(2011) 08 MAD CK 0528

Madras High Court

Case No: Writ Petition No''s. 6311 of 2006, 3964 of 2007 and 15869 of 2009

The Senior Regional Manager Food Corporation of India		APPELLANT
	Vs	
The General Secretary Madras Port United Labour Union and The Presiding Officer Central Government Industrial Tribunal-cum-Labour Court A.V. Dakshinamurthy Vs The Assistant Manager Administration Food Corporation of India and Sathyamurthy The General Secretary, Madras Port United Labour Union Vs The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and The General Manager (TNR) Food Corporation of India		RESPONDENT

Date of Decision: Aug. 18, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 18(1), 33C(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: A.S. Thambuswamy, in W.P. No. 6311/2006, Selvi Georgein, in W.P. No. 3964/2007 and R. Gowthamanin, in W.P. No. 15869/2009, for the Appellant; A.S. Thambuswamyin in W.P. No. 3964/2007, A.S. Thambuswamy, for R2 in W.P. No. 15869/2009, R. Gowthamanin W.P. No. 6311/2006 and V. Parivallal, SCG in W.P. No. 15869/2009, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner in W.P. No. 6311 of 2006 is the Food Corporation of India, represented by its Senior Regional manager, Chennai. That writ petition was filed challenging the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D. No. 309 of 2004, dated 22.3.2005. By the impugned award, the Tribunal held that the members of the first Respondent/Trade Union are entitled to get 21 days minimum guaranteed wages from 1.11.2001, the date on which they gave option to perform all works as per the settlement deed dated 4.7.1988. That writ petition was admitted on 6.3.2006. Pending the writ petition, this Court granted interim stay subject to payment of 50% of the award amount within eight weeks, failing which the stay was liable to be vacated.

2. Even when that writ petition was pending, one worker by name A.V.Dakshinamurthy filed a writ petition in W.P. No. 3964 of 2007 seeking a direction to the Respondent/Food Corporation of India to pay 21 days salary towards minimum guaranteed wage right from 1.3.1976. In that writ petition, he claimed that as against his termination during November, 1978, he raised a dispute in I.D. No. 17 of 1981 and the Tribunal, by award dated 9.11.1981, directed his reinstatement with full back-wages. Subsequent to the order of the Tribunal, he was restored to duty on 16.2.1994 and his back-wages were also paid. But still he was working only as a worker and he was not paid the minimum wages and therefore, he is entitled to have 21 days salary every month right from 1.3.1976. When that writ petition came up on 17.4.2007, the same was admitted and directed to be heard along with the earlier writ petition. In that writ petition, the Respondent/Food Corporation of India has filed a counter affidavit dated 30.6.2007.

3. It was long after the first writ petition filed by the Food Corporation of India, the Trade Union, which raised the industrial dispute, filed a cross writ petition (W.P. No. 15869 of 2009) in the year 2009 challenging that portion of the award wherein and by which the relief was restricted for the payment of guaranteed wages of 21 days from 1.11.2001 and not from 4.7.1988. In that writ petition, notice of motion was ordered on 10.8.2009 and it was directed to be heard along with the previous writ petition. However, they have not explained as to why they had taken more than three years in moving this Court challenging the said award.

4. For the sake of convenience, the Food Corporation of India is referred to as "the Management" and the contesting trade union is referred to as "the workmen".

5.1. The case of the workmen was that initially they raised a dispute, being I.D. No. 35 of 1984, before the Industrial Tribunal seeking for an award to absorb the Vacuator Workers in the Engineering Department of the Management. The Management was handling the food grain vessels coming to Madras Harbour for discharging food grains from the vessels and the work was done by the contractors

appointed by the Management from the year 1972 to 1975. From 21.5.1976, the management employed workers directly and they were called as Vacuator Workers.

5.2. It was stated that there were 215 such workers employed by the Management and they are employed for the mechanical discharge of the wheat from the vessels by operating vacuator machines. They are essentially technical persons and they were taken into service after conducting a trade test. The designation given to such vacuator workers, include Operator, Pipe Fitter, Nossilman, Tank Cleaner, Tank Supervisor, Head Mechanic, Assistant Mechanic, Oilman, Foremen, etc. and all of them come under the Mechanical Wing of the Management and since they had failed to consider their demand for absorption in the Engineering Department, they raised the dispute. It was stated that in respect of the Bombay Port Trust, the Vacuator Workers were absorbed in the Engineering Department and on regular time scale of pay.

5.3. The Tribunal, after a contest, by its award dated 16.11.1989, directed the Management to absorb them in the Engineering Department with continuity of service and benefits of pay scales and allowances applicable to the corresponding category of the Management.

5.4. As against the said award, the Management preferred a writ petition before this Court in W.P. No. 14057 of 1992. That writ petition was disposed of by this Court directing the Management to regularise 124 Vacuator Workers, who are still remaining in the cadre of Handling Mazdoors, if they are willing and if vacancies arise in the Engineering Department with the sanction of the Government of India and subject to the rules of reservation.

5.5. Thereafter, the Madras Port United Labour Union made several representations to comply with the award in I.D. No. 35 of 1984. But a writ appeal was filed against the order of the learned Single Judge in W.A. No. 431 of 2000. On 15.3.2000, a Division Bench of this Court dismissed the writ appeal. Since the management did not comply with the award, the workmen were forced to raise an industrial dispute claiming parity of wages for Vacuator Workers for the period from August, 1988.

5.6. At that time, the Management entered into a settlement dated 4.7.1988 with the Transport and Dock Workers Union u/s 18(1) of the Industrial Disputes Act. All the workers were directed to give option. During the pendency of the writ petition, the vacuator workers were directed to attend loading and unloading work along with other workers of the Management with effect from 4.7.1988. The workmen were once again asked to give option for re-designating them as Handling Mazdoors. Since the matter was pending before this Court for their absorption in the Engineering Department, only some workers gave their option under pressure, but the workers who did not give option were also posted along with other mazdoors. The workers who gave option were paid minimum guaranteed 21 days wages and off and for the remaining days they were paid attendance wages. But the workers

who did not opt were only given 16 days minimum guarantee and off and for the remaining days they were paid attendance wages with lesser basic pay. Thus, a discrimination was continued ever since 4.7.1988. It was contended that both groups were discharging same duties and responsibilities but there was a vast difference in their wages.

5.7. It is at this stage the workmen raised a dispute before the Assistant Labour Commissioner (Central). During the conciliation, the Officer gave advise to the workmen vide advise dated 9.5.2001 that since the matter pertains to discrimination in the payment of wages, they can always find a remedy u/s 33-C(2) of the Industrial Disputes Act. Hence, the workmen filed a claim petition in C.P. No. 2 of 2002 before the Central Government Industrial Tribunal (for short, "the CGIT").

5.8. The CGIT gave an advise for the workers to give option to do all the work and copies were also filed before the CGIT. The CGIT held that the status of the workers cannot be determined in a petition u/s 33-C(2) of the Industrial Disputes Act and therefore, the workmen were forced to renew the dispute. On the basis of the failure report sent by the Conciliation Officer, the Government of India, Ministry of Labour, vide order dated 3.2.2004, referred the issue for adjudication by the CGIT. As per the terms of reference, it was stated that "whether the demand of the Madras Port Trust United Labour Union for payment of 21 days minimum guaranteed wages to the 27 vacuator workers is justified and if not, to what relief they are entitled to?"

5.9. The said dispute was taken on file by the CGIT as I.D. No. 309 of 2004 and notice was ordered to the Management. The workmen filed a claim statement dated 28.3.2004, to which the Management filed a counter statement dated 22.6.2004. Before the CGIT, on behalf of the workmen, M/S.P.Mlaichamy and M.Shamsudeen were examined as W.W.1 and W.W.2 and on their side nine documents were filed and marked as Exx.W1 to W9 and on the side of the management, one G.Ponnusamy was examined as M.W.1 and eleven documents were filed and marked as Exx.M1 to M11.

5.10. Before the CGIT, the contention of the Management was that the allegation of the workmen that Vacuator Workers were employed from 1976 and they were technical persons and taken into service after trade test was denied. It was stated that Vacuator Workers were engaged only to help the Engineering personnel of the Management and they were never designated as Nossilman, Tank Cleaner, Tank Supervisor, etc.

5.11. It was stated that the earlier award in I.D. No. 35 of 1984 was modified by this Court by order dated 24.12.1998. In that order, it was stated that the 124 Vacuator Workers remaining in the cadre of Handling Mazdoor, if they are willing, and as and when vacancy arises in the Engineering Department, with the sanction of the Government of India and subject to the rules of reservation, can be accommodated.

Since No. vacancy arose in the Engineering Department, it was not possible for the Management to absorb any of the Vacuator Workers. At the time of earlier reference there were 191 Vacuator Workers covered by the industrial dispute and as per the agreement between the parties, those workers were paid only 16 days minimum guaranteed wages.

5.12. It was stated that during the pendency of the industrial dispute, a voluntary retirement scheme was introduced in the year 1985 to retrench the workmen of the Management in Madras Harbour. As per that scheme, 67 Vacuator Workers opted for voluntary retirement and left the service after receiving compensation. Thereafter, only 124 Vacuator Workers remained and since No. more vacuator machines were operated by the Management in the Madras Harbour, a settlement u/s 18(1) of the Industrial Disputes Act was arrived at on 4.7.1988 between the Management and the Transport and Dock Workers Union, which was the recognised trade union. By the said settlement, the Vacuator Workers were to be treated as regularised Handling Mazdoors of the Management in Madras Harbour with the scale of pay prescribed and 21 days minimum guaranteed wages were to be paid, if they opt for the same.

5.13. It was stated that out of 124 vacuator workers, 97 voluntarily opted to be treated as regularised Handling Mazdoors, while the remaining 27 vacuator workers refused to do so despite repeated requests made by the Management. Since 27 vacuator workers did not give requisite consent, it was presumed that they were not willing to do any of the works relating to Handling Mazdoor. The mere pendency of I.D. No. 35 of 1984 before the CGIT will not preclude the Management. It was also stated that those 27 vacuator workers have formed a group of their own and were only performing light work and, therefore, the question of grant of any parity with other workers in terms of the settlement will not arise.

5.14. It was also stated in paragraph [9] of the counter statement, wherein six names of workers are given, that only those six workers remain on roll and have not opted to work as per the settlement dated 4.7.1988 and, therefore, the claim made by the workmen is without justification and they prayed for dismissal of the industrial dispute.

5.15. The CGIT held that during the pendency of the dispute it gave advise and pursuant to the same, the members of the Union gave option by individual letters under Ex.W6 and the settlement dated 4.7.1988 does not bar any subsequent option and therefore, the Tribunal held that the workmen are eligible for the same relief as per the settlement dated 4.7.1988 for getting 21 days minimum guaranteed wages. But since they opted to do all works as per the advise from 1.11.2001, the claim was restricted only from 1.11.2001.

6.1. It was contended by the Management that the award was illegal on the ground that the CGIT ought not to have acted based on the memo filed in the claim petition.

It was also contended that the port operations at the Chennai Port have been closed and workers are only paid idling wages. As per the negotiation with the major recognised union, the workmen were categorised as additional Category ''C'' employees employed for the work of collecting spilled grains, etc., and thereafter, on the assurance of the Union, the Management offered an option form asking them to do all other heavy work for wages and excepting 27 Vacuator Workers all others have exercised option to do heavy work, and the workmen herein alone refused to do heavy work and therefore, they are not entitled to same wages as that of other workers and the workmen were given light work because of their refusal to do other work.

6.2. It was also stated that the port operations and the administrative works of the Management at Chennai Port were closed from 31.7.2000 and the Management was also forced to vacate the harbour premises. The workmen were directed to mark their attendance at the Egmore godown with effect from 1.7.2001. Since there was No. port operation from 2000 onwards, the workmen are paid idling wages. The management has offered a voluntary retirement scheme, which they have not accepted.

7. Countering the stand of the Management, the workmen contended that as per Exx.W8 and W9 it was clearly proved that they were doing the same work as that of the other workers under the settlement dated 4.7.1988 and, therefore, they cannot be paid any lesser wages.

8. But in the present case, the union, which exposes the case of the workmen, advised the workmen to file a memo agreeing to abide by the terms of the settlement and on the advise of the CGIT, only on 1.11.2001 they gave option to perform all works as per the settlement deed dated 4.7.1988 and, therefore, the settlement which is u/s 18(1) of the Industrial Disputes Act cannot have any direct application. The settlement contemplates in paragraph 1(b) a willingness form as per Appendix-II, which is as follows:

1. b. Each male worker will be advised to state his willingness in a form (Appendix-II) prescribed by the Administration to perform all types of heavy manual labour, either individually or in small groups or in gangs, including the tasks, specified above, as may be assigned from time to time, by the FCI Administration, according to exigencies of work.

The administration agrees that all these who submit their willingness in the prescribed form from a date to be specified by the administration will be:

i.designated as "Handling Workers" and allowed the pay scale, currently applicable to "Loaders", under the existing structure of pay scales, viz., Rs. 585-840. ii.their pay will be fixed in the next higher stage of the said scale of pay, if the current pay is not a stop in the said pay scale, wherever applicable. iii.Such of those who are classified as ''B'' category workers will be classified as ''A'' category workers and such of them

who are classified as ''C'' category workers will be classified as ''B'' category workers with all attendant benefits currently allowed to ''A'' and ''B'' category workers.

At the end of 3 months, the Management agrees to re-classify the workers left over in the ''B'' Category as ''A'' Category. They will however be confirmed in ''A'' Category only on satisfactory performance." As can be seen from the term, it is only those workers who have given their willingness are to be considered for the purpose of grant of scale of pay as Loaders.

9. Despite the fact that the workmen were covered by the settlement, it is they who did not give their willingness and they were denied the wages on a par with the others and after the workmen filed a claim u/s 33-C(2) of the Industrial Disputes Act, they were given advise by the CGIT to submit the option form and, therefore, the CGIT, in the absence of any prohibition fixing time limit for grant of willingness, extended the benefit of settlement to these workmen also, but very correctly held that they are not liable for any past payment.

This Court does not find any illegality or infirmity in the award passed by the Tribunal. Hence, W.P. Nos. 6311 of 2006 and 15869 of 2009 stand dismissed. In the light of the fact that the award has been upheld, the Petitioner in W.P. No. 3964 of 2007 will have to workout his remedy in the manner known to law and that writ petition is disposed of accordingly. No. costs.