

(2000) 10 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 8601 of 1993 and W.M.P. No's. 13444 and 13445 of 1993

Varadan K.

APPELLANT

Vs

Presiding Officer, Principal Labour Court and Another

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 33C

Citation : (2002) 4 LLJ 95

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for a writ of certiorarified mandamus to call for the records in C.P. No. 13 of 1990 on the file of the first respondent dated November 3, 1992, and to quash the same and to direct the second respondent to pay the sum of Rs. 35,419 to the petitioner.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to file the present writ petition and requested this Court to allow the writ petition as prayed for. Per contra, on behalf of the second respondent a counter- affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this Court to dismiss the writ petition for want of merit.

3. Heard the arguments advanced by learned counsel appearing for the respective parties. I have perused the contents of the affidavit and the counter-affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by learned counsel appearing for the respective parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration in this case, is as to whether there are any valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner after qualifying himself in Diploma in Mechanical Engineering, joined as machinist on June 17, 1969, at the second respondent-management on a consolidated salary of Rs. 150 per month. Before his completion of probation as machinist, he was promoted as inspector on May 13, 1970. After successful completion of the period of probation as inspector, he was confirmed on August 13, 1970, for a consolidated salary of Rs. 170 per month. His salary has been revised on various dates and he was promoted as supervisor-II operation in the year 1982. The said promotion was confirmed on April 1, 1983. He was a workman and he discharged his duties continuously from the date of his appointment. One Mr. M. S. Sachidanandam, who is having similar qualification like him, joined in service on June 25, 1969, i.e., 8 days after his joining in service and the same Sachidanandam though junior of him was promoted as inspector along with him and, "thereafter, he was promoted as chageman-II operation in the year 1980. He was again promoted as superintendent II operation. He and the said Sachidanandam are working in the II operation. They take care of the II operation Section as head of the Section. He is the reliever of Sachidanandam and Sachidanandam is his reliever. The second respondent-management also promoted his juniors, namely, K. Jayaraman and A. Sekar, who joined on January 20, 1971, and October 13, 1976, respectively, as inspectors promoted as supervisors and, finally, as superintendent, quality control department and assistant superintendent, tool room in the year 1988. He is entitled to equal wages for equal work that of Sachidanandam who is discharging the similar work and also his reliever. He represented to the management to pay equal wages for equal work. The second respondent has failed to comply with the same. The action of the second respondent is violative of Articles 14 and 19(1)(g) of the Constitution of India. The second respondent is bound to pay him the equal wages payable to his reliever, i.e., Sachidanandam. The attitude of the second respondent is nothing but forced labour which is prohibited under Article 23 of the Constitution of India. The second respondent for the reasons best known to them have refused to grant leave for him. Though he is having leave in his credit the second respondent deliberately refused to grant leave for him. Whereas the other workers have been sanctioned leave though they are not having leave in their leave account. The action of the second respondent is nothing but illegal and violative of Articles 14, 19(1)(g) and 23 of the Constitution. Since the second respondent refused to pay the equal wages for equal work he has filed C. P. No. 13 of 1990 u/s 33-C(2) of the Industrial Dispute Act, 1947, before the Principal Labour Court, Madras, against the second respondent herein claiming difference of wages and other benefits for the period from April 1, 1984, to November 30, 1989, for a sum of Rs. 35,084 and also leave salary for 6 1/2 days for a sum of

Rs. 335 and in all he has claimed a sum of Rs. 35,419 for computation before the first respondent-Labour Court. The second respondent filed a counter stating that he is not a workman u/s 2(s) of the Industrial Disputes Act, 1947. It was further contested by the second respondent that he was claiming promotion and, therefore, he is not entitled to benefits for such a higher post. Because of the claim petition, the second respondent transferred him from Madras factory to Coimbatore branch office at the time of giving evidence before the first respondent. The action of the second respondent is nothing but victimisation and harassment. From the date of his appointment, he is working at Ambattur factory. The second respondent management has no right to transfer him from Ambattur to any other place as per the service conditions of the appointment order dated June 19, 1969. Ultimately, after enquiry the first respondent dismissed his claim petition stating that he is claiming wages of the person who is holding the higher post. According to him, the finding of the Labour Court is untenable and unjust. The Labour Court misconstrued the claim petition filed by him for equal wages for equal work.

6. Challenging the order of the Labour Court dated November 3, 1992, it is contended by the petitioner herein that the Labour Court's order is contrary to law, illegal and unjust, that the first respondent failed to appreciate that his claim petition is for equal wages for equal work, that the Labour Court erred in stating that he is claiming promotion, that the Labour Court ought to have appreciated that M.W.-1 categorically admitted that Sachidanandam is his reliever and there is no evidence before the Labour Court to show that he is doing more work than him and he had any additional qualification, that the Labour Court ought to have appreciated that the documents filed on his behalf have been established that he is entitled to claim wages for equal work, that he failed to appreciate the second respondent in using unfair labour practice in order to victimise him because of his just and reasonable demand, that the Labour Court ought to have appreciated that the action of the second respondent is violative of Articles 14, 19(1)(g) and 23 of the Constitution of India and also that the first respondent erred in not appreciating the fact that the petitioner cannot be denied wages entitled on par with the other workers who are doing similar work along with the petitioner. It is also his contention that the Labour Court erred in not appreciating the fact that he is entitled to protect his right contemplated under Article 19(1)(g) of the Constitution of India. He also claimed that the first respondent failed to appreciate that Article 23 of the Constitution of India prohibited traffic in human beings and forced labour, and that the second respondent forced him to work for lesser salary than other worker who is doing work similar to that of the petitioner, that the first respondent, while holding that the petitioner is a workman, ought to have computed the claim petition as prayed for by him and that the first respondent ought to have rejected the contention of the second respondent in toto.

7. Per contra, in the counter-affidavit filed by the second respondent, inter alia, it is contended by them that the petitioner joined the services of the second

respondent as a machinist on June 17, 1969, and from April 1, 1983, the petitioner was promoted as supervisor second operation with a basic salary of Rs. 1,015 per month. With effect from April 1, 1986, the petitioner was redesignated as senior supervisor with a monthly salary of Rs. 1,900, the petitioner was paid Rs. 2,560 as gross salary per month apart from other allowances and benefits. The second respondent filed its counter-statement contending that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, that he was functioning as a supervisor drawing monthly wages exceeding Rs. 1,600 and hence the application was not maintainable. On the merits, it was contended by the second respondent that employees working in supervisory grade do not have any time scale of pay for automatic annual increment, as a matter of right, that apart from basic wages any increase in emoluments would be granted based on their performance of that year, that in charge of a shift as a supervisor and as superintendent calls for entirely different duties and responsibilities and, therefore, the petitioner was not entitled to claim salary paid to Sachidanandam, who was functioning as superintendent admittedly a higher post when compared to the petitioner with additional duties and responsibilities, and, therefore, the claim of the petitioner on the principle of equal pay for equal work is not sustainable. Further, according to them, the petitioner's claim is based on assumption and such a claim cannot be countenanced in a limited jurisdiction of the Labour Court u/s 33-C(2) of the Industrial Disputes Act herein only pre-existing rights could be executed. As far as the claim of leave wages, is concerned, it was submitted that once the petitioner's leave was rejected even as per his claims statement, he cannot claim wages for it. It is claimed by them that the order of the first respondent dismissing the claim of the petitioner on merits is based on appreciation of evidence and the said finding is justified and valid and that the petitioner has not made out any ground to disturb the said finding under the jurisdiction of this Court and that their case is that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. This respondent has placed materials before the first respondent in support of its stand that the petitioner was not a workman. The first respondent was not justified in holding that the petitioner was a workman. Therefore, it is prayed by the management that the order of the Labour Court has to be sustained rejecting the claim of the petitioner on the ground that as the petitioner was not a workman he was not entitled to invoke Section 33-C(2) of the Industrial Disputes Act, in other words, this respondent's prayer is to sustain the impugned order on the ground which has been rejected by the first respondent. It is also their case that Sachidanandam was paid his emoluments pursuant to the scales of pay fixed for him taking into consideration the job responsibilities attended by him and the petitioner's scale of pay was fixed taking into consideration the nature of job performed by him and hence the petitioner cannot under any circumstances, compare himself with Sachidanandam and claim the wages paid to Sachidanandam on the principle of equal pay for equal work. Thus, it is their case that the question of equal pay for equal work does not arise given the facts of the present case. It is also urged by

them that the petitioner himself has admitted that he was not granted leave and in spite of it he did not report for work, it would only amount to absence from duty and hence he is not entitled to wages for such period of absence and hence the petitioner's claim for leave wages is not sustainable. Further, it is their case that the petitioner's claim has been rightly rejected by the first respondent on appreciation of evidence placed before him by holding that the petitioner cannot compare himself with Sachidanandam and thus the petitioner's claim before the first respondent was not maintainable in law and it was also without any merit and hence the petitioner's claim was rightly rejected by the first respondent.

8. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims and counter-claims made by the rival parties, the following are the admitted facts: The petitioner herein joined as machinist on June 17, 1969 at the second respondent-management on consolidated salary of Rs. 150 per month. Subsequently, he was promoted as supervisor II operation in the year 1982 and he was confirmed on April 1, 1983. One M. S. Sachidanandam having similar qualification like him joined service on June 25, 1969, i. e., 8 days after his joining the service. He and the said M. S. Sachidanandam are working in the find operation. They take care of the II operation section as head of the section. He is the reliever of Sachidanandam and Sachidanandam is his reliever. His grievance is that the second respondent-management also promoted his juniors who joined on January 20, 1971, and October 13, 1976, as inspectors promoted as supervisors and, finally, as superintendent, quality control department and assistant superintendent, tools room in the year 1988. His claim is that he is entitled to equal wages for equal work as that of M. S. Sachidanandam who is discharging similar work and also his reliever. He claims equal wages for equal work. He also claims that the second respondent-management also refused to grant leave for him. Thus, it is claimed by him towards difference of wages and other benefits for the period from April 1, 1984, to November 30, 1989, for a sum of Rs. 35,084 and also leave salary for 6 1/2 days for a sum of Rs. 335 and in all he has claimed a sum of Rs. 35,419 for computation before the first respondent-Labour Court. Ultimately, his claim petition was dismissed by the first respondent and, hence, this writ petition.

9. Though it is contended by the petitioner herein that the first respondent failed to appreciate that his claim petition is for equal wages for equal work and also that the Labour Court failed to appreciate the second respondent is using unfair labour practice in order to victimise him because of his just and reasonable demand and also that the Labour Court erred in not appreciating the fact that the petitioner cannot be denied wages entitled on par with the other workers who are doing (sic) similar work along with the petitioner, it is significant to note that the impugned award is a contested and speaking order and sufficient opportunity was given to both the parties to put forward their cases and thus totally two witnesses have been examined and 117 documents have been marked. The Labour Court has gone into every aspect of the case and came to a conclusion

and also recorded reasons for such conclusions. Thus, it is very clear that after a thorough enquiry only it came to a conclusion that the petitioner and the said Sachidanandam have not carried out the same job in the same position and the petitioner has not proved that he and Sachidanandam were doing the same job and that, therefore, the management is not liable to the claim amount. I do not see any illegality or irregularity in such an award passed by the Labour Court. Further, in this case, it is significant to note that the employees working in supervisory grade do not have any time scale of pay for automatic annual increment as a matter of right, and also that apart from basic wages any increase in emoluments would be granted based on their performance of that year and also that in charge of a shift as a supervisor and as superintendent calls for entirely different duties and responsibilities and that, therefore, the petitioner was not entitled to claim salary paid to Sachidanandam, who was functioning as superintendent, admittedly a higher post when compared to the petitioner with additional duties and responsibilities and that, therefore, the claim of the petitioner on the principle of equal pay for equal work is not sustainable. Moreover, the petitioner cannot compare himself with the said M. S. Sachidanandam who was admittedly holding higher position, namely, superintendent, second operation, whereas the petitioner was not holding the position of senior supervisor, second operation, and hence, the petitioner cannot under any circumstances compare himself with Sachidanandam and claim the wages paid to Sachidanandam on the principle of equal pay for equal work. Therefore, in such circumstances it has been rightly held by the Labour Court that the question of equal pay for equal work does not arise in this present case.

10. Learned counsel, appearing for the petitioner, relied on the following decisions in support of their case:

1. Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, wherein it has been held that the doctrine of equal pay for equal work is required to be applied to persons employed on a daily wage basis and they are entitled to same wages as are paid to similarly employed employees.

2. M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D'costa and another, wherein it has been held that for deciding whether a work is similar or same in nature or another work, a broad view should be taken and difference in details cannot defeat claim for equality and duties actually performed: should be taken into account and not those theoretically possible.

3. U.P.R.S.B.V. Bank v. Its Workmen [1989] II LLN 986, wherein it has been, held that in the matter of junior and senior groups doing the same work the principle of equal pay for equal work is definitely attracted.

4. Central Institute for Subtropical Horticulture, Lucknow v. Presiding Officer, Central Industrial Tribunal-cum-Labour Court [1994] 4 LLN 722, wherein it has been held that regular employees as well as temporary employees are entitled to wages for weekly and gazetted holidays and they would be entitled to wages

equal to wages of other regular employees to the weekly and gazetted holidays.

11. On behalf of the second respondent, the following decisions were relied on:

1. Instrumentation Employees Union v. Labour Court, Kozhikode [1992] FJR 542, wherein it has been held that finding of the Labour Court that the dominant work of foreman was supervisory in character and that, therefore, he was not "workman" as defined in the Act justified.

2. Shrikant Vishnu Palwankar v. Presiding Officer, First Labour Court 1992-II-LLJ-378 wherein it has been held that the expression "incidental" necessarily means that it is an appendage or a part of something which is larger and substantial.

3. Seraikella Glass Works Ltd. v. Second Industrial Tribunal W.B. 1993-I-LLJ-1158 wherein it has been held that the nature of duties performed by the employee is managerial and in carrying out the main duty as supervisor, he was required to do various jobs like assignment of work, allocation of jobs indenting of materials, recommendation of leave and work appraisal of the workmen working under him, he was also getting salary above Rs. 1,600 per month and as such he cannot prima facie claim the benefit of "workman" within the meaning of Section 2(s) of the Industrial Disputes Act and is not entitled to interim relief u/s 15(2)(b) of the Industrial Disputes Act.

4. Superintending Engineer, Zhakam Project v. Ramesh Chandra [1999] 2 LLN 590 wherein it has been held that it is necessary to bear in mind the vital difference between a pre-existing right or benefit on one hand and the right or benefit which is considered just and fair, on the other hand. The former falls within the ambit of Section 33-C(2) while the latter does not. Therefore, for resorting to the provisions of Section 33-C(2), the claimant has to fulfil the condition precedent and he must point out some pre-existing right or benefit, which he seeks to enforce.

5. State of Rajasthan v. Mool Singh [1999] 2 LLN 595 wherein it has been held that since the issue had never been settled by adjudication nor has it been by the employer, and in the absence of such precondition, the claim cannot be entertained by the Labour Court u/s 33-C(2).

6. P.K. Singh and Others Vs. Presiding Officer and Others, wherein it has been held that merely by doing the same kind of work as is done by "B" grade fitter, a "C" grade fitter cannot claim the wages of "B" grade fitter unless he is duly promoted after getting through the prescribed trade test-and such a workman cannot complain that he is not paid salary and allowance of a "B" grade fitter because he has no existing right to claim it,

7. Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , wherein it has been held that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not

incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. That being so, in view of the above decision it is clear that, in the facts and circumstances of the case on hand, the decisions relied on by the petitioner are not helpful to support their case whereas, the decisions relied on by the second respondent-management support the case of the management and the stand taken by them.

12. Therefore, in the aforesaid facts and circumstances of the case and also in view of my above discussions with regard to the various aspects of the case, and also in the light of the various decisions relied on by the parties, I am of the clear view that the petitioner herein has not made out any case in his favour and that, therefore, there is no need for any interference with the award impugned in this writ petition. Thus, the writ petition fails and the same is liable to be dismissed for want of merits.

13. In the result, the writ petition is dismissed. No costs. W.M.P. Nos. 13444 and 13445 of 1993 are also dismissed.