
(1961) 08 MAD CK 0010
In the Madras High Court

The Management of Pushpa Talkies APPELLANT
Vs
Workers in Pushpa Talkies and Another RESPONDENT

Date of Decision : 10-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25FF, 25H

Citation : (1962) 1 MLJ 415

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This petition under Article 226 of the Constitution seeks to quash the award of the Labour Court, dated 15th June, 1959,

directing the petitioner to reinstate seven workers in service within a week after its publication in the Fort St. George Gazette.

2. The Petitioner is sub-lessee of not only the leasehold interest in the land and building constituting the Cinema Theatre but also an assignee of the

equipment, including a projector for running cinematograph business. From the original owners of the site and building, the lessor of the petitioner

had taken out a lease of those properties. The agreement to transfer the site and building was, dated 7th December, 1958, which was executed by

the lessor in favour of the petitioner. On 27th December, 1958, the lessor, who was the previous employer, put up a notice which ran thus:

Take notice that since we have relinquished the business of Pushpa Talkies with effect from 27th December, 1956, to one Mr. V. Subramaniam of

Salem, your services, have been terminated with one month's notice from this 27th day of December, 1958. You will have to refrain from

attending duty and have to take your salary after the expiry of the notice date.

3. It was alleged that after the notice the workers to whom the notice applied did not turn up for work, though this was controverted by the workers themselves. The fact appears to be that, from that date, the workers did not actually work in the concern of the petitioner. The workers took up the attitude that the transfer of the business actually took place before 27th December, 1958 and that on that date they continued to be under the employment of the petitioner, and that, therefore, the notice issued by the previous management on 27th December, 1958, was improper and ineffective to terminate their services by retrenchment. The petitioner, on the other hand, would have it that the actual transfer of the business as distinct from the transfer of the site and building thereon, took place only on 27th December, 1958, so that by reason of the notice on that date by the previous employee, the workers in question no longer continued under his service so that no question of his liability would arise either u/s 25-FF of the Industrial Disputes Act or of his liability to reinstate the workers on any ground. In view of this difference, a reference of this dispute was made to the Labour Court, the terms of the reference being whether the retrenchment of the workers was justified, and if not, to what relief they were entitled.

4. Before the Labour Court, the previous management filed a counter in which it was asserted that the actual charge of the business was with him, and that the notices to the workers on that date could not, therefore, be said to be invalid. The Labour Court, on the basis of the evidence placed before it, found that even before 27th December, 1959, the previous management had virtually transferred the business to the petitioner, and that, therefore, the previous management had no right to issue notices to the workers on that date terminating their services on the ground of retrenchment. It held therefore, that the notices were not valid. Without being content with this finding, the Labour Court went further to find that neither the previous management nor the petitioner had complied with the provisions of Section 25-FF and that the retrenchment of the workers was illegal and not justified. Eventually, therefore, the Labour Court directed reinstatement of the workers with back wages from the date on which they were retrenched. It is this award that is sought to be quashed by the present petition.

5. Sri R.M. Seshadri, the learned Counsel for the petitioner, urged two points: (1) that the Labour Court misdirected itself in assuming that there

was a transfer on 28th December, 1958, of the business of running the cinema, as distinct from a transfer of the site and the building thereon; and

(2) that it was also in error in holding that the petitioner had contravened the provisions of Section 25-FF. So far as the first point is concerned, it

appears to be a factual one and involves a review of the relative evidence. In support of his point, the learned Counsel drew my attention to certain

documents which were not even filed before the Labour Court. The finding of the Labour Court that there was virtually a transfer of the business

even prior to 27th December, 1958, was evidently based on two documents Exhibits W-5 and W-6. The first of them is, dated 29th December,

1958 and was written by the petitioner himself to the owners of the site and the building thereon. In that letter, the petitioner stated thus:

Please be advised that under the agreement concluded with M/s. Liberty & Co. of Bangalore the business of Pushpa Talkies, Tiruppur, has been

relinquished to me with all the rights hitherto held by the above concern. It should also be noted that I had taken possession of the theatre on and

from 15th December, 1958.

6. In the second letter which was written by the previous employer, it was stated:

Please be informed that we have leased out Puspha Talkies, Tiruppur, to Mr. V. Subramanyam son of Mr. Venkatachala Gounder, merchant,

residing at No. 112, Nadu Street, Salem 2, for running shows with effect from 15th December, 1958, as per lease, dated 28th December, 1958.

On the basis of these two letters, the Tribunal considered that the transfer of the business virtually took place before 27th December, 1958. This is

a finding of fact which cannot be interfered with in this petition.

7. The effect of the finding is that the workers in question should be taken to have continued under the service of the petitioner himself even from

prior to 27th December, 1958. That means the previous management ceased to be the employer of the workers, with the result that the

management had no right to terminate their services by retrenchment, by notices, dated 27th December, 1958. It follows, therefore, that the

Labour Court's finding that the notices were invalid, is correct. The first point of the learned Counsel is hence rejected.

8. On the second point of the learned Counsel, it does appear from paragraph 9 of the Labour Court's order that there was some confusion. In

view of the finding aforesaid of the Labour Court, it is difficult to understand by what process of reasoning it came to the conclusion that the

petitioner infringed the provisions of Section 25-FF. Since the workers had been continued, according to the finding of the Labour Court, even

prior to 27th December, 1958, no question of the petitioner terminating the services of the workers arose without complying with the provisions of

Section 25-FF. As a matter of fact, no notice of such termination was at all given by the petitioner. It seems to me that the Labour Court was also

in error in assuming that Section 25-H was applicable to the case. For the reason that there was no question of retrenchment of the workers made

by the petitioner himself, the Labour Court's order of reinstatement, to the extent to which it was based upon its view that the petitioner had

contravened the provisions of Section 25-FF and Section 25-H, cannot be supported.

9. The only real question to which the Labour Court should have addressed itself in considering the question whether the workers should be

reinstated and were entitled to the other reliefs prayed for by them, was to find whether the workers did not, of their own accord, turn up for work

under the petitioner or they were prevented from turning up for work under the petitioner after 27th December, 1958, or in other words whether

they stopped from work and if so, were justified in stopping away from work after 27th December, 1958. The relief to be given to the workers

would depend upon the answer to be given to that question. But the award of the Tribunal does not ex facie show that the Labour Court

addressed itself to that question at all and this, in my opinion, therefore, vitiated the award. On that ground the award has to be quashed.

10. The petition is allowed. Rule nisi is made absolute. The Tribunal will be at liberty to dispose of the reference afresh. In the circumstances of this

case, there will be no order as to costs.