workmen are entitled to withdraw Rs. 10,000/-

(Rupees ten thousand only) as litigation expenses. The balance amount of Rs. 40,000/- is permitted to be withdrawn by the Railways.

17. The writ petitions are allowed. The Award passed in complaints are set aside. No costs. Consequently, connected M.P.s are closed. No

costs.

18. W.P. No. 16905 of 2011: In view of the decision rendered that the complaints are not maintainable, the above said writ petition seeking for a

improved relief over the same award is also not maintainable. Accordingly, the above writ petition is dismissed. No costs.