
(2009) 01 MAD CK 0106

In the Madras High Court

Case No : Writ Appeal No. 1039 of 1998 and C.M.P. No. 12126 of 1998

The Secretary Vibromech Engineering Thozilalar Sangam APPELLANT
Vs

The Management of Vibromech Engineering Private Limited RESPONDENT
and The Presiding Officer Industrial Tribunal

Date of Decision : 06-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1)

Citation : (2009) 122 FLR 90 : (2009) 3 LLJ 605

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : S. Gunaseelan, for the Appellant; T.R. Rajaraman, for R1, for the Respondent

Judgement

S. Tamilvanan, J.—The writ appeal has been preferred, under Clause 15 of the Letters Patent, against the order, dated 31.03.1997 made in

W.P. No. 8487 of 1988 by the learned single Judge, confirming the order, dated 09.05.1988 passed by the second respondent in I.D. No. 52 of 1986.

2. The appellant herein had filed the writ petition in W.P. No. 8487 of 1988, challenging the order passed by the Industrial Tribunal at Chennai,

seeking an order in the nature of writ of certiorarified mandamus, calling for the records relating to the order, dated 09.05.1988 made by the

Tribunal in I.D. No. 52 of 1986 and quash the same and also to direct the first respondent/management to reinstate 18 employees of the petitioner

union with back wages, continuity of service and other attendant benefits.

3. It is not in dispute that the management of the Vibromech Engineering Private Limited, the first respondent herein, had raised an Industrial

Dispute in Ref No. 52 of 1986 against 18 named employees, u/s 33(1)(b) of Industrial Disputes Act, 1949 before the Industrial Tribunal, Chennai.

In the petition filed, it was stated by the first respondent before the Tribunal that the establishment had suspended its manufacturing activities from

21.06.1985 to 15.09.1985 in view of the riotous behaviour, indiscipline and acts of violence created by the respondents therein along with other

workers. It is further stated that on 24.06.1985, charges were framed against the workmen and written explanation was also called for from them,

then a domestic enquiry was conducted. According to the first respondent herein, the workmen deliberately refrained from attending the enquiry on

flimsy pretext and hence, the enquiry officer was constrained to conduct the enquiries exparte. The enquiry officer held that the charges levelled

against all the workmen were established and in the said circumstances of the case, it was suggested that punishment of dismissal would be the

appropriate action against them. Accordingly, second show cause notice was issued regarding the proposed punishment. The explanations

submitted by the workmen were found not satisfactory, taking into consideration the gravity of the misconduct and it was decided that the

workmen were to be dismissed from service with effect from 02.09.1985. They were also placed under suspension pending enquiry under Clause

(b) of Sub-section (1) of Section 33 of the Industrial Disputes Act.

4. In the counter filed on behalf of the workmen, respondents therein, all the allegations raised by the first respondent herein were denied.

According to the workmen, suddenly the management imposed illegal lock-out from 21.06.1985 in contravention of the provisions of the Industrial

Disputes Act and on the same day, 12 workers were arrested on certain false and foisted cases and the management served charge memos,

making false allegations against the workmen. They have also stated that the union had filed several complaints before the police and when the

management suspended the workmen on 02.09.1985, they requested management for change of enquiry officer and also the place of enquiry on

various grounds, including safety of the workmen, but the management failed to consider the same, but issued second show cause notice proposing

the punishment of dismissal.

5. On the side of the first respondent/management, Personnel Officer of the first

respondent herein was examined as M.W.1. On the side of the opposite party/workmen, W.W.1 was examined, apart from marking various documents. However, the Tribunal allowed the petition filed by the management, seeking punishment of dismissal, against which, the writ petition was filed. The learned single Judge, by setting aside the impugned order, remitted back the matter to the second respondent for fresh disposal, according to law, aggrieved by which, this writ appeal has been preferred.

6. It is brought to the notice of the court that in a similar writ petition filed in W.P. No. 16499 of 1998 by workmen, represented by its Secretary, Vibromech Engineers Thozhilalar Sangam, the respondent herein, considering all the facts and circumstances of the said case, the learned single Judge, by order, dated 03.11.2008 has held as follows:

Therefore, the workmen, who are denied work from the day they had expressed their willingness to report for work till the lockout was lifted are entitled for 50% of the wages. The Award impugned in the writ petition will stand modified to that extent.

7. It is seen from the order that when lockout was lifted on 16.09.1995, out of 120 workmen, 58 workmen reported for duty and 25 were kept under suspension pending enquiry, out of which five workmen's suspension was revoked and two had resigned. The balance 18 workmen were dismissed, after holding enquiries with the approval of the Tribunal. It is seen from the records that the dispute arose only after the charter of demands was placed by the union and even when the issue was pending before the Conciliation authorities, the management had declared lockout on 29.06.1985. However, the appellant union herein, the petitioner in the aforesaid writ petition, gave it in writing to the management, expressing their willingness for the work and further, as per the letter, Ex.W.25, dated 17.09.1985, the workmen were ready to join work. Under Ex.W.11, the union has addressed the management regarding illegal lock-out. However, the management, first respondent herein, had imposed pre-conditions stating that the workmen should give individual undertakings, though the workmen were willing to report for work, without any pre-condition. When the workmen were ready and willing to join work, as per letter, Ex.W.25, dated 17.09.1985, the management, without

considering the same issued Ex.W.26 notice on the same day. As per Ex.W.28, letter dated 20.09.1985, Union's President asked the

management for lifting the lock-out. As per Ex.W.38, letter, dated 22.11.1985, the union expressed the willingness of the workmen to join work.

8. The Hon'ble Supreme Court in *The Statesman Ltd. Vs. Their Workmen*, while dealing with a similar issue, has held in paragraph 17 and 22 of

the Judgment, which is extracted as below:

17. If the strike is illegal, wages during the period will ordinarily be negated unless considerate circumstances constrain a different course.

Likewise, if the lock-out is illegal full wages for the closure period shall have to be "forked out", if one may use that expression. But in between lies

a grey area of twilight law. Strictly speaking, the whole field is left to the judicious discretion of the tribunal. Where the strike is illegal and the sequel

of a lock-out legal, we have to view the whole course of developments and not stop with examining the initial legitimacy. If one side or other

behaves unreasonably or the overall interests of good industrial relations warrant the tribunal making such directions regarding strike period wages

as will meet with justice, fairplay and pragmatic wisdom, there is no error in doing so. His power is flexible.

22. Having regard to the circumstances of the case, it is proper to direct that the appeal be dismissed but the parties will bear their respective

costs. Before parting with this case we deem it our duty to record our appreciation of the thoroughness of preparation of Shri Kapil Sibbal, a

young advocate of promise, who has assisted the Court as amicus curiae with precedential industry and persuasive felicity.

9. In the instant case, as per letter, it was intimated to the first respondent that the workers were subjected to physical attack by anti social

elements, by mentioning few names of such persons and it was also intimated that there is no safety to the lives of the workmen, if the enquiry is

conducted on 21.12.2005 at the specified place and also requested to change the place of enquiry, in order to provide safety to the workers.

10. The Personnel Officer of the first respondent, who was examined as M.W.1 himself has admitted the fact that there was lock-out since

21.06.1985 and according to him, the workmen, who had indulged in violence were suspended only from 02.09.1985. However, the witness

deposed that he did not know the reason for the delay for suspending the workmen. Had it been true, there could be no delay in taking action against the workmen, who had indulged in violence.

11. The learned single Judge in a similar matter referred to above, has held, based on materials, that the award of the Tribunal, holding that the lock-out for the entire period could not be justified, thereby denying wages for the whole period, as unreasonable.

12. According to the appellant, the first respondent, management was in the habit of engaging rowdy elements and anti social elements for physically attacking the women workmen, when they legally agitate for their legitimate demands. On a thorough perusal of the entire materials placed on record, we found that the said allegation of the workmen cannot be ruled out, since there is abundant material on record to support the same.

13. It is not in dispute that the lock-out had taken place on 21.06.1985, whereas the suspension of workmen, on the allegation of indulging in violence, took place only on 02.09.1985, long after the lock-out. Had the version of the first respondent been true, as contended by the appellant union, such workmen could have been suspended on the alleged date or immediately thereafter. But, they were suspended only on 02.09.1985, which has to be construed as an after- thought and hence, legally not sustainable. As per the notice sent by the first respondent, Lattice Bridge, Adyar was the place fixed for enquiry, which is one kilometer away from the factory. The averments of the workmen, as per their letter are that the management had engaged rowdies and anti social elements to attack the workmen on account of their trade union activities and hence, they could not attend the enquiry. In our view the averments of the workmen cannot be ruled out, having regard to the materials available on record.

14. It is seen that the Industrial Tribunal has not considered various aspects and the circumstances, which are against the first respondent, management and the evidence available on the side of the appellant shows that the workmen were deliberately prevented from attending the enquiry and subsequently, they were dismissed from service.

15. Considering all the materials and the case of both the parties, we concur with the view of the learned single Judge in the order, dated

03.11.2008 made in W.P. No. 16499 of 1998, that there was illegal lock-out by the first respondent and the order dismissing the workmen is not

legally sustainable. In such circumstance, we hold that the 18 workmen referred to in this writ appeal are also entitled to the relief granted to other

workmen, as per the order, dated 03.11.2008 passed in W.P. No. 16499 of 1998 by the learned single Judge. We are of the considered view

that there is no specific allegation and materials available as against the 18 workmen referred to in the writ appeal. As held in the other case

referred to, the workmen, who are denied work from the day they had expressed their willingness to report for work till the lock-out was lifted,

they are entitled to 50% wages.

16. In the instant case, it is seen that by the impugned order, dated 31.03.1997, the learned single Judge, set aside the order passed by the second

respondent and directed to take up the matter to his file and dispose the same. Since the material on record would speak volumes in favour of the

workmen and since the matter is pending for about 25 years and sending the matter back to the Tribunal does not meet the ends of justice and

further since the material placed on record would show that the 18 workmen referred to in the Writ Appeal are also entitled to similar relief as that

of other workmen, we do not propose to remit the matter.

17. Accordingly, the relief granted in the order, dated 03.11.2008, passed in W.P. No. 16499 of 1998 is just and reasonable and also applicable

to the facts and circumstances of this case, we find it reasonable to direct the first respondent to extend the similar relief to the 18 other workmen

who are also parties to the writ appeal. It is made clear that the workmen, who are denied work from the day they had expressed their willingness

to report for work till the lockout was lifted are entitled for 50% of back wages.

18. With the above observation, this writ appeal is disposed of. No costs. Consequently, connected C.M.P. No. 12126 of 1998 is closed.