

(1982) 09 MAD CK 0011

In the Madras High Court

Case No : W.A. No's. 287 and 288 of 1977 and W.A. No's. 1218 and 1219 of 1978

The Superintendent Tansi Leather Works, Madras

APPELLANT

Vs

G. Gowri and Others

RESPONDENT

Date of Decision : 07-09-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2, 25A, 25C, 33C(2)

Citation : (1986) 2 LLJ 263 : (1983) 96 LW 232

Hon'ble Judges : K.B.N. Singh, C.J;S. Padmanabhan, J

Bench : Division Bench

Judgement

K.B.N. Singh, C.J.—Both the writ appeals and the two petitions raise a common question of law and with the consent of parties, they have

been Heard together and are being disposed of by a common judgment.

2. The short facts necessary for disposal of both the appeals only need be stated.

3. By a notice, dated 28th December, 1971, the Superintendent, Tansi Leather Works, informed the fifteen workmen named therein that the

Management had decided to lay off the 15 workers named therein out of 23 workers. The relevant portion of the notice reads as follows :

It is hereby informed to the workers that the Management had decided to give lay-off for 15 (fifteen) workers out of 23 (twenty-three) workers

whose names are given below, with effect from 29th December, 1971, onwards until further notice. The reason for the lay-off being want of orders

and inability to provide work for them"".

Only two of the laid-off workers, namely S. Gowri and G. Venkataratinamma filed two applications under S. 33-C(2) of the Industrial Disputes

Act, hereinafter referred to as the Act, before the Labour Court, Madras, alleging that they have been laid-off wrongly and they are entitled to full wages for the period that they had been laid-off. Both the applications were taken up together. The Management contested the proceeding before the Labour Court, and the Labour Court, after hearing the parties, by a common order came to the conclusion that the Management was entitled to lay-off under Clause 11(1) of its Standing Orders (Exhibit B-1) and as there was no provision for payment of wages to the laid-off workmen, they were not entitled to claim wages and dismissed the applications of both the workers.

4. Against the said order each of the two workers filed a writ petition which were allowed by Mohan, J., who came to the conclusion that the grounds given for lay-off, namely ""want of order"" and ""inability to provide work for them"" would not fall under the purview of Clause 11(1) of the Standing Orders and therefore, the lay-off was unauthorised and quashed the order of the Labour Court and remanded the matter to the Labour Court only for the purpose of computing the benefit to which both the workers were entitled. It is against this order that the two writ appeals have been filed.

5. Mr. M. R. Narayanaswami, learned counsel for the appellants, submitted that in their application under S. 33-C(2) of the Act the workers did not challenge the power of the Management to lay-off under the Standing Order. Therefore, it was not open to the employees to raise that question in the writ petition. Nor this question could be gone into by the Labour Court within the limited scope of S. 33-C(2) of the Act. There is no substance in this contention of the learned counsel. ""The workers in their application under S. 33-C(2) of the Act have claimed that they are entitled to full wages under the contract of service. They also asserted that as the industrial unit was employing less than 50 workers, it could not have the advantage of paying lesser amount under Chapter V-A of the Act. By virtue of S. 25A of the Act, Ss. 25C to 25B will not be attracted and the Management will not be entitled to pay the concessional rate of payment, that is 50 per cent. of the wages. It being the categorical case of the workers that they are entitled to full wages for the period laid-off under the contract of service, it is open to them to contend, when the

Standing Order is sought to be relied upon by the Management in support of the lay-off, that the lay-off was not in pursuance of the provisions of

the Standing Order, rather they were in excess of the power or beyond the power which the Management had to lay-off under the Standing Order.

As no reference was made in the notice to lay-off that the lay-off was made in pursuance of the power conferred under the Standing Order, the

labourers could not the obviously challenge in their application that the lay-off was not in pursuance of the Standing Order. As the Management

relied on the Standing Order, the Labour Court was entitled to go into the question whether the lay-off was in pursuance of the power of the

Standing Order or not so as to determine the quantum of compensation to be paid to the workers as it was dependent on that.

6. It may be mentioned that Mr. Narayanaswami has not advanced any argument before us that the lay-off can be justified under the provisions of

S. 2(kkk) of the Act as the Management employed less than 50 workers, and could have the advantage of paying wages at a lesser rate than the

full wages, as provided under Ss. 25-C to 25-B of the Act as those provisions are not applicable to such an establishment in view of S. 25A of the

Act. The provisions of S. 2(kkk) of the Industrial Disputes Act for lay-off can usefully be quoted, which reads as follows :

2(kkk) : "lay-off (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of

shortage of coal, power or raw material or the accumulation of stock or the breakdown of machinery are for any other reason to given

employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

The provision of this sub-clause came to be interpreted by the Supreme Court in the case of Workmen of Dewan Tea Estate and Others Vs. The

Management, , and it may be stated that the expression ""for any other reason"" specified in the said clause, which we have underlined, must be

construed ejusdem generis with the words that precede them. Vide Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, .

7. Mr. Narayanaswami has further submitted that the Standing Order 11 of the appellant-company is of wider import than mentioned in S. 2(kkk)

of the Act inasmuch as it uses the expression ""other cause beyond his control"" and this will include the expressions ""want of orders"" and ""inability to

provide work"" used in the notice of lay-off. The relevant clause of the appellant-company's Standing Order, which is marked as Exhibit R-1, may usefully be quoted :

11. Temporary closure of Departments and lay-off of workers for causes beyond the control of the Employer :

(1) The employer may, at any time, in the event of fire catasrophe, breakdown of machinery, or stoppage of power supply, epidemic, civil

commotion or other cause beyond his control, stop working any machine or close any department or departments wholly or partially for any

period or periods.

8. Interpreting the provision ""other causes beyond his control"" in the case of Workmen of Dewan Tea Estate and others (supra), the of Dewan Tea

Estate and others (supra), the Supreme Court also held that the other causes beyond his control for one thing should be similar to the causes that

have preceded, and observed as follows :

The other argument urged before us is that the last clause of rule 8(a)(i) which refers to "other causes beyond his control" would take in the

financial difficulties of the Companies. We are not inclined to accept this argument also. Other causes beyond his control for one thing should be

similar to the causes that have preceded; even otherwise, we see no justification for the argument that the financial difficulty which is alleged to have

confronted the respondent was beyond its control"",

Faced with that difficulty, Mr. Narayanaswami has advanced an argument that in the Standing Order of that case stoppage of supply was held to

be a good ground for lay-off and relied on the following observation of the Supreme Court in that case :

Stoppage of supply must in the context, mean stoppage of raw material or other such thing. In regard to the factory, the stoppage of supply may

mean the stoppage of tea leaves, or in the case of field work, it may mean the stoppage of supply of other articles necessary for field operations. It

is impossible to accept the argument that ""supply"" in the context can mean money or funds.

Applying the same principle, in the Standing Order in the instant case also ""want of orders"" would be deemed to be a stoppage of supply without

which the industry could not run. This argument of the learned counsel is based

on a mis-reading of the Standing Order. The Standing Order of the appellant-company refers to a "stoppage of power supply" and not "stoppage of power or supply". "Inability to provide work" is not one of the reasons mentioned in the Standing Order of the appellant-company, on which ground lay-off could be justified. Therefore, the lay-off the workers could not be justified under the Standing Order of the appellant-company. The Standing Order lays down that in such cases payment would be made in accordance with law. No law has been pointed out to us on behalf of the appellants as to the rate at which compensation could be paid to the workers. It will be relevant in this connection to refer to Clause 16(o) of the Standing Orders of the appellant-company, which read as follows :

16. The following acts or omissions shall be treated as misconduct and be liable for disciplinary action :

x x x x x x x x

(o) Undertaking employment under any employer in any capacity without the permission of the Management".

Under this provision the workers could not have sought employment elsewhere without the permission of the Management.

9. When the matter is before the Labour Court in application under S. 33-C(2) of the Industrial Disputes Act, the Management is bound to pay full

wages of compensation. It has been held by the Supreme Court in the case of The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd.

Vs. The Firestone Tyre and Rubber Co., , that the position would be otherwise if it would have been a reference under S. 10(1) of the Act where

the Tribunal has larger power than the Labour Court. The following observations of the Supreme Court may usefully be quoted :

In a reference under S. 10(1) of the Act it is open to the Tribunal or the Court to award compensation which may not be equal to the full amount

of basic wages and dearness allowance. But no such power exists in the Labour Court under S. 33-C(2) of the Act. Only money due has got to

be quantified. If the lay-off could be held to be in accordance with the terms of the contract of service, no compensation at all could be allowed u/s

33-C(2) of the Act, while in the reference some compensation could be allowed. Similarly on the view expressed above that the respondent

company had no power to lay-off any workmen, there is no escape from the

position that the entire sum payable to the laid-off workmen except the workmen who have settled or compromised, has got to be computed and quantified under S. 33-C(2) of the Act for the period of lay-off.

10. Coming to the two writ petitions which were posted to be heard along with these appeals, they deal with the lay-off of the workers who have

been referred to the Industrial Tribunal under S. 10(1) of the Act. The Industrial Tribunal has held in both the cases that although the lay-off was in

1976; it was continued till the date of the award which was made on 7th January, 1978, awarding half the wages as compensation although there

was no provision to that effect in the Standing Orders of the petitioner companies where it was merely stated that payment was to be made in

accordance with law. No provision of law had been pointed out to as to what would be the quantum of compensation to be paid to the workers.

In view of the decision of the Supreme Court in the case of *The Workmen of M/s. Firestone Tyre and Rubber Company of India (P) Limited v.*

The Firestone Tyre and Rubber Company, (supra) the impugned award is quite valid and does not call for any interference.

11. In the result, the appeals and the writ petitions are dismissed, but in the circumstances of the case, there will be no order as to costs.