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Lakshmi Machine Works Limited, Coimbatore Vs Presiding Officer, Labour Court, Coimbatore and Another

Court: Madras High Court

Date of Decision: June 7, 2010

Acts Referred: Industrial Disputes Act, 1947 â€" Section 17B, 2, 25F

Citation: (2011) 1 LLJ 566

Hon'ble Judges: R. Banumathi, J; B. Rajendran, J

Bench: Division Bench

Advocate: Sanjay Mohan and S. Ramasubramaniam and Associates, for the Appellant; R. Thanjan, for the Respondent

Final Decision: Allowed

Judgement

R. Banumathi, J.
This writ appeal arises out of the order of learned single Judge dated August 17, 2000 made in W.P. No. 8865/1993

confirming the award of the Labour Court dated November 24, 1992 made in I.D. No. 294/1991 ordering reinstatement of the 2nd Respondent

along with back wages.

2. The brief facts are that the 2nd Respondent - V. Dharmarajan was appointed as Craftsman Apprentice in the Appellant Management for a

period of three years. From January 1, 1985 to December 31, 1987. The 2nd Respondent has undergone the training period during which he was

paid the amount of Rs. 175/-per month as stipend, Rs. 200/- per month for the 2nd year and Rs. 225/- per month for the 3rd year. The

apprenticeship was for a period of three years. The case of the 2nd Respondent is that without following the procedure as contemplated under the

provisions of Industrial Disputes Act (in short, ""I.D. Act""), the Appellant Management has terminated him. The 2nd Respondent had raised the

Industrial Dispute before the Labour Court, Coimbatore in I.D. No. 294/1991.

3. The Management resisted the dispute contending that the 2nd Respondent did not work or undergo training to the satisfaction of the

Management and that he was frequently applying leave and during the period of three years, most of his time was spent on leave. Further case of

Management was that only based on the requisition of the 2nd Respondent (dated April 4, 1988) the Management has permitted the 2nd

Respondent to undergo training for a further period of one year i.e. from April 15, 1988 to April 14, 1989. Further case of Management is that on

completion of one year training with effect from April 14, 1989, the account of the 2nd Respondent was settled on April 22, 1989 and that the 2nd

Respondent''s apprenticeship period came to an end in two spells and the Management was not obliged to provide him with any employment.

4. Before the Labour Court, both the Workman and the Management adduced oral and documentary evidence. Upon consideration of the

evidence, the Labour Court held that after the training was extended, in the second spell of period i.e. from April 15, 1988 to April 14, 1989, the

2nd Respondent was on temporary employment and that his termination would amount to retrenchment in violation of the provision ''"Section 25-F

of the I.D. Act. Pointing out that the 2nd Respondent was a workman within the meaning of Section 2(5), the Labour Court has ordered

reinstatement of the 2nd Respondent and also ordered back wages.

5. Challenging the award of the Labour Court, the Management filed writ petition in W.P. No. 8865/1993. The learned single Judge held that

when the Management has chosen to extend the apprenticeship by one more year and when it is not the case of Management that even after

extension of one more year, the 2nd Respondent did not undergo training to the satisfaction of the Management and on those findings, the learned

single Judge confirmed the finding of the Labour Court that the termination amounted to retrenchment in violation of the provisions of Section 25F.

By the impugned order dated August 17, 2000, the learned single Judge confirmed the award of the Labour Court, which is the subject matter of

challenge in this writ appeal.

6. Challenging the order of the learned single judge, the learned Counsel for the Appellant Mr. Sanjay Mohan submitted that the learned single

Judge did not keep in view the fact that the 2nd Respondent''s apprenticeship/ training period came to an end on December 31, 1987 and only at

the request of the 2nd Respondent, he was taken for a specific period of apprenticeship from April 15, 1988 to April 14, 1989. The learned

Counsel for the Appellant Management would further contend that when the 2nd Respondent was taken as a trainee afresh, there was no

continued employment to the 2nd Respondent and the service of the 2nd Respondent/workman came to an end as a result of the non-renewal of

the contract of employment, which would clearly fall within the first Part of Section 2(oo)(bb) of I.D. Act and while so both the Labour Court and

the learned single Judge were not right in ordering reinstatement with back wages.

7. We have heard Mr. Thanjan, learned Counsel appearing for the 2nd Respondent. The learned Counsel for 2nd Respondent submitted that after

one year period of apprenticeship, the 2nd Respondent was paid salary and not mere stipend and the Labour Court has rightly held that during the

second spell of employment, the 2nd Respondent was a temporary employee and that he was a workman within the meaning of Section 2(5) of the

Act. The learned Counsel for the 2nd Respondent would further submit that upon appreciation of oral and documentary evidence, the Labour

Court has passed the award ordering reinstatement with back wages and when the award of the Labour Court does not suffer from any perversity

or error of law, the High Court cannot interfere with the award passed by the Labour Court.

8. We have carefully considered the submissions of both the counsels, the award of the Labour Court and the order of the learned single Judge.

9. There is no dispute that the 2nd Respondent had been taken as Craftsman Apprenticeship for a period of three years from January 1, 1985.

First two years of apprenticeship was from January 1, 1985 to December 31, 1987. Equally there is no dispute that in the third year the 2nd

Respondent was able to attend training only for 45 days due to his continued ill-health. From Exhibit M-4, it is seen that only based upon letter of

requisition of the 2nd Respondent to grant him the facility to undergo the training for a further period of one year with effect from April 15, 1988

and he was allowed to undergo training for a further period of one year.

10. Exhibits W-1 to W-11 are the slips for payment of amount to the 2nd Respondent during the training period. Based upon Exhibits W-1 to W-

11, the Labour Court arrived at the conclusion that during the period of training, the 2nd Respondent was paid the salary and not stipend. It is seen

from Exhibit M-2 that the 2nd Respondent was permitted to undergo apprenticeship training in the Appellant Management for a period of three

years. In Exhibit M-2, it is also clearly indicated that during the training period, the 2nd Respondent will be paid monthly stipend from January 1,

1985 to December 31, 1985 at Rs. 175/- per month, from January 1, 1986 to December 31, 1986 at Rs. 200/- per month and from January 1,

1987 to December 31, 1987 at Rs. 225/- per month. In our considered view, referring to Exhibits W-1 to W-11, the Labour Court was not right

in saying that the 2nd Respondent was paid only the salary and not the stipend. Such finding of the Labour Court is not in consonance with Exhibit

M-2, whereby the Management stated that the 2nd Respondent would undergo practical training on payment of monthly stipend. The Labour

Court brushed aside Exhibit M-2 and erred in ignoring the contents in Exhibit M-2.

11. The Labour Court further held that for the second spell of training i.e. April 15, 1988 to April 14, 1989, the 2nd Respondent was on

temporary employment and that the termination was in violation of Section 25-F and was contrary to the well established procedure. As rightly

submitted by the learned Counsel for the Appellant-Management, the 2nd Respondent was granted the facility to undergo further training for a

period of one year based upon his own request (Exhibit M-4). In Exhibit M-4, the 2nd Respondent has clearly stated that from February 20,

1987, he was on leave for about ten months due to his ill-health and that he prayed to allow him to undergo further training in the Appellant-

Management. Exhibit M-4 reads as under:

Vernacular portion deleted

12. By reading of Exhibit M-4 it is evident from Exhibit M-4 that only at the request of the 2nd Respondent to undergo further training, the

Appellant-Management granted the facility of further training for a period of one year. It is seen from Exhibit M-5 that the 2nd Respondent was

granted the facility to undergo'' apprenticeship training for a period of one ear from the date of joining and during that period he would be paid

stipend of Rs. 400/- per month. While so, the Labour Court erred in saying that during the second spell, the 2nd Respondent was on temporary

employment and not on continued treatment. Even in Exhibit M-5, the Management has made clear that on completion of apprenticeship training,

the 2nd Respondent, would be relieved without notice or compensation and in case of successful completion of his training, the Management may

consider his case for absorption, if any regular vacancy was available at that time subject to the suitability.

13. From the submissions of the learned Counsel for the Appellant-Management and the counter affidavit filed by the Management in I.D. No.

294/1991, it is seen that on completion of training on April 14, 1989, the accounts of the 2nd Respondent were settled on April 22, 1989 and that

his employment was not renewed.

14. The Labour Court has held that Section 2(oo)(bb) of the I.D. Act would not apply on the ground that the employment itself was continued

even after his termination and that there was violation of the provisions of Section 25-F in terminating the services of the 2nd Respondent. As

pointed out earlier, the 2nd Respondent was engaged as Craftsman Apprenticeship from January 1, 1985 to December 31, 1987. During the 3rd

year of apprenticeship, the 2nd Respondent worked only for 45 days and therefore there is no question of continued employment.

15. As per First Part of Section 2(oo)(bb), if the services of the workman is allowed to get terminated by non-renewal of the contract of service, it

would not amount to retrenchment as defined in the Act. Section 2(oo)(bb) of the I.D. Act reads as under:

2. Definitions.-....

(oo) ""retrenchment"" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action but does not include-

(a) ....

(b) ....

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the

workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

16. As pointed out earlier, on completion of training of the 2nd Respondent on April 14, 1989, his accounts were settled on April 22, 1989 and

therefore there was non-renewal of the contract of employment/apprenticeship. The offer of employment made in Exhibit M-5 was provisional

subject to the vacancy available at that time and subject to the suitability of the 2nd Respondent. The Labour Court erred in finding that the

termination of the 2nd Respondent amounted to retrenchment in violation of the provisions of Section 25-F of the Industrial Disputes Act (in short,

I.D. Act""). The learned single Judge was not right in saying that the Management has not made out a case that the 2nd Respondent did not

undergo training to the satisfaction of the Management. It is not the question of satisfactory completion of the training. On the other hand, it is a

question of non-renewal of the contract of employment/apprenticeship.

17. Learned Counsel for the Appellant-Management has relied upon a judgment of the Division Bench of this Court in the case of V. Ravichandran

and Others Vs. The Management M.R.F. Limited and The Presiding Officer, Labour Court, where in after referring to the various judgments of the

Supreme Court, this Court has held that the termination of service after expiry of probation period on review of work cannot be termed as illegal

and it will not amount to retrenchment and therefore it squarely comes within the ambit of Sub-clause (bb) of Section 2(oo) of the I.D. Act. The

observation of the Division Bench applies to the case on hand.

18. Normally, exercising jurisdiction under Article 226, the High Court would not interfere with the findings of fact recorded by the Labour Court.

But where the findings are perverse, ignoring the material evidence and when the findings borders on perversity, the High Court can certainly

interfere with the findings of the fact recorded by the Labour Court. In our considered view, the Labour Court ignored the material evidence

Exhibits M-2, M-4 and M-5 and the clear terms of appointment of the 2nd Respondent to undergo apprenticeship training. The learned single

Judge was not right in confirming the award of the Labour Court and the order of the learned single Judge has to be set aside and resultantly the

award of the Labour Court is liable to be set aside.

19. As token gesture, learned Counsel for the Appellant-Management has submitted that the Appellant Management is prepared to pay

reasonable ex gratia amount. It was further submitted that so far the Management has paid Section wages u/s 17-B of the I.D. Act to the 2nd

Respondent from 1992 till January 2010 in a sum of Rs. 81,200/-. The 2nd Respondent has been fighting out the dispute from 1991 for nearly two

decades. Having regard to the long pendency of the matter and other facts and circumstances of the case, we deem it appropriate to direct the

Appellant-Management to pay a sum of Rs. 2,50,000/- as ex gratia amount to the 2nd Respondent. The sum of Rs. 81,200/- paid u/s 17-B of the

I.D. Act to the 2nd Respondent is to be deducted from the amount of Rs. 2,50,000/- ordered to be paid as ex gratia amount.

20. In the result, the order of the learned single Judge dated August 17, 2000 made in W.P. No. 8865/1993 confirming the order of the Labour

Court, Coimbatore in I.D. No. 294/1991 is set aside and the writ appeal is allowed. The award passed in I.D. No. 294/1991 is quashed. For the

reasons stated in paragraph No. 19, the Appellant Management is directed to pay a sum of Rs. 1,68,800/- Rs. 2,50,000/- less Rs. 81,200/- paid

u/s 17-B of I.D. Act) to the 2nd Respondent within a period of four weeks from today by way of demand draft drawn in favour of the 2nd

Respondent. In the circumstances of the case, both parties are directed to bear their respective costs. Consequently, the connected W.A.M.P. is

closed.