

(2011) 01 MAD CK 0401

In the Madras High Court

Case No : Writ Petition No. 13159 of 1998

Workmen of PMP Textiles

APPELLANT

Vs

Management of PMP Textiles and Another

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

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

Citation : (2011) LLR 731

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for the Appellant; M.R. Raghavan, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The Petitioners are the workmen of PMP Textiles, Spinning Mills Ltd., represented by their Trade Union known as Marumalarchi Thozhilalar Munnani (MLF), In respect of the non-employment of 29 workmen, employed in the first Respondent management (PMP Textiles Spinning Mills Ltd.), on a dispute raised by the workmen, the Government of Tamil Nadu under G.O.D. No. 142 dated 8.2.1994, referred an industrial dispute u/s 10(1)(c) of the Industrial Disputes Act, 1947 to the Labour Court, Vellore for adjudication.

2. In the claim statement filed before the labour Court, it was contended by the workmen that they were all employed as regular workmen by the first Respondent though they were all called as apprentices. They were paid meager salary. It was further contended that there was no training at all given to them as there was also no Trainer. Therefore, though by nomenclature they were Apprentices, as a matter of fact, they were all workmen involved in the production activities of the first Respondent management. While in service, according to the workmen, their signatures were obtained in blank papers. Since the workmen were not made permanent, they joined the trade union to improve their conditions of service. Thereafter, all the workmen formed Joint Action Council and placed charter of demands. When the efforts taken by the Joint

Action Council for a negotiated settlement on the charter of demands failed, the Joint Action Council issued strike notice that the workmen would go on strike from 16th November, 1992. The Commissioner of Labour intervened in the matter and held conciliation talks. The Joint Action Council therefore deferred the strike from 16th November, 1992 to 15th December, 1992 at the request of the Commissioner. Since the conciliation could not make any progress, the strike commenced as scheduled from 15th December, 1992. The strike came to an end on 19th and 20th December, 1992 at the intervention of the Hon"ble Labour Minister and other interested persons. During the said talks, to end the strike, the workmen were assured that there would be no disciplinary action initiated against them. But when they reported for duty on 21st December, 1992, they were denied employment. All their efforts through the Labour Commissioner and other officials to get reinstatement could not be achieved. But they were informed by the Management that they gave resignation letters and went out of service voluntarily. It was also contended by the management before the Labour Commissioner that the resignation letters were accepted and accordingly, they were relieved from service. It was also contended before the Labour Commissioner by management that the workmen were not regularly employed and they were all only trainees that too engaged only for a period of three years. Therefore, according to the Management, question of reinstating them does not arise. The conciliation failed and thereafter only, the Government referred the dispute for adjudication by the Labour Court.

3. In the counter-statement filed before the Labour Court, the first Respondent reiterated its stand that these Petitioners were not working on a regular basis and they were only Apprentices undergoing training that too for a period of three years. It was further reiterated that they were not terminated from service but they went out of service by submitting resignation letters.

4. Before the Labour Court, on the side of the workmen, as- many as three witnesses were examined and eight documents were exhibited. On the side of the first Respondent management, one witness was examined and as many as 19 documents were exhibited. Having considered all the above, the Labour Court declined to accept the contention of the first Respondent management that the workmen resigned their jobs. The Labour Court found that the alleged letters which are exhibited as resignation letters were not true and they were obtained by force. However, the Labour Court was of the view that the workmen were not regular workmen as claimed by them but, they were all only Apprentices engaged for three years. On this factual finding, the Labour Court held that the workmen would be entitled for backwages only for the remaining three years training period of Apprenticeship.

5. Before the Labour Court, yet another plea was taken by the first Respondent that the Petitioner union is not a representative of the workmen and therefore, the reference itself is not a valid reference. But the Labour Court found that in view of introduction of Section 2(A) of the Industrial Disputes Act, this question

has become immaterial. On that finding, the Labour Court negated the contention of the first Respondent. Aggrieved over the award, since there was denial of reinstatement with continuity of service and back-wages, the workmen of the Petitioner Union have come-up with the writ petition. Similarly, aggrieved over the award for payment of back-wages, the Management has come up with the other writ petition.

6. When this matter was taken up, it was brought to the notice of this Court by the learned Counsel On either side that out of 29 workmen concerned in this industrial dispute, as many as 19 workmen have accepted the award of the Labour Court and they have given up all their claims. Therefore, this writ petition is proceeded with only in respect of following remaining 10 workmen:

- 1 A. Jayasankar .
2. T. Sundaram .
3. G. Velayutham .
4. V. Selvam .
5. K: Arungiri .
6. P.C. Saravanan.
7. S. Kumar .
8. V. Kasi .
9. P. Murugesan .
10. M. Sivam.

7. I have heard the learned Counsel for the Petitioner and the learned Counsel for the first Respondent and also perused the records carefully.

8. It is the contention of the Petitioner that the finding of the Labour Court that the employees of the Petitioner union were all working only as Apprentices is factually incorrect. According to the learned Counsel, the Labour Court was swayed by the nomenclature attached to the post instead of looking into the actual work done by these employee. The learned Counsel would point out that as per the evidence of M.W.1, all the employees working In the first Respondent during the relevant point of time were all called as Trainees/Apprentices and there was no trained or permanent employees. The learned Counsel would take me through the evidence of M.W.1 wherein, M.W.1 has tacitly admitted the fact that all the employees who were then employed were all called only as Trainees and there was no permanent employee as per the registers. The learned Counsel would point out that production in the Mill had already started in the year 1990 itself. When that be so, it cannot be stated that these employees were employed as Trainees/Apprentices and not as regular workmen. The learned Counsel would rely on a judgment of the Hon''ble Supreme Court in Trambak Rubber Industries

Ltd. Vs. Nashik Workers Union and Others, , wherein, while dealing with a similar situation, the Hon''ble Supreme Court has held as follows:

8. The management witness categorically stated that the workers concerned were engaged in production of goods and that no other workmen were employed for production of goods. In fact, one of the allegations of the management was that they adopted go-slow tactics and did not turn out sufficient work. According to the Industrial Court, the fact that the "trainees" were employed for performing the regular nature of work would not by itself make them workmen. The question then is, would it lead to an inference that they were trainees?" The answer must be clearly in the negative. No evidence whatsoever was adduced on behalf of the management to show that for more than one and half years those persons remained as trainees in the true sense of the term. It is pertinent to note the statement of the managements witness that in June-July, 1989, the Company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The management evidently came forward with a false plea dubbing the employees/workmen as trainees so as to resort to summary termination and deny the legitimate benefits. On the facts and evidence brought on record, the conclusion was inescapable that the Appellant employer resorted to unfair labour practice. There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis reached by the Industrial Court.

9. To the contrary, the learned Counsel for the first Respondent would submit that there is positive ad-mission on the part of the workmen in their evidence that they were only Trainees/Apprentices and they were not permanent employees. To substantiate the said contention, the learned Counsel has taken me through the evidence of W.W.1 to W:W.3. The learned Counsel would further submit that at the time when the Mill was started, in the backward area, there were no trained employees available for appointment on regular basis. Therefore, the Mill appointed the unemployed persons in that area as Trainees/Apprentices and gave training. For this purpose, according to the learned Counsel, very experienced persons from a different Mill by name Kumari Mill were brought to the first Respondent Mill under whom the workmen underwent training. Therefore, according to the learned Counsel, the employees concerned were all only Trainees/Apprentices and therefore, the Labour Court was right in declining to order for reinstatement.

10. In this regard, I may say that one should not go by the nomenclature attached to the post but it is the nature of the job which is material. Admittedly, the first Respondent Mill was involved in production: Though it is stated that the said employees were engaged as Trainees/Apprentices; it is the positive evidence of M.W.1 that there was no permanent employee. It is highly impossible to engage in the production without having regular employees. Therefore, though

the workmen were called as Apprentices since they were all involved in the production activities, I am of the view as held by the Honble Supreme Court in the judgment cited supra, they are to be treated only as workmen as defined in the Industrial Disputes Act and they cannot be termed as Trainees/Apprentices.

11. Apart from that, it has to be stated that if these people were really Trainees, there should have been a Trainer to train them. Though it is stated that some experienced persons were brought from a different Mill and they trained these employees, absolutely there is no record to substantiate the said contention. The Labour Court has not considered this aspect of the matter. From the findings of the Labour Court, it could be made out that the Labour Court was simply swayed by the nomenclature attached to the post held by these employees. This finding, in my considered opinion, is perverse.

12. The contention of the learned Counsel for the first Respondent that the employees have admitted in their evidence that they were all Trainees/Apprentices, cannot be countenanced. A close reading of the cross-examination of these witnesses would go to show that when they were asked as to whether they were Apprentices, they have admitted that they were all called as Apprentices. It is not the case of either side that they were called by a different name. Through out they were called only as Apprentices, that was the nomenclature attached to the said post. That was only admitted by the workmen and that does not mean that they have admitted that they were only Apprentices in legal sense. As I have already stated and as held by the Honble Supreme Court, there is vast difference between the Apprentices and regular employees simplicitor. The Apprentices/Trainees means taking training under a trainer and not doing regular work, whereas, a regular workman is the one who was involved in the production activities of the management. In this case, from the evidence available, I am sure that these employees were employed as workmen and not as Apprentices. To this extent, the award of the Labour Court is perverse which requires interference.

13. Now coming to the next contention of the learned Counsel for the first Respondent that the reference itself has not been validly made by the Government, I find no force. The learned Counsel relies on an unreported judgment of a learned single Judge of this Court in W.P. Nos. 10850 of 1997 and 1430 of 1999 dated 16.4.2008, wherein in paragraph No. 8, it has been held as follows:

8. This portion of the award completely misreads the legal position with reference to the representative capacity as well as authorisation that union must receive from its workmen. When a specific plea is raised by the Petitioner Management in the reply statement before the Tribunal, no attempt was made by the second Respondent to either produce any membership register or the subscription register from the workmen. No attempt was also made to produce the minutes of the General Body by which the Union was authorised to take up the dispute. In the absence of the same, mere relying upon the direction given

by this Court to make a reference cannot absolve the obligation cast upon the second Respondent. In fact at the stage of the writ petition regarding declining to refer the issue was whether the Government throughout fit to refer the disputes raised by the Union. In any event, even after reference is made u/s 10(1) of the Act, the said reference must be a valid reference without which the Tribunal does not get any jurisdiction. Further it is not as if the said issue can be decided on the basis of pleadings between the parties and it has to be established by necessary proof produced before the Tribunal.

14. Relying on this, the learned Counsel for the first Respondent would submit that in the present case also there was no document produced to show that the Petitioner-Union has got competence to raise industrial dispute. The learned Counsel for the Petitioner would counter the said argument by submitting that after introduction of Section 2(A) of the Act, this question has lost its relevance. In paragraph No. 12 of the award, the Labour Court has held that after the introduction of Section 2A, it is not necessary that a dispute relating to discharge, dismissal, retrenchment or otherwise termination of service of workmen must be sponsored by a trade union. I find every justification in the said conclusion arrived at by the Labour Court. In this case, it is not at all in dispute that these 10 workmen were similarly placed. Even according to the learned Counsel, they were all engaged on similar terms and conditions as Apprentices. When that be so, in my considered opinion, in view of the introduction of Section 2A of the Act, assuming that the Petitioner Trade Union has got no competence to represent them, even then/there cannot be any difficulty in holding that the Labour Court was right in granting relief to the workmen.

15. The learned Counsel would submit that it is absolutely necessary for the workmen to let in independent evidence by each employee to substantiate their contention. In the absence of the same, the industrial dispute should have been rejected by the Labour Court, he contended. For this proposition, the learned Counsel relied on a judgment of this Court in *R. Maria Thangam v. U. Murugan and Ors.*, (1979 (II) LLJ 29 wherein, this Court has held as follows:

17....In other words, when the workman seeks to enforce a monetary claim, the basis for his claim may be closure or retrenchment, etc., That is the one that enables him to make a claim u/s 33C(2). But the actual relief due in terms of money is distinct and separate as far as each workman is concerned. If it is kept in the background, in our view, there will be no difficulty in appreciating that these do not involve transactions wherein common question of facts arise. No doubt, the workmen are jointly interested in seeking that they succeed in their contention regarding closure. That is all the jointness. With that it stops. But once we turn to the relief, the jointness ends. Thereafter," each has got to establish his entitlement independently of the other workmen. Normally, therefore, each one of the workmen should file a separate petition u/s 33C(2).

16. Relying on the above judgment, the learned Counsel would submit that each

workman should have raised a separate industrial dispute making his own claim for reinstatement. In this case, since the same was not done and since there was no evidence let in independently by each workman, according to the learned Counsel, the industrial dispute ought to have been rejected. In my considered opinion, the said contention cannot be countenanced at all. The facts stated dealt with in the said judgment are totally distinguishable. That was a case where monetary claim, was made by the individual workmen u/s 33C(2) of the Act. Though retrenchment was by means of a common order of closure of the industry, each employee had his own different case. In such circumstance, namely each employee had distinct cause of action, distinct period of service and distinct monetary compensation etc., though they were all allowed to file a joint application, they were required to let in separate evidence. The defence taken by the management as against each employee was different. In those factual background, since there was no independent evidence by each employee, the Division Bench took the said view. But, in the present case, the cause of action is one and the same and there is no conflicting stand taken by the management as against each workman. Therefore, in my considered opinion, though 29 workmen had not let in independent evidence, that is of no consequence. The evidence of M.W.1 itself would be sufficient to hold that these employees were regular employees and not Apprentices. Therefore, the principles stated in the said judgment have got no application to the facts of the present case.

17. Now, the learned Counsel for the first Respondent would submit that after such a long lapse of time, it would not be pertinent to order reinstatement of the workmen in service. For this proposition, the learned Counsel would rely on a judgment of the Hon"ble Supreme Court in *Shalimar Works Ltd. v. Its Workmen* 1959 (II) LLJ 26 : AIR 1959 SC 1217, wherein it has been held as follows:

We are of opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the industrial tribunal more than four years after re-employment of most of the old workmen We have also pointed out that it was open to the workmen themselves even individually to apply u/s 33A in this case; but neither that was done by the workmen nor was the matter referred for adjudication within a reasonable time. In these circumstances, we are of opinion that the tribunal would be justified in refusing the relief of reinstatement to avoid dislocation of the industry and that is the correct order to make.

18. The view expressed in the said judgment has no application to the facts of the present case. That was a case where the workmen did not raise industrial dispute within a reasonable time and the same was raised after four years. But in the case on hand, the industrial dispute was raised forthwith by the management. Though the industrial dispute has been pending either before the Labour Court or before this Court for years, the workmen cannot be blamed for the same. Therefore, it would be proper to direct the management to reinstate the employees in service at this length of time.

19. Now coming to the question of back-wages, in my considered opinion, since these workmen have not rendered any service to the first Respondent for all these years and since it is also not in evidence that they were not gainfully employed elsewhere, I am of the view that it would be suffice if the workmen are directed to be reinstated without back-wages but with continuity of service.

20. In the result, the writ petition is allowed the award of the Labour Court is set aside and the first Respondent is directed to reinstate the 10 workmen mentioned in paragraph No. 6 of this judgment in service forthwith with continuity of service but without back-wages. No costs.