The Management of Maclellan Vs M. Ravi, The Management of Ford India Ltd. and The Presiding Officer

Court: Madras High Court

Date of Decision: Sept. 23, 2011

Acts Referred: Constitution of India, 1950 â€" Article 136, 226
Industrial Disputes Act, 1947 â€" Section 11A, 17B, 2, 25F, 2A

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S. Ravi, Gupta and Ravi, for the Appellant; Balan Haridoss, for 1st Respondent, S. Ravindran, for T.S. Gopalan and Company for 2nd Respondent, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The Petitioner is the management. They have come forward to file the present writ petition seeking to challenge an award

passed by the third Respondent/Principal Labour Court, Chennai in I.D. No. 480 of 2000, dated 23.12.2008. By the impugned award, the

Labour Court directed reinstatement of the first Respondent with continuity of service, back-wages and other attendant benefits.

2. The writ petition was admitted on 9.4.2009. Pending the writ petition, this Court granted an interim stay. Subsequently, the first Respondent

filed a vacate stay petition in M.P. No. 1 of 2010 together with his supporting counter affidavit dated 18.1.2010. This Court, by order dated

15.7.2010, directed the Petitioner/Management to comply with the provisions of Section 17-B of the Industrial Disputes Act, 1947 (for short, ""the

ID Act"") in paying the last drawn wages and also directed them to deposit 50% of the back-wages to the credit of I.D. No. 480 of 2000. The

amount was directed to be reinvested in a cumulative fixed deposit in any nationalised bank for a period of three years. It is stated by both sides

that the said interim order has been complied with.

3. Heard the arguments of Mr. Ravi of M/S. Gupta and Ravi, learned Counsel for the Petitioner, Mr. Balan Haridoss, learned Counsel for the first

Respondent and Mr. S. Ravindran of M/S. T.S. Gopalan and Company, for the second Respondent.

4.1. The facts leading to the case are as follows: The first Respondent, who was recruited by the Petitioner/Contractor, was doing the work of a

Driver. The second Respondent outsourced the transport service to the Petitioner and in that capacity the first Respondent was employed as a

driver. It is the case of the Petitioner/Management that though he was appointed and confirmed in service on 1.8.1999, he stopped coming to

work, which necessitated the management to send two letters dated 15.2.2000 and 6.3.2000 (though by Certificate of Posting) and thereafter,

straight-away terminated the service of the Petitioner by an order dated 13.3.2000.

4.2. Thereafter, the first Respondent raised a dispute u/s 2A of the Industrial Disputes Act. The contention of the first Respondent was that the

Petitioner was only a name-lender and that he was actually an employee of the second Respondent/company and therefore, his being non

employed was unjustified and he claimed relief of reinstatement with other consequential benefits against the second Respondent. The Conciliation

Officer, as he could not bring about mediation, gave a failure report. On the strength of the failure report, the first Respondent filed a claim

statement before the third Respondent/Labour Court.

4.3. The said dispute was taken on file as I.D. No. 490 of 2000 and notice was ordered to the Petitioner as well as the second Respondent. In the

claim statement, the first Respondent stated that his non employment was illegal and violative of Section 25F of the Industrial Disputes Act and

therefore, he sought reinstatement with all benefits with the second Respondent.

4.4. The second Respondent filed a counter statement disclaiming the relationship between them and the first Respondent, on the ground that they

have outsourced the transport operations with the help of the Petitioner and therefore, there is no employer-employee relationship between the first

Respondent and the second Respondent.

4.5. The Petitioner filed a counter statement dated 10.11.2000 stating that the first Respondent was only their employee and he was engaged for

the purpose of driving the vehicles of the factory owned by the second Respondent and since he had absented himself, he was terminated from

service by invoking Clause 2(b) of the order of appointment.

4.6. Before the Labour Court, the first Respondent examined himself as W.W.1. On the side of the second Respondent, Mrs. Kamali Rajesh,

Manager (H.R.) of the second Respondent was examined as M.W.1. On behalf of the Petitioner, one S. Vijayan, Manager (H.R.) was examined

as M.W.2. On the side of the first Respondent, 21 documents were filed and marked as Exx. W1 to W21 and on the side of the management, 46

documents were filed only by the writ Petitioner and they were marked as Exx.M1 to M46.

4.7. On the basis of this evidence (oral and documentary), the Labour Court came to be conclusion that the first Respondent is an employee of the

writ Petitioner/company and without enquiry the termination has been made. Out of the two letters said to have been sent by the Petitioner, there is

no proof that they were served on the first Respondent. The first rsepondent was terminated by a specific order marked as Ex.M41 (dated

13.3.2000) and inasmuch the termination is covered by Section 2(oo) read with Section 25F of the Industrial Disputes Act and the condition

precedent was not complied with, he is entitled to the relief of reinstatement with back-wages. Challenging the same, the Petitioner has filed the

present writ petition.

5.1. The contention made by Mr. Ravi, learned Counsel for the Petitioner was that ultimately the first Respondent did not know who was his

employer and his entire effort before the Labour Court was it was the second Respondent who was the employer and he cannot suddenly seek

relief against the Petitioner. Without prejudice to the said submission, he submitted that in view of the existence of letters dated 15.2.2000

(Ex.M39) and 6.3.2000 (Ex.M40), the first Respondent could not remain absent thereby making the Petitioner to dispense with his service. He

also stated without prejudice to the above that the question of reinstating the first Respondent with full back-wages is never contemplated for the

misconduct committed by him and if at all, the Labour Court could have granted compensation. He further submitted that the finding of the Labour

Court that it was retrenchment u/s 25F of the Industrial Disputes Act was erroneous, as the specific case of the management was that it was a

termination due to the absence of the first Respondent.

5.2. He also referred to the judgment of the Supreme Court in Municipal Council, Sujanpur Vs. Surinder Kumar, for contending that even in cases

of violation of Section 25F of the Industrial Disputes Act, the Courts have granted only compensation and further the grant of reinstatement even

u/s 11-A of the Industrial Disputes Act was only discretionary and in the facts and circumstances of the case, the Labour Court should not have

granted the relief of reinstatement with back-wages.

5.3. Thereafter, he referred to the judgment of the Supreme Court in U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, for

contending that the grant of back-wages on the finding that the termination was illegal is not automatic and even if the Labour Court does not

exercise the discretion properly, the High Court has inherent powers to interfere with such awards.

5.4. It was contended that a person is not entitled to get something only because it will be lawful to do so and if that principle was applied, the

functions of the Industrial Tribunal shall lose much of their significance and therefore, the Courts which are empowered to adjudicate the lis

between the parties must also apply their discretion in the matter of grant of relief.

5.5. Lastly, the learned Counsel referred to the judgment of the Supreme Court in J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, for

contending that in respect of the claim for back-wages on the question of burden of proof, there is noticeable shift in the approach and the

employee will have to plead before the Labour Court that he was not gainfully employed from the date of termination and though the employee

was not necessitated to prove the negative, it was held that he has to assert on oath that he was neither employed nor engaged in any gainful

business and that he did not have any income and the consequential benefits to be given upon reinstatement and the relief cannot be automatic and

there must be application of judicial mind.

5.6. In that view of the matter, he prayed for setting aside the award passed by the Labour Court.

6.1. Per contra, Mr. Balan Haridoss, learned Counsel for the first Respondent referred to the portion of the award found in page (8) in paragraph

(12), wherein the Labour Court, on the question of the two letters sent by Certificate of Posting, having found that it was a case of termination by

order dated 13.3.2000 and the first Respondent had denied the receipt of the letters, disbelieved that such letters were sent by the management.

Therefore, he stated that since the Labour Court had given a finding of fact, this Court should not interfere with the impugned award.

6.2. He also placed reliance upon a judgment of the Supreme Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, for contending

that the Supreme Court took exception to the Courts granting compensation in the matters of retrenchment and also held that in these days of

unemployment, the Court cannot deprive the workman''s livelihood and the approach of the Courts must be compatible with the constitutional

philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by

entertaining the specious and untenable grounds put forward by the employer, whether public or private.

6.3. He, therefore, submitted that there is no case warranting interference with the impugned award.

7. In the light of the rival contentions, it has to be seen whether the impugned award calls for any interference.

8. In the present case, if the documents produced before the Labour Court by the parties are looked into, the entire controversy to the extent of

80% to 90% revolved around as to who is the employer of the first Respondent. While the first Respondent admitted to latch on himself with the

second Respondent/Principal Employer, the Petitioner, being the contractor and also doing outsourcing work for the second Respondent, took

upon the task in proving that his contract with the second Respondent was not sham and nominal and it was real and it was authorised under the

provisions of the Contract Labour (Regulation and Abolition) Act and he has also produced documents to show that there was a real contract

between them and the second Respondent and that the first Respondent was their employee. In that process they succeeded in convincing the

Labour Court that the first Respondent is only an employee of the Petitioner and not that of the second Respondent. The first Respondent also

wisely did not challenge those findings by filing cross writ petition and contained himself with the impugned award and therefore, that question need

not be gone into once again.

9. If once it is established that the writ Petitioner is the employer of the first Respondent, the next question is whether the non employment of the

first Respondent was justified by leading appropriate evidence before the Labour Court.

10. Though in the order of termination the Petitioner stated that it was due to unauthorised absence, but yet as per the the Standing Orders no

enquiry was held by them. Once no enquiry was held by the employer, they are at liberty to lead evidence before the Labour Court to justify the

non employment. Therefore, it has to be seen whether in the oral evidence let in by them they are able to justify the non employment of the first

Respondent. The evidence of M.W.2 in this regard assumes importance. In his cross-examination, M.W.2, S. Vijayan (Manager # HR) stated that

to his knowledge no letters were given to the first Respondent for his frequent absence. He also stated that before the issuance of termination no

charge sheet was given. He also admitted that no compensation was given to the worker and to prove that he did not come to work properly the

attendance register was not marked by them.

11. No doubt, in the present case, the Labour Court went by the stand of the workman that it was a case of retrenchment u/s 25F of the Industrial

Disputes Act. The term ''retrenchment'' is defined u/s 2(oo) of the Industrial Disputes Act. As per the said section, 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. Since the Petitioner has taken a definite stand that it was a case of dismissal for the misconduct of unauthorised absence, the

Labour Court could not have held that it was a case of retrenchment covered by Section 2(oo) read with Section 25F of the Industrial Disputes

Act and to that extent the counsel for the Petitioner may be justified in stating that the award requires interference. But, at the same time, only for

that purpose this Court is not inclined to remand the matter for afresh consideration on the relief claimed by the first Respondent.

12. The Supreme Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, has held that if for some

reason the arbitrator/adjudicator does not decide the lis between the parties, this Court exercising the power under Article 226 of the Constitution

of India or the Supreme Court under Article 136 of the Constitution of India are not powerless for interfering with the award and the Courts

themselves can grant relief in such matters. Therefore, since necessary ingredients are present in this case to go into the question of non

employment of the first Respondent and the Labour Court has erroneously held that it was a case of retrenchment, this Court is of the view that

such finding was not warranted. But, at the same time, for the purpose of unauthorised absence it has to be seen whether the Petitioner has

acquitted themselves in satisfying the Labour Court on the misconduct committed by the first Respondent.

13. When a full-fledged enquiry is held by the employer and thereafter the matter is brought before the adjudicating form, there is justification to

contend that the Labour Court must have strong reasons to disagree with the findings rendered by the employer. But in a case where the enquiry is

vitiated or for the first time evidence is let in before the Labour Court, then the satisfaction of the misconduct or otherwise is for the Labour Court

and therefore, the standard of proof that is required is much higher than a domestic enquiry forum. This position of law has been clarified by the

Supreme Court in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, .

14. If it is seen in this context then the Petitioner/management has miserably failed to satisfy the Labour Court on the so-called unauthorised

absence of the first Respondent/workman. Though Mr. Ravi contended by referring to the cross-examination of the first Respondent that out of the

two letters he was in receipt of one, a close examination of the said evidence would show that the first Respondent has stated that the first letter

was received by him beyond time and there was no scope for reporting for work and the second letter was never received by him. Therefore, even

if the Labour Court was erroneous in not taking note of the same, but yet the other evidence, namely the evidence of M.W.2, as noted above,

wherein he did not even produce the attendance register to show that there was unauthorised absence and the termination was not preceded by

any specific charge sheet would go to show that no fault can be found with the impugned award.

15. Though the management contended about the burden of proof of the worker not being employed during the pendency of the dispute based

upon the judgment of the Supreme Court, referred to above, in this case, after the writ petition was filed, the workman filed an application for grant

of wages u/s 17-B of the Industrial Disputes Act and the same was also granted by this Court. The condition precedent for grant of last drawn

wages is that the worker will not be gainfully employed elsewhere. Proviso to Section 17-B of the Industrial Disputes Act provides for variation of

the order granting wages in case the workman is gainfully employed. Since the management did not raise any such objection, this Court is not

inclined to consider the said objection in the light of the finding rendered above.

16. The other decisions cited by the counsel for the Petitioner, referred to above, are not apposite or appropriate in this case. On the contrary, the

decision of the Supreme Court in Harjinder Singh case, supra, is more applicable and in that view of the matter, this Court does not think that any

case is made out to interfere with the impugned award.

17. In view of the above, the writ petition stands dismissed. However, there will be no order as to costs. In view of the dismissal of the writ

petition, the first Respondent is entitled to withdraw the amount lying in deposit with the Labour Court and claim the balance from the employer.