

(1990) 09 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 8317 of 1988

V. Veeraraghavan

APPELLANT

Vs

P.O., Labour Court, Coimbatore and Another

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (1992) 2 LLJ 137

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Judgement

K.M. Natarajan, J.—This writ petition is filed under 226 of the Constitution of India for the issuance of a writ of certiorari calling for the

records of the first in I.A. No. 733 of 1987 in Petition No. 395 of 1955 dated December 18, 1987 and Computation petition No. 395 of 1988,

dated February 8, 1988 and quash the same.

2. The facts is disclosed from the filed by the petitioner can be briefly stated as follows. The petitioner is the proprietor of the permanent theatre

known as Gobald Theatre at Sathyamangalam. From 1957 onwards, the second respondent was employed in the petitioner's theatre as Projector

Operator. According to the petitioner, during the tenure of his office, the second respondent was very irregular in his attendance as he was

engaged in other part-time jobs at that time. He applied for leave on January 13, 1981 and January 14, 1981 and the leave was granted Again, he

applied for leave on two days on medical ground. He was asked to produce the medical certificate in proof of the alleged illness and thereafter to

produce the Fitness Certificate and join duty. The second respondent refused to produce any Medical Certificate. Hence, the lever requested for

by him was refused. He failed to turn up for duty and he raised industrial dispute in I. D. No. 188 of 1981. He obtained an ex-parte award on

April 29, 1982. Though the petitioner engaged a lawyer to defend the case, the matter was not followed properly due to the breach of trust

committed by the petitioner's ex-clerk and as such an ex-parte award was passed. Thereafter the second respondent filed another petition u/s 33-

C(2) of the Industrial Disputes Act claiming back-wages from July, 1981 till September, 1985, amounting to Rs. 12,500. That petition was also

received by the ex-clerk of the petitioner and he handed over the same in the Advocate. But the Advocate did not take adequate steps to inform

the petitioner about the ex-parte order or the filing of the computation petition. Only in August, 1986, when the petitioner engaged another lawyer,

he came to know of the actual position. Thereafter he contested the claim of the second respondent in Computation Petition No. 395 of 1985

alleging that the second respondent was gainfully employed as a projector operator and he is having a tea shop of his own and hence he is not

entitled to wages during the period of his non-employment. He was also prepared to reinstate the second respondent immediately with continuity of

service, but without back-wages. But the second respondent failed to turn up for duty since he was employed in some other theatre.

3. The petitioner was able to obtain a certificate dated October 14, 1986 from the proprietor of Sathya Theatre, Sathyamangalam, to the effect that

that the second respondent was employed under him from October 22, 1984 on a monthly salary of Rs. 500. The petitioner also filed I.A. No.

521 of 1987 requesting the first respondent to issue a notice to the Electrical Inspector, Gandhipuram, Coimbatore, directing him to produce the

Cinema Operator Employment Registers for the period from July 1, 1981 to September 13, 1985 as the Electrical Inspector having jurisdiction

over the area maintains a register showing the employment of cinema operators in various theatres under the Tamil Nadu Cinemas Regulations Act,

1985. By the order dated August 27, 1987, the first respondent allowed I.A. No. 521 of 1987 as the second respondent has no objections. The

summons was issued to the Electrical Inspector for September 17, 1987. Though summons has been served on the Electrical Inspector, he did not

attend the hearing. Hence the petition was closed. The petitioner filed I.A. No. 733 of 1987 requesting the first respondent to issue summons to

direct the Electrical Inspector to produce the Cinema Operators Employment Register. By the order dated December 18, 1987 the petition was

dismissed with the following observations :

Both sides were heard. The respondent had filed I.A. No. 521 of 187 for the very same relief and summons were issued to the witnesses and

subsequently the petition was closed on September 17, 1987 since the witness did not appear even though he was served with summons. This

petition is filed after three months for the disposal of that petition. This shows that the intention of the respondent is to protract the proceedings.

Thus the petition is not bona fide. Hence the petition is dismissed.

It is only therefore the main petition was taken up for disposal and the first respondents the order February 8, 1988 allowed the petition in part

computing the back wages from July 1981 to October 21, 1984 at the rate of Rs. 250 per month which comes to Rs. 9,925 with costs of Rs.

100. However, the claim of the second respondent was negatived for the period from October 22, 1984, on the ground that he was gainfully

employed on a monthly salary of Rs. 500. Aggrieved of by this order, this writ petition is filed. It is contended by the petitioner that S. II(3) of the

Industrial Disputes Act read with R. 43 of the Rules, the court shall have the same powers as are vested in a civil Court under the CPC when

trying the suit, in respect of enforcing the attendance of any person and examining on oath, compelling the production of documents in material

objects. Reliance was also placed on O. II, R. 14, C.P.C. R. 43(2) of the Tamil Nadu Industrial Disputes Rules also states that the Labour Court

may summon suo motu any person whose appearance that it shall be deemed to be a civil court within the meaning of Ss. 480 and 482 of the

Code of Criminal Procedure, 1898. The learned counsel submitted that from the above provision of law, when the Electrical Inspector failed to

appear on September 17, 1987 after receipt of the summons and produce the document, the Labour Court/first respondent ought to have exercise

its powers under S. II(3) and R. 43 to enforce the attendance of the witness and ought to have compelled the witness to produce the documents

called for. Since the Labour Court has failed to take steps, there is an error apparent on the face of the records and there is a violation of the

proceedings contemplated under the Act and the rules made thereunder. Hence

the order is liable to be quashed. It is to noted that this court while admitting the writ petition, in W.M.P. No. 12131 of 1988 passed an order on October 7, 1988 calling for the document namely Cinema Operators Employment Register from July, 1981 to September 13, 1985 from the Electrical Inspector Gandhipuram, Coimbatore and summons were issued to him to cause production of the document. It is in obedience to the said summons, the Government Pleader produced a communication from the Electrical Inspector to the effect that the second respondent was employed in Gobald Cinema Theatre from January 7, 1981 to January 12, 1981, and thereafter from June 14, 1983 to September 15, 1984 he was employed in Usha Theatre, Tiruppur and from September 17, 1984 till date (March 4, 1990) he was employed in Sathya Theatre, Sathyamangalam. It was stated that from January 13, 1983 to June 13, 1983 the employment particulars are not known. It also states that he has got licence on March 9, 1983 and that it is valid upto March 8, 1993. But, he has no valid licence from April 15, 1982 to March 8, 1983. The learned counsel for the petitioner relied on the said communication which was produced by the Government Advocate and submitted that it is clear from the communication that the second respondent was employed at least from June 14, 1983 in another theatre. It was also contended that since the Labour Court/first respondent failed to exercise its jurisdiction vested in it by compelling the witness to produce the document, there is apparent error on the face of the record and there is violation of the Act and Rules and as such the order is liable to be set aside. I find much force in the contention of the learned counsel for the petitioner in this regard. It is true that the Labour Court once issued summons to the Electrical Inspector for production of the document, for hearing on September 17, 1987. Though the summons have been served, the Electrical Inspector did not attend the hearing. The petition was closed on the ground that the Electrical Inspector did not attend. But, when the petitioner again filed another petition to summon the Electrical Inspector, there is no justification for the Labour Court in refusing to issue summons to the Electrical Inspector to produce the Cinema Operators Employment Register. The reasons given by the first respondent/Labour Court for dismissing the petition are not sustainable. It is not correct to say that the

petitioner once filed a petition for the same relief, that summons was issued, that as the Electrical Inspector did not appear, that petition was closed

and that as such the present petition filed after three months of the disposal of the first petition is not valid. It may be that the petitioner filed the

petition for the second time. But the said document is material and a relevant document. Under the Tamil Nadu Cinema Regulations Act, 1965,

Electrical Inspector is bound to maintain a register showing the employment of cinema operators in various theatres. The production of the said

register will solve the main issue in the petition. In the circumstances I have no hesitation in holding that the order passed in I.A. No. 733 of 1987 is

not correct and consequently the order in I.A. No. 733 of 1987 in Computation Petition No. 395 is liable to be set aside on the ground that there

is violation of the principle of natural justice and the first respondent failed to exercise its jurisdiction properly under the statute.

4. Accordingly, the writ petition is allowed. The impugned order passed by the first respondent is hereby set aside. The matter is remitted back to

the first respondent which is directed to restore the petition, consider the communication produced by the Government Advocate before this court

in the writ petition and also issue suitable process according to law to the Electrical Inspector to produce the Cinema Operators Employment

Register for the relevant period without delay and then dispose of the same according to law, giving opportunity to both sides. In the circumstances

of the case, there will be no order as to costs.

5. Note to office : The office is directed to dispatch the communication received from the Electrical Inspector and produced by the Government

Advocate in this writ petition, along with the order copy to the first respondent, early.

6. In view of the representation made by learned counsel for the respondents, it is hereby directed that the enquiry should be completed within two

months from the date of receipt of a copy of this order.