(2013) 08 MAD CK 0232

Madras High Court

Case No: W.A. No. 657 of 2007

Commissioner Tiruppur Municipality		APPELLANT
	Vs	
Presiding Officer, Labour Court and Others		RESPONDENT

Date of Decision: Aug. 2, 2013

Citation: (2013) 4 LLJ 67

Hon'ble Judges: T.S. Sivagnanam, J; R. Banumathi, J

Bench: Division Bench

Judgement

R. Banumathi, J.

Challenge in this appeal is the order in W.P. No. 23820 of 2005 (12.01.2007) confirming the order of reinstatement with continuity of service and back wages in I.D. No. 436 of 2001 dated 28.2.2002. 2nd Respondent-C. Chinnappan @ Chinnapalani claims that he worked as night watchman in Appellant Municipality since 27.1.1989 and was working in the permanent post continuously and he was paid monthly salary of Rs. 2,500/- per month. Case of 2nd Respondent is that on 25.8.1998, he was orally terminated from service, without assigning any reason and without following the relevant provisions of Industrial Disputes Act.

2. Alleging violation of provisions of Industrial Disputes Act and also violation of principles of natural justice, 2nd Respondent raised Industrial Dispute in I.D. No. 436 of 2001. Appellant Municipality did not file counter and was set ex-parte. Labour Court passed ex-parte award holding that non-employment of 2nd Respondent was not justified and directing reinstatement of 2nd Respondent with continuity of service and back wages. Challenging the ex-parte award, Appellant Municipality has filed W.P. No. 23820 of 2005.

3. 2nd Respondent sent representation to Appellant Municipality for reinstatement as per the award of the Labour Court and thereafter, filed Computation Petition in C.P. No. 826 of 2003 before the Labour Court claiming back wages to the tune of Rs.

1,50,577/-. In the said Computation Petition, Appellant Municipality was set ex-parte and the Computation Petition was allowed. 2nd Respondent claim to have sent letter to the Appellant Municipality for payment of the amount computed by the Labour Court. According to 2nd Respondent, there was no reply. 2nd Respondent filed application before the State Government for recovery of that amount and after issuing show cause notice, Government issued G.O.Ms. No. 251 dated 23.2.2005 to the District Collector, Coimbatore to recover the amount of Rs. 1,50,577/- from the Appellant Municipality, who in turn issued order dated 11.4.2005 to the Tahsildar, Tiruppur to recover the amount of Rs. 1,50,577/- from the Appellant Municipality. 2nd Respondent had also filed two other Computation Petitions in C.P. No. 427 of 2004 (Rs. 17,500/-) and C.P. No. 1065 of 2004 (Rs. 12,500/-) and both the Computation Petitions were allowed by the Labour Court on 22.6.2004 and 15.9.2005 respectively. After G.O.Ms. No. 251 dated 23.2.2005 was passed, W.P. No. 23820 of 2005 contending that the award passed in I.D. No. 436 of 2001 is a non-speaking order and that it suffers from non-application of mind and is liable to be quashed. Case of Appellant Municipality is that the name of 2nd Respondent was not found in the list and he could not be considered for appointment and while so, the award of the Labour Court for reinstatement of the 2nd Respondent cannot be considered.

4. Upon consideration of rival contentions, the learned single Judge held that by virtue of G.O.Ms. No. 251 dated 23.2.2005, the amount was ordered to be recovered from the Appellant Municipality and therefore, question of setting aside the award on the ground of non-giving of any reason in the ex-parte award cannot be considered Being aggrieved by the dismissal of the Writ Petition, Writ Appeal is filed. The learned single Judge held that there is a delay of three years in filing the writ petition and observing that the delay in approaching the Court is not reasonable the learned single Judge dismissed the writ petition.

5. Mr. V. Karthick, learned counsel appearing for appellant Municipality contended that the award passed by the Labour Court is a non-speaking award and the impugned award suffers from non-application of mind. The learned counsel contended that the single Judge ought to have seen that even though the 2nd respondent has stated in his evidence that he was a permanent employee of the appellant Corporation he has not filed any document to substantiate his case and the only document filed by the second respondent was a letter sent by the second respondent to the appellant and the acknowledgment card, which is not the sufficient proof to prove employment. The learned counsel further submitted that the writ Court ought to have seen that the petitioner had set out the sequence of events that preceded the filing of the writ petition and ought to have considered the entire facts and prevailing situation and given an opportunity to the appellant to prove its case before the Labour Court.

6. Learned counsel for the workmen submitted that inspite of repeated notices both in the Industrial Dispute and also in the Computation petitions the Management has not chosen to appear both in the Industrial Dispute and also in the Computation Petition and the Management had not taken immediate steps for quashing the award within a reasonable period. The learned counsel further submitted that only after G.O.Ms. No. 251 dated 23.2.2005 was issued, the appellant Municipality had filed Writ Petition and in these circumstances, taking note of the unreasonable delay the learned single Judge rightly dismissed the petition and there is no reason warranting interference.

7. In matters, where the Management was absent, it is the duty of the Labour Court/Industrial Tribunal to consider and give reasons for passing of the award. For ordering reinstatement with back wages and continuity of service, there must be a judicial application of mind and the order must be based on acceptable materials. But the award passed by the Labour Court is not a speaking Order inasmuch as it neither considered the questions whether the 2nd respondent was employed as a workman nor given the reason for passing the award.

8. In Tamil Nadu Housing Board, Madras Vs. The Presiding Officer, II Additional Labour Court, Madras and Another, , Division Bench of this Court considered Rule 48 of the Tamil Nadu Industrial Disputes Rules, 1958 as well as an ex-parte award passed by the Labour Court and held thus:

Thus, from the aforesaid award, it is clear that the Labour Court has not considered the evidence on record. Event though the appellant remained absent, nevertheless, there was evidence on record. There were the statements of the case pleaded by the petitioner and the respondent. The Labour Court was required to consider and give reasons for passing the award in favour of the 2nd respondent workman. As no such reason is given, not even the facts of the case are stated, the award cannot at all be considered to be a speaking order, as such it cannot be sustained. The Presiding Officer is an Officer of the District Judge grade. He should not have decided the dispute in such manner. There is no judicial application of mind of the Presiding Officer of the Labour Court. Such exercise of jurisdiction causes great and incalculable damage to the parties and also to the administration of justice. The Presiding Officer would do better, if he discontinues such a habit of disposal of cases.

9. Referring to the above judgment of the Division Bench and also referring to the judgments of the Kerala High Court in FACT Employees Association Vs. FACT Ltd., and the Andhra Pradesh High Court in Dawood Khan Vs. Labour Court and Another, , Justice P. Sathasivam, (as His Lordship then was), in The Chairman and Managing Director, Tamil Nadu Minerals Ltd., Chennai 5 Vs. The Presiding Officer, Industrial Tribunal, Chennai 104 and two others, , held thus:

.... It is clear that in a matter like this, even if the respondent was absent, it is the duty of the Labour Court/Industrial Tribunal to consider and give reasons for passing the award. Inasmuch as the Presiding Officer is an officer of the District Judge grade as observed by their Lordships in the Division Bench, he should not have decided the dispute in such a manner. There must be a judicial application of mind and his order must be based on acceptable materials. By applying the ratio laid down in the Division Bench decision, the impugned order cannot be sustained.

10. Reference could also be made to the judgment of another decision of learned single judge in Management of Tiruttani Co-operative Sugar Mills Ltd. Vs. Presiding Officer, Industrial Tribunal and Another, .

11. Rule 22 of the Industrial Disputes Act came up for consideration before the Supreme Court in a judgment reported in Agra Electric Supply Co., Ltd. Vs. The Labour Court, Meerut and Another, , wherein the Honourable Supreme Court held as under:

That provision which, clearly enjoins the Labour Court or Tribunal in the circumstances mentioned therein to proceed with the case in his absence either on the date fixed or any other date to which the hearing may be adjourned coupled with the further direction and pass such order as it may deem fit and proper, clearly indicates that the Tribunal or Labour Court should take up the case and decide it on merits and not dismiss it for default.

12. It is clear from the above judgments that even though the Management remained absent, the Labour Court was required to consider the dispute and pass award giving reasons and such award should be a speaking order on merits and based on materials available before the 1st respondent. Before the Labour Court, Management was set ex-parte and the award is a non-speaking award. In the Labour Court, on the side of the workman, workman was examined as W.W. 1 and letter sent by the 2nd respondent to the appellant Management dated 3.10.2000 and the acknowledgement card were marked as Exs. W. 1 and W. 2. The Labour Court after stating that W.W. 1 was examined and that Exs. W. 1 and W. 2 were marked and that the claim is proved, passed an award directing the appellant Municipality to reinstate the 2nd respondent with back wages, continuity of service and other attendant benefits.

13. In our considered view, the award passed by the Labour Court is a non-speaking award. Notwithstanding that the Management did not appear, a duty was cast upon the Labour Court to consider the question whether the plea of the 2nd respondent that he was employed as a casual labourer by the Municipality and that in violation of the rules he was terminated. But there is no such application of mind by the Labour Court and the award is a non-speaking award. Based on the ex-parte award and also the orders passed in the Computation Petitions, G.O.Ms. No. 251 dated 23.2.2005 was passed. Only thereafter the appellant Municipality has filed the writ

petition challenging the award and there was a delay of three years in filing the writ petition. The learned single Judge appears to have taken note of the Government Order in G.O.Ms. No. 251 dated 23.2.2005 and the delay in filing the writ petition. Of course, there is a delay in filing the writ petition, but the delay cannot be the reason to sustain a non-speaking award passed by the Labour Court. Such non-speaking award would have implications on the Management, more so, when the appellant is a civic body like Municipality. In view of the fact that the appellant Municipality has not taken prompt steps, the interest of justice would be met by awarding costs in favour of the second respondent and also directing the appellant Management to deposit a sum of Rs. 1 lakh to the credit of I.D. No. 436 of 2001 on the file of Labour Court, Coimbatore. For the foregoing reasons, the order of the learned single Judge dated 12.1.2007 in W.P. No. 23820 of 2005 is set aside and the writ appeal is allowed. The impugned award of the Labour Court, Coimbatore in I.D. No. 436 of 2001 dated 28.2.2002 is quashed with costs of Rs. 10,000/- payable to the 2nd respondent by the appellant Management by way of demand draft within a period of four weeks from the date of receipt of copy of this judgment. The appellant Municipality is also directed to deposit Rs. 1 lakh to the credit of I.D. No. 436 of 2001 on the file of Labour Court, Coimbatore. On payment of costs and also deposit of the amount of Rs. 1 lakh, the Labour Court, Coimbatore shall restore I.D. No. 436 of 2001 to its file and decide the matter on merits within a period of six months thereafter. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.