

(1999) 03 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No"s. 12398 and 15889 of 1989 with W.M.P. No"s. 17694 and 17695 of 1989

Workmen (represented by General Secretary, Presiding Officer E.I.D. and S.F. Ltd., Labour Union)

APPELLANT

Vs

P.O., Additional Labour Court and Others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 33C(2)

Citation : (2001) 3 LLJ 588

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Judgement

T. Meenakumari, J.—Writ Petition No. 12398 of 1989 is for the issue of writ of certiorarified mandamus to call for the records from the

first respondent relating to I.D. No. 320 of 1984 to quash the preliminary award, dated February 4, 1987, in full read with the award, dated

December 30, 1998, of the First Additional Labour Court, Madras, in I.D. No. 320 of 1984 filed and marked as Exhibit A inasmuch as it has held

that the reference of the dispute relating to K. Veerappan was bad and unsustainable and has denied back wages to Balasubramanian, Yesudaian,

Pazhamalai and Subbarayan and consequently direct the second respondent the reinstatement of K. Veerappan with back wages, continuity of

service and all other benefits and direct the payment of full back-wages and other benefits in the case of Veerappan, V. Balasubramanian,

Yesudaian, Subbarayan and Pazhamalai.

2. W.P No. 5889 of 1989 is for the issue of writ of certiorari to call for the records in I.D. No. 320 of 1984 from the file of the First Additional

Labour Court, Madras, and quash the award passed therein, dated December 30, 1988, and published in the Tamil Nadu Government Gazette,

dated March 15, 1989, in so far as it is against the petitioner granting the relief to respondents 3 to 6.

3. As the facts in both the writ petitions are one and the same, both the writ petitions were heard together and the following common order is passed.

4. So far as W.P. No. 12398 of 1989 is concerned, since the management had not resolved the problems and the Government were also not

taking a decision in referring the issues for adjudication, the union decided to adopt ""work to rule"". The workmen adopted ""work to rule"" from

March 22, 1983. The management has called it ""go slow"". All the workmen resorted to ""work to rule."" Ignoring the other workmen, the

management has chosen to issue the chargesheet, dated March 22, 1983, only in respect of 21 workmen including the 4 workmen mentioned in

the award. Explanation was offered by the workmen. There was a strike from January 17, 1984 till February 4, 1984. The petitioners in the writ

petition went for work on February 4, 1984 along with others but they were not allowed to resume work. They were served with the approval

petition, dated February 1, 1984, purported to be one filed u/s 33-C(2) of the Industrial Disputes Act terminating their services for the alleged ""go

slow"" in March 1983. The reason being that the four workmen participated in the strike from January 17, 1984. It has been contended that four

workmen were chargesheeted for adopting ""go slow"" in carrying out their duties and for instigating other workers to do so in March 1983. So far

as Veerappan is concerned who is petitioner 1 before the First Additional Labour Court in I.D. No. 320 of 1984, he was removed from service

only on the reason that he was the Vice-President of the Workers' Union. Learned counsel for the petitioners in W.P. No. 12398 of 1989 has

assailed the award on the ground that the management having once dropped the disciplinary proceedings against the four workers, which was

common to all the 21 workers, was not justified in falling back on the same proceedings to dismiss them from service. She has further contended

that the enquiry was unjust and unfair and the charges were not proved. Learned counsel has further contended that mere participation in a mass

action would not justify dismissal from service. She has further argued that when the Labour Court has interfered with the punishment of dismissal, the Labour Court erred in not granting the back wages to the three petitioners. Learned counsel has also contended that when the Labour Court agreed with the labour union that there was discrimination in dismissing the four workers only when 21 workers were similarly chargesheeted, the Labour Court have found the workers guilty. She has further contended that the workers are entitled to reinstatement and continuity of service with back-wages. She has argued that the evidence did not warrant a conclusion of guilt. In the case of Veerappan, he has already attained the age of superannuation. Learned counsel has further argued that the termination of the services of Veerappan merely because he happened to be the Vice President of the union is clearly discriminatory and also an act of victimisation. Learned counsel has argued that when the union as a whole went on strike, the management cannot expect the Vice-President of the union to come to work. Learned counsel has further argued that the management has terminated the services of the employees without complying with the provisions of Section 25-F of the Industrial Disputes Act. She has further argued that the action of the management in not allowing the four workers, i.e., Pazhamalai, Yesudaian, V. Balasubramanian and Subbarayan to do their work is wholly unjust. She has further argued that they were not allowed to commence the work on the ground that they have filed petition u/s 33-C(2) (sic) of the Industrial Disputes Act on February 1, 1984. The enquiry revealed that no such petition has been made before the Labour Officer. Learned counsel for the petitioner-workmen argued that Veerappan has been removed without any enquiry and the provisions of Section 25-F of the Industrial Disputes Act have not been complied with. Learned counsel has argued that the termination is illegal as no enquiry was held and no opportunity was given for the alleged charge of ""go slow"".

5. Learned counsel for the management contended that the said Veerappan remained absent without permission from January 18, 1984. In accordance with the existing regulations, the management has sent him a letter on January 21, 1984 informing him that as per Clause 9(1) of the Standing Orders, the name of the employee who remained absent for more than eight days continuously without permission was liable to be

removed from the company's rolls as if he has voluntarily left the services of the company. The respondent-management has advised the said

Veerappan to resume duty on or before January 27, 1984. On January 21, 1984, the said Veerappan has written a letter stating that as the Vice-

President of E.I.D. & S.F., Ltd. Union, he committed to the decision of that union which had launched a strike and that the management should

give up the idea of removing his name from the rolls of the company. Learned counsel has argued that as per the Standing Orders 9(1), the name

of Veerappan was struck off from the rolls as he has not reported for duty on or before January 27, 1984. Under such circumstances, he has

argued that there was no contravention of the provisions of Section 25F of the Industrial Disputes Act. Learned counsel has argued that so far as

the case of other workers namely, Pazhamalai, Yesudaian, Balasubramanian and Subbarayan are concerned, they were chargesheeted for

adopting ""go slow"" in carrying out their duties and instigating the co-workers to adopt"" go slow on various dates in March 1983. Learned counsel

has submitted that the workers have submitted their explanation to the above chargesheet as it was not found satisfactory. After conducting the

enquiry, the company decided to discharge the abovesaid four workmen from their services. Simultaneously at the time of sending Form ""T"" u/s

33(2)(b) one month's wages in lieu of notice have been sent by way of demand draft to these four workmen along with copies of Form ""T"".

Learned counsel has argued that the discharge is neither illegal nor victimisation. The Labour Court should have upheld the discharge of the

workmen. Learned counsel for the management has argued that the Labour Court has erred in accepting the contentions of the workmen.

6. The Labour Court has dealt with the termination of Veerappan separately in the award. The said Veerappan was examined himself as W. W. 1

and several documents were marked. Exhibit W. 1 was the memo, dated January 21, 1984, issued to the said Veerappan calling upon him to

explain why action should not be taken against him for his absence without prior permission with effect from January 18, 1984. Exhibit W.2 was

the explanation submitted by the said Veerappan. The management after considering the explanation, passed an order on January 27, 1984 Exhibit

W. 3 removing the name of K. Veerappan from the rolls of the company with effect from January 27, 1984 as per Clause 9(1) of the Standing

Orders. The said action was challenged by the said Veerappan under Exhibit W. 4. Exhibit W. 5 was the letter of the union to the Labour Officer

to initiate the conciliation proceedings. The Labour Court after discussing the evidence adduced by both sides and also taking into consideration

that the said Veerappan being a panman belonging to the category of non-covenanted staff, has come to the conclusion that the said Veerappan

not only absented himself from duty on January 18, 1984 but refused to join duty as directed by the management. The Labour Court went in detail

into the evidence and the case laws cited by both sides and has come to the conclusion that the management was perfectly justified in removing the

name of the said Veerappan as per Clause 9(1) of the Standing Orders and it came to the conclusion that the reference made by the Government

in so far as Veerappan is concerned, is bad and not sustainable in law.

7. In view of the above, this Court could not find any flaw in the findings of the Labour Court so far as Veerappan is concerned. With reference to

the other four petitioners the Labour Court has observed that in the preliminary award, the findings of the enquiry officer have been confirmed. The

termination of the services of these workers were not upheld on the ground of discrimination. The Labour Court has observed that the 13 workers

1 covered under Exhibits M1- to M13 were also chargesheeted by the management for these misconducts in resorting to go slow and for

instigating other workers to resort to go slow. When the management itself has chosen to retain the other 12 workmen covered under Exhibits M2

to M13 the action of the management in terminating the four workers alone cannot be justified. The Labour Court has set aside the termination on

the ground of "discrimination. The Labour Court did not sustain the termination. However, the Labour Court has disallowed the back wages. The

Labour Court had directed the reinstatement of four workmen without back-wages but with continuity of service. In so far as Veerappan is

concerned, the reference made by the Government was held to be bad. In the case of four workmen stated above, what the Labour Court has

come to the conclusion that the management has chosen to retain the other 12 workmen covered and Exhibits M2 to M 13, the action of the

management in terminating the above four workers alone is not justified, in my view, when the Labour Court granted continuity of service ought to

have directed the management to pay the back-wages to the above four workers as the Labour Court has directed reinstatement. Under such circumstances, the award is modified so far as Pazhamalai, Yesudaian, V. Balasubramanian and Subbarayan are concerned. So far as Veerappan is concerned, the award, is confirmed. However, the management is directed to pay the terminal benefits to said Veerappan if he is eligible. In view of the observation made above the writ petition filed by the management (W. P. No. 15889 of 1989) is dismissed. The writ petition filed by the workmen (W.P. No. 12398 of 1989) is allowed in respect of Pazhamalai, Yesudaian, V. Balasubramanian and Subbarayan. As regards Veerappan is concerned, the writ petition is dismissed. No costs. Consequently, W.M.P. Nos. 17694 and 17695 of 1989 are dismissed.