

(2002) 10 MAD CK 0148

In the Madras High Court

Case No : Civil Revision Petition No. 371 of 1999 and C.M.P. No. 1922 of 1999

The Special Officer, Thirupattur Cooperative Sugar Mills Ltd. APPELLANT
Vs

S. Sivalingam RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Industrial Disputes (Amendment) Act, 1965 — Section 2A
Industrial Disputes Act, 1947 — Section 7

Citation : (2003) 2 LLJ 231

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : G. Thilakavathi, for the Appellant; V. Velayutham, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.

The above Civil Revision Petition has been filed under Article 227 of the Constitution of India as against the order dated 25.11.1998 made in I.A.No.196 of 1998 in O.S.No.91 of 1998 by the Court of District Munsif-cum-Judicial Magistrate, Vaniyambadi.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the respondent herein was appointed temporarily in a seasonal post with the petitioner herein as early as on 12.12.1979 and on completion of his probation period, he was re-designated from the Post of Temporary Transport Clerk to that of a Junior Clerk (Seasonal) with effects from 3.10.1980 and thereafter he was designated as Junior Clerk (Regular) with effects from 20.2.1988.

3. It further comes to be known that on grounds of dereliction and negligence in duty and for dishonesty, which amounts to a grave misconduct as per clauses 17(3) and 17(9) of the petitioner's standing order, the respondent was issued

with a charge memo. dated 21.11.1997 by the petitioner; that on receipt of the explanation from the respondent and having found the same not satisfactory, the petitioner ordered a departmental enquiry against the respondent wherein the charges with regard to clause 17(3) alone were held proved and charge under clause 17(9) was held not proved and hence a show-cause notice dated 24.10.1998 was issued against the respondent calling upon him to explain as to why he should not be inflicted with the punishment of reduction in rank from the post of Junior Clerk (Regular) to that of Junior Clerk (Seasonal). Aggrieved, the respondent has filed the suit in O.S.No.91 of 1998 before the Court below praying for declaration that the proposed penalty of changing in status from Junior Clerk (Regular) to the post of Junior Clerk (Seasonal) as illegal and invalid and for permanent injunction restraining the defendant, his men and subordinates from implementing the penalty of change of status from Junior Clerk (Regular) to Junior Clerk (Seasonal) and for costs. Along with the said suit, the respondent/plaintiff had also filed a petition in I.A.No.196 of 1998 under Order 39 Rules 1 and 2 and Section 151 of the C.P.C. praying for a temporary injunction restraining the defendant, his men and subordinates from implementing the order of penalty of changing the status of the plaintiff from Junior Clerk (Regular) to that of Junior Clerk (Seasonal) pending disposal of the suit on pleadings such as that since he defied the instructions to do an irregular and illegal transaction, the authorities of the defendant, to wreak vengeance against him, had issued the charge memo. on flimsy and baseless grounds and conducted the departmental enquiry and on the basis of the report of the said enquiry, they issued the impugned show-cause notice.

4. The Court below, having conducted a thorough enquiry into the matter, wherein though no oral evidence has been adduced on either side, four documents would be marked as Exs.P.1 to P.4 on behalf of the plaintiff and ten documents would be marked as Exs.R.1 to R.10 on behalf of the defendant, and having regard to the facts and circumstances of the case, would allow the interlocutory application filed on behalf of the plaintiff thus granting the temporary injunction, as prayed for, pending disposal of the suit. Aggrieved, the defendant in the suit, has come forward to file the above civil revision petition on certain grounds as brought forth in the grounds of civil revision petition.

5. The arguments advanced on the part of the learned counsel appearing on either side could be summed up that as per the revision petitioner, the civil court has no jurisdiction to entertain a suit of such nature against such an order passed by the employer against the employee; that under Clause-I of Second Schedule formed u/s 7 of the Industrial Disputes Act, the propriety or illegality of an order passed by an employer under the standing orders are the matters within the jurisdiction of the labour Court and cannot lie before the Civil Court.

6. But, on the part of the learned counsel appearing on behalf of the respondent, he would cite a judgment delivered in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , wherein the Honourable

Apex Court has held:

"The expression "Industrial Dispute" is defined in Section 2(k) to mean any dispute or difference (i) between employers and employers; (ii) between employers and workmen; and (iii) between workmen and workmen, provided such dispute is connected with the employment, non-employment, terms of employment or conditions of labour of any person. It is well settled by several decisions of this Court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen (see *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, . Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that Section 2A was inserted by Amendment Act 35 of 1965. It says, "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute". By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2(k) but also Section 2A. Section 2A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which means that - to give an employee - if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2A. (however, if the union or body of workmen espouses his cause, it does become an industrial dispute). We have given only one instance; there may be many disputes which would not fall within Section 2(k) or Section 2A. It is obvious that in all such cases, the remedy is only in a Civil Court or by ways of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes (in short, Sections 10 to 12) does not apply to such a dispute."

Citing the above judgment, the learned counsel for the respondent would exhort that since it is not the case of the petitioner herein that the subject is one falling within the purview of either Section 2(k) or Section 2A, there is no question of excluding the civil court's jurisdiction and would pray to dismiss the above civil revision petition.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it is clear from the judgment of the Honourable Apex Court (extracted supra) that the civil Court has jurisdiction over the subject and therefore the only point that arises for consideration in this civil revision petition is "whether, on facts and circumstances as brought forth in the application filed by the respondent herein, valid decisions

have been arrived at by the lower Court?" A perusal of the order passed by the Court below would reveal that the Court below having thoroughly gone into those documentary evidence placed on record has thought it fit to allow the said application thereby granting the order of injunction restraining the defendant as prayed for by the plaintiff, pending disposal of the suit.

8. In the order passed on facts and circumstances by the lower Court, this Court is not able to see any serious irregularity or legal infirmity or inconsistency so as to make this Court to exercise its supervisory power conferred under Article 227 of the Constitution of India, which is mostly confined to questions of jurisdiction. Therefore, when no such legalities are involved, it is safer to conclude that the lower Court, on facts and circumstances, has its right to decide the matter and it has decided the matter in the manner expected by law and this Court does not at all see any ground to cause its interference in exercise of its supervisory control and hence the following order:

In result,

(i) the above Civil Revision Petition is devoid of merits and the same is dismissed as such.

(ii) The fair and decretal order dated 25.11.1998 made in I.A.No.196 of 1998 in O.S.No.91 of 1998 by the Court of District Munsif Magistrate, Vaniyambadi is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P.No.1922 of 1999 is also dismissed.