

(2011) 12 MAD CK 0076

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No"s. 10182 of 2008, W.P. (MD) . No. 4953 of 2011 and M.P. (MD) . No"s. 1 of 2008 and 1 of 2011

The Management, Thogamalai
Panchayat Union, Thogamalai

APPELLANT

Vs

The Presiding Officer, Labour
Court, Tirruchirappalli Post and
District and S. Sukumaran

S. Sukumaran Vs The
Commissioner Thogamalai
Panchayat Union Thogamalai

RESPONDENT

Date of Decision: Dec. 21, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Industrial Disputes Act, 1947 - Section 17A, 2, 25F, 2A(2)
- Tamil Nadu Industrial Disputes Rules, 1958 - Rule 48(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Saravanakumarin in W.P. MD Nos. 10182 of 2008 and MRs. J. Padmavathy Devi in W.P. MD. No. 4953 of 2011, for the Appellant; J. Padmavathy Devi for R2 in W.P. (MD) Nos. 10182 of 2008 and Mr. M. Govindan, SPL. GP. in W.P. (MD). No. 4953 of 2011, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. In W.P. (MD).No. 10182 of 2008, the petitioner is the Thogamalai Panchayat Union represented by its Commissioner. In this writ petition, the Panchayat Union has challenged an order passed in I.A. No. 1 of 2007 in I.D. No. 146 of 2001 dated

10.07.2008.

2. By the impugned order, the first respondent Labour Court dismissed the interim application filed by the petitioner's Panchayat Union to condone the delay of 98 days in setting aside the exparte award.

3. The said writ petition was admitted on 12.11.2008. Pending the writ petition, this Court granted an interim stay. Subsequently, even while the writ petition was pending, the second respondent workman filed W.P. (MD). No. 4953 of 2011 seeking for a direction to implement the award dated 07.09.2006 in I.D. No. 146 of 2001 within a reasonable time. When that writ petition came up on 27.04.2011, this Court ordered notice regarding admission.

4. It transpires that the main writ petition filed by the Management of the Panchayat Union was dismissed by this Court on 29.08.2011 for want of prosecution. But, at the same time, the other writ petition filed by the workman was subsequently, adjourned was allowed on 08.09.2011.

5. The management filed two applications in M.P.(MD).Nos.2 and 2 of 2011 in those writ petitions to restore both the writ petitions and it was allowed by a common order dated 11.11.2011. Both the writ petitions were restored to file.

6. In the meanwhile, the management filed M.P.(MD).No. 1 of 2011 to receive a letter dated 02.08.2011 sent by the District Manager, TASMAL, Karur as an additional document to be relied upon in W.P. (MD). No. 10182 of 2008.

7. For convenience sake, the parties are referred to as the management and workman as the case may be. It is seen from the records, the workman claimed that he was employed as an Assistant Hand Pump Fitter with effect from 03.02.1997. He claims that his monthly salary was fixed at Rs. 1,400/-. He was removed from service with effect from 23.10.1997.

8. The workman raised an Industrial Dispute before the Assistant Commissioner of Labour (Labour Court), Dindigul. The said officer after due notice to the Panchayat Union could not bring about conciliation, gave a failure report dated 21.06.2001. On the strength of the failure report, the workman filed a claim statement before the Labour Court dated 25.09.2001. The Labour Court registered the dispute in I.D. No. 146 of 2001 and issued notice to the management.

9. The management filed a counter statement dated Nil (June 2002). In the counter statement it was stated that the petitioner cannot invoke the provisions of Section 2A(2) of the Industrial Disputes Act (hereinafter referred as the Act) for raising the dispute as it was not a case of termination. The Panchayat Union has got many Borewell pumps for providing water supply and there are regular permanent employees engaged to maintain the Bore well pumps. During monsoon season and increase flow of water in the rivers and canals, the utilisation of water will be optimum and there will not be much complaint about the maintenance. But, during

summer and water starved seasons, the usage of the bore well pumps increase. It was only during that time, the workman was engaged and his engagement was not on a regular basis and depended upon the exigencies. He was not designated as an hand pump fitter. That he was drawing a sum of Rs. 1,400/- per month was denied. It was also stated that no person, who were similarly placed as that of the Workman are continued to be employed in the respondent Union.

10. Before the Labour Court, on behalf of the workman, he had examined himself and filed 8 documents which were marked as Ex.W1 to Ex.W8. The Labour Court over ruled the objections regarding non maintainability of the Industrial Dispute and also held that he was a workman coming within the meaning of Section 2(s) of the Act. On the question of workman's status, the Labour Court held that he had completed 240 days within one year. The Labour Court recorded that no evidence was let in by the management. The management did not instruct their counsel to pursue the case effectively. The counsel for the management also reported no instructions. Therefore, they were set exparte. It was proved that the workman had satisfied the definition of Section 2(s) of the Act and was eligible to get the benefits of Section 25-F of the Act.

11. In view of the fact that the termination of the workman was opposed to the principles of natural justice and the mandatory conditions precedent were not complied with, he was directed to be reinstated with backwages and other attendant benefits. Thereafter, the management filed an application under Rule 48(2) of the Tamil Nadu Industrial Disputes Rules, 1958 in I.A.No. 1 of 2007 to condone the delay of 98 days in filing the petition to set aside the exparte award dated 07.09.2006.

12. In the affidavit filed in support of the condone delay petition, it was stated that the management representative met the advocate on 25.01.2007 along with the relevant papers. But by then, the exparte award came to be passed. In fact on the date of hearing, the Commissioner was busy with local body elections, which was held from 01.09.2006. On 06.09.2006 the Commissioner had participated in the District Collector's review meeting.

13. The Labour Court held that there was no proof that the commissioner had participated in the review meeting before the District Collector on 06.09.2006 pursuant to the local body elections. Since the delay had not been explained and the counsel for the management himself had reported no instruction, the delay cannot be condoned. There were no valid grounds to condone the delay. In that view of the matter, the interim application was dismissed on 10.07.2008.

14. In a condone delay application, the Labour Court will have to see the bonafide claim made by parties and to find out whether there were sufficient reasons for condoning the delay.

15. In the present case, it is well known fact that the local body elections were held during 2006. Being the Commissioner of Panchayat Union, his services will be required by the District administration as the election concerns the Panchayat Union also. Considering the delay was only 98 days, the Labour Court was wrong in refusing to condone the delay and hence this Court, is constrained to set aside the order made in I.A.No. 1 of 2007 in I.D. No. 146 of 2001, dated 10.07.2008. The I.D. No. 146 of 2001 stands restored to the file of the Labour Court, Thiruchirappalli.

16. The counsel for the Workman relied upon judgments of the Supreme Court reported in [Sangham Tape Company Vs. Hans Raj](#), to contend that after a publication of the award, the Labour Court become functus officio.

17. The two decisions relied on by the petitioner has no relevance to the case on hand. The Tamil Nadu Industrial Disputes Rules, 1958 provides for Rule akin to Order IX Rule 13 CPC. The subsequent judgment of the Supreme Court in Radhakrishna Mani Tripathi v. L.H. Patel and another reported in 2009 (2) SCC 815, it was held that if there are rules provided for setting aside an exparte award, then notwithstanding the publication of the award in terms of Section 17-A of the Industrial Disputes Act, the Labour Court has power to restore the dispute after setting aside its earlier exparte award.

18. Since the order dated 10.07.2008 is set aside, the other writ petition i.e. W.P. (MD). No. 4953 of 2011 seeking to enforce the award is not maintainable and it has to be dismissed. Hence, the writ petition being W.P. (MD). No. 4953 of 2011 will stand dismissed.

19. When once the interim application to set aside the exparte order dated 07.09.2006 is allowed, thereafter restoring the Industrial Dispute is only an automatic process. This Court had already condoned the delay. In stead of remanding the matter to the Labour Court again and in the light of the subsequent developments, this Court had decided to dispose of the matter in this Court itself especially due to the fact that the management brought to light a new fact through M.P.(MD).No. 1 of 2011 and which was allowed by this Court on 12.12.2011.

20. In the affidavit filed in support of the application M.P.(MD).No. 1 of 2011, the Commissioner of the Panchayat Union had stated that they came to know that the workman was employed in the TASMACH with effect from 29.11.2003 as a salesman and he was working at the shop No. 5065 situated in Potharavathanpatti village, Krishnarayapuram Panchayat, Karur District union and at present he is working in that shop with effect from 14.10.2009.

21. These facts are not be denied by the counsel for the workman though time is given to controvert the same. Since the order issued by the District Manager, TASMACH Karur dated 05.07.2011 provides that the workman has been working from 29.11.2003 as Salesman, there is no reason to doubt the same.

22. It was rather unfortunate that the workman where he filed the writ petition being W.P. (MD). No. 4953 of 2011 seeking to enforce the exparte award sworn by him on 28.04.2011, he had not mentioned about his alternative employment. But, he merely wanted enforcement of the award. By way of an interim application, he sought for a direction to pay monthly salary as an interim measure pending disposal of the writ petition. It is rather shocking that the worker had suppressed a vital information about his employment in a State owned Corporation.

23. In the light of these facts it has to be seen whether the Industrial Disputes requires any fresh disposal by the Labour Court. Admittedly, the workman was only engaged on with employment during the period from 03.02.1997 to 23.10.1997. The total number of days available is 263 days and if deducted the days of weekly two offs, he is engaged only 203 days. Though the Workman had asserted that he had worked 240 days before the Labour Court, he has not produced any evidence except his assertion made in the pleadings. He has not summoned the salary register from the Panchayat Union.

24. On the other hand, the Panchayat Union has taken a definite stand that the workman was not a regular employee and he was a casual labourer and he was engaged only during exigency circumstances. In such circumstances, the Labour Court ought to have called for proof regarding the completion of 240 days of service of the workman before it could consider the case for grant of reinstatement with backwages and continuity of service.

25. The burden proving 240 days of service, will initially vest only on the workman. In the present case, there is no evidence to prove that he had worked for 240 days. The onus to prove completion of 240 days lies only on the workman as held by the Supreme Court in the following judgments:

i) *Batala Cooperative Sugar Mills Limited Vs. Sowaran Singh* reported in 2005 8 SCC 481;

ii) [Surendranagar District Panchayat Vs. Dahyabhai Amarsinh](#), ; and

iii) [Surendranagar District Panchayat and Another Vs. Jethabhai Pitamberbhai](#), .

26. Further after he was stopped from work in the year 1997, the Workman had moved the authorities by raising an Industrial Dispute only during the year 2001. The failure report itself was given in June 2001. The workman has not satisfactorily explained as to the delay in moving the Forum after a period of four years. In case of violation of Section 25-F of the Act, the Labour Court can only to restore a person or place a person in the same status in which he has held by him lastly as already held by the Supreme Court in [The State Bank of India Vs. Shri N. Sundara Money](#), .

27. Assuming that the workman was employed for 240 days during a period of 12 calendar months, it is not automatic that he will be entitled to get wages for the entire period of his non employment and it depends upon the facts and

circumstances of each case

28. The Supreme Court vide its Judgment in [Rajasthan Lalit Kala Academy Vs. Radhey Shyam](#), held that even if there is a invalid termination due to infraction of Section 25-F of the Act, though the relief of reinstatement with backwages is the normal rule, but several other factors such as nature of the appointment being adhoc, daily wages, temporary as well as delay in raising the dispute should be taken into account.

29. In the present case, the document produced before this Court in M.P.(MD).No. 1 of 2011, clearly showed that the workman was in service in the TASMAC as a salesman, which fact has not been mentioned in his writ petition seeking to enforce the award. He has been in that employment from 29.11.2003. Assuming that he had worked for 240 days, he would not eligible for full backwages as there was a four years delay from the year 1997 to 2001. From the year 2003 he was employed gainfully in some other place. Therefore, if at all he would have been eligible to get wages only for the interregnum period of about two yearRs. His claim of Rs. 1,400/- per month, was strongly denied by contending that his engagement was only temporary and depended upon exigencies.

30. Therefore, this Court feels considering the fact that he was in a temporary employment and not liable to be made permanent and that he was not engaged through an employment exchange and also because of the inaction made by the Panchayat Union, he was forced to come this Court and taking into account the over all facts and circumstances of the case, this Court directs that the petitioner management should pay Rs. 20,000/- (Rupees twenty thousand only) as full and final settlement of all claims of the workman.

31. It was in that view of the matter instead of remitting the I.D. No. 146 of 2001 for fresh disposal, the amount is computed by this Court itself. Therefore, while allowing the W.P. (MD). No. 10182 of 2008, the management is directed to pay a sum of Rs. 20,000/- to the second respondent workman, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. In view of the order passed in W.P. (MD). No. 10182 of 2008, W.P. (MD). No. 4953 of 2011 will stand dismissed. No costs.