
(1982) 11 MAD CK 0039
In the Madras High Court

The Management of Kalpana Textiles	APPELLANT
Vs	
The Additional Commissioner for Work, men's Compensation (Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947), and Another	RESPONDENT

Date of Decision : 04-11-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1984) 1 MLJ 74

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The 2nd respondent herein was working as the Assistant Accountant in the petitioner's establishment. By a notice,

dated 7th September, 1977 he was informed that consequent on the reduction of work in the accounts section, it had been decided to retrench the

Assistant Accountant and that as such his services would stand retrenched with effect from 10th September, 1977. He was also paid one month's

salary in lieu of notice and retrenchment compensation as laid down u/s 25-F of the Industrial Disputes Act.

2 The 2nd respondent took the matter for conciliation under the Industrial Disputes Act. But however, he did not pursue those proceedings but

filed an appeal u/s 41 of the Tamil Nadu Shops and Establishments Act, before the 1st respondent. The Additional Commissioner for Workmen's

Compensation, Madurai, questioning the validity of the said order of retrenchment. The following were the grounds of appeal set out in his

memorandum of appeal before the 1st respondent:

1. The order of retrenchment is illegal.

2. The respondent is a firm under the Shops and Establishments Act and he has not complied with the provisions of the Act.

3. The respondent has not been given notice under the provisions of the said Act and hence the retrenchment is illegal.

4. The respondent's conduct in retrenching the services is not reasonable and has to be set aside.

3. The petitioner-management filed a counter statement contending that the appeal u/s 41 of the Shops and Establishments Act is not maintainable

and that the 1st respondent cannot go into the validity, necessity or bona fides of the order of retrenchment. It appears that at the time of the

argument the management placed reliance on Section 25-J(2) in support of its contention that the appeal u/s 41 of the Shops and Establishments

Act in relation to the dispute relating to retrenchment cannot be maintained. However, the 1st respondent without considering the question of lack

of jurisdiction raised by the petitioner to dispose of the appeal filed by the 2nd respondent u/s 41, and proceeded to consider the case on merits.

After considering the merits, the 1st respondent held that there was no justification for the management to resort to retrenchment, especially when

the management was earning profits during the relevant period. In that view, he set aside the order of retrenchment passed by the management on

7th September, 1977. The validity of that order is challenged in this writ petition both on the ground of lack of jurisdiction on the part of the

Commissioner for Workmen's Compensation, Madurai to deal with the appeal u/s 41 and on the merits.

4. Having regard to the fact that the writ petition is to be allowed and remitted to the 1st respondent to first consider the question of jurisdiction

and then to decide on the merits, it is unnecessary at this stage to go into the merits of the case.

5. On the question of jurisdiction, whenever a party before a statutory authority questions its jurisdiction to hear the case, it is the duty of the

authority to decide the question of jurisdiction before proceeding to decide the case on merits In this case, the petitioner-management has raised

the question of jurisdiction. But the 1st respondent has not discussed that question and given its finding thereon. According to the learned Counsel

for the petitioner, though the petitioner may have two remedies, one under the Industrial Disputes Act and another under Shops and Establishments

Act, as has been held by a Full Bench of this Court in *The Management of Safire Theatre, Madras Vs. The Additional Commissioner for*

Workmen's Compensation, Madras and Others, , if the dispute relates to layoff and retrenchment, it has to be determined only in accordance with

(the provisions of Chapter V of the Industrial Disputes Act. Such position is made clear in Sub-section (2) of Section 25-J. Sub-section (2) is as

follows:

For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for

the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers

and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

6. This sub-section firstly declares that nothing contained in Chapter V of the Industrial Disputes Act will affect the provisions of any other law for

the time being in force in any State in so far as that law provides for the settlement of industrial disputes. From this it is clear that the Industrial

Disputes Act, which is a Central Act, and any State Act providing for the settlement of industrial disputes will have a concurrent operation and one

cannot exclude the operation of the other. This means that the operation of the Industrial Disputes Act as well as the Shops and Establishments Act

can be invoked for the settlement of Industrial Disputes. The later clause in Sub-section (2) of Section 25-J makes an exception. It says that the

rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the

provisions of Chapter V. Therefore disputes relating to lay-off and retrenchment can only be determined in accordance with Chapter V of the

Industrial Disputes Act and any State Act will have to give way to the extent indicated above. Section 25-J 2) which has been relied on by the

management to oust the jurisdiction of the 1st respondent has not been referred to and no finding has been given on the question of jurisdiction

Since the provisions of Section 25-J (2) appear to affect the jurisdiction of the 1st respondent, a decision by the 1st respondent on the scope of

that section is necessary before the 1st respondent gives his decision on merits.

7. In this view of the matter, the writ petition is allowed and the order of the 1st

respondent dated 30th July, 1980 is quashed with a direction to the 1st respondent to dispose of the matter afresh, after giving a finding on the question of jurisdiction, within two months from the date of the receipt of this order. There will be no order as to costs.