(2011) 10 MAD CK 0069

Madras High Court

Case No: Writ Petition No''s. 15786, 38936 of 2002 and W.P. No. 5863 of 2004

The Management of Roca Bathroom Products Pvt Ltd., Ranipet, Vellore District		APPELLANT
	Vs	
Presiding Officer, Labour Court, Vellore and Others P.A. Sarangapani Vs The Presiding Officer, Labour Court, Vellore, Sathuvachari, Vellore and Others P. Punniakotti, Murugesan, R. Arumugam and Pachaiyappan Vs The Presiding Officer Labour Court, Vellore, Sathuvachari, Vellore and The Management of Roca Bathroom Products Pvt Ltd., Ranipet, Vellore District		RESPONDENT

Date of Decision: Oct. 20, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 12(3), 2, 25F, 25FFA, 25G

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: AL. Somayaji for M/s. T.S. Gopalan and Co. in WP No. 15786/02 and Mr. S.T. Varadarajulu in WPs. 38936/02 and 5863/04, for the Appellant; AL. Somayaji for M/s. T.S. Gopalan and Co. R2 in WPs. 38936/02 and 5863of 2004, Mr. S.T. Varadarajulu for RR4, 25 and 33 to 35 in WP.15786/02 and Mr. R. Rajaram for R3 to 31 in WP. 38936 of 2002 and RR2, 3, 5 to 7, 9 to 11, 13 to 23, 26, 27, 29 to 32, 36 to 39 in WP.15786/02, for the Respondent

Final Decision: Dismissed

Judgement

T. Raja

1. An Award, dated 16.08.2001, passed by the Labour Court at Vellore, in I.D. No. 256 of 1993, whereby, the said Court directed the Management of Roca Bathroom Products Pvt. Limited, Vellore (formerly called as the Management of EID Parry (India) Ltd., Vellore) to pay retrenchment compensation to the workmen, while declining to order reinstatement of the employees/workmen, has led to filing of the above writ petitions, one of which ie., Writ Petition No. 15786 of 2002, has been filed by the Management of Roca Bathroom Products Pvt. Ltd., questioning the correctness of the Award in ordering payment of the retrenchment compensation, with a limited prayer for the issuance of a writ of certiorari to call for the records of the Labour Court relating to the Award dated 16.08.2001 passed in I.D. No. 256 of 1993, and to quash the same; and the other two petitions - WP Nos.38936 of 2002 and 5863 of 2004, have been filed by some of the workmen seeking to issue writs of certiorarified mandamus to call for the records relating to the aforesaid Award passed by the Labour Court and to quash the portion of the Award in negativing reinstatement despite grant of retrenchment compensation and consequently, to direct the Management to reinstate the workmen in service with continuity of service, back-wages and all other attendant benefits.

2. Inasmuch as all these three writ petitions stem from one and the same Award passed by the Labour Court and the issues being interconnected, they are heard together and disposed of by this common Judgment.

3. At the first instance, it would be better to recapitulate certain core factual aspects, which led to passing of the Award by the Labour Court and ultimately, the parties approaching this Court by way of these writ petitions.

The Management/petitioner in W.P. No. 15786 of 2002 had its Tower Packing Unit at Ranipet, Vellore, where-from the finished products were supplied to Chemical Fertilizer Industries. The said Unit was operated with 32 regular workmen and 186 casual workmen including respondents-2 to 35 in WP No. 15786 of 2002. Due to decline of demand for the products connected to Tower Packing Unit since 1977, the Management decided to close down the Unit in 1982. Consequently, on 06.02.1982, the Management issued a notice u/s 25-FFA of the Industrial Disputes (I.D.) Act, proposing the closure of the Tower Packing Manufacturing Unit with effect from 10.04.1982. Such decision of the Management to close down the Unit ultimately had given rise to an Industrial Dispute, however, the dispute was resolved by way of a Settlement, dated 23.04.1982. Insofar as 31 regular workmen and 1 Supervisor, the Settlement provided that they would be deployed at other Departments and regarding 186 casual workers, it was agreed that 33 of them would be taken on probationer rolls from 03.05.1982 and, of the remaining 153 casual workmen, 20 of them would be taken as apprentices for a period of two years with a guarantee of regular employment on completion of training, and 34 would be given the opportunity to work as apprentices under the Apprentices Act, for a period of two years with no assurance of regular employment. Those 34 casual workers are now

the contesting respondents (2 to 35). In respect of 99 causal workmen, they would stand terminated and they would be paid amounts covering the Notice period wages, closure compensation, ex-gratia and other dues, if any.

4. Highlighting the above aspects, Mr.AL.Somayaji, learned Senior Counsel appearing for the Management would submit that both sides, having accepted to act by the Settlement reached between them u/s 12(3) of the I.D. Act and there being a clear provision therein governing the case and cause of the workmen/respondents-2 to 35 that they were to be given an opportunity only to serve as apprentices for a limited period of two years alone with no guarantee of employment after the two years'' period of apprenticeship, their present claim before this court for reinstatement on the ground that they were wrongly retrenched in violation of Section 25-G of the I.D. Act, is nothing but a vague attempt to mislead this Court and an endeavor to undo the settlement by which all the issues had already been given a quietus. According to the learned Senior Counsel, any direction to the Management for reinstating the workmen would only amount to rewriting the settlement reached between the parties by the Labour Court. It is ultimately contended that when the Labour Court clearly found that there is no case made out for reinstatement, in that line, it should have also legally restrained itself from awarding the retrenchment compensation; therefore, since the writ petitions came to be filed by the workmen as a result of the erroneous findings of the Labour Court rendered for grant of retrenchment compensation, such portion of the Award of the Labour court may be quashed by allowing the writ petition filed by the Management and by straight away dismissing the ones preferred by the workmen under misconception.

5. Opposing the above contentions, Mrs.S.T.Varadarajulu, learned counsel appearing for the workmen/petitioners in WPs.38936 of 2002 and 5863 of 2004, in an endeavour to exhibit that the claim of the petitioners/workmen for reinstatement is just and reasonable, would point out that, subsequent to the closure of a single Unit called ''Tower Packing Unit'', all of a sudden, the Management sent out 191 casual employees, and submit that none of the casual employees having been permanently attached to the Tower Packing Division, invariably terminating the services of all the 191 casual employees on the ground that one of the several units called Tower Packing Unit was closed, was highly arbitrary and condemnable. After raising the Industrial Dispute, a settlement was reached before the Special Duty Labour Commissioner on 23.04.1982 between the Labour Unions and the Management and as per Clause 4(c) of the Settlement, the Management agreed to take them back as apprentices under the Apprentices Act, 1961. Adding further, it is stated that, on the basis of the settlement, 60 casual workers were divided into 2 groups, of whom, one group consisting of 20 employees, whose names were given in Annexure ''D'', were taken back as trainees. Another group of 34 employees was retained as Apprentices and their names were shown in Annexure ''E''. However, after their reinstatement, both groups in Annexure ''D'' and ''E'' were doing the

same kind of manual work. But, the Management on 04.11.1984 again terminated the services of the 34 employees shown under Annexure ''E'' of the Settlement while retaining the service of 20 employees grouped under Annexure ''D''. Though all the employees found in Annexure ''D'' and ''E'' were recruited on the same day, no reason was given as to why they were divided into two groups under 1982 settlement and further, why the services of workmen, who are grouped in Annexure ''E'' were terminated on 04.11.1984. Also, 99 employees whose names were found in Annexure ''F'' of the Settlement were given retrenchment compensation and their services were duly terminated on the date of settlement. When, as per clause 4(d) of the Settlement, the Unions agreed for termination of services of 99 casual labourers on payment of compensation, the position was very clear that other than those 99 casuals, whose names were found in Annexure ''F'' and whose termination was mutually and expressly agreed upon, the other casual employees shown in Annexure-B, D and E should be retained on the rolls of the company. Therefore, according to the learned counsel, the object of the Settlement was to get employment to the casuals shown in Annexure-B, D and E by expressly sacrificing the services of the 99 causals in Annexure F. If the intention behind the settlement was to give a right to the management to terminate the services of the casuals in Annexures B, D and E, nothing would have been more easier than by saying that the services of the employees would come to an automatic end on the expiry of the period of their initial appointment. That is why, there was nothing in the Settlement to suggest that the services of those causals in Annexure-B, D and E would be terminated and they would not be taken back on the permanent rolls of the company. Acting as per the Settlement, though the Management had taken back on the rolls of the company a set of casuals, unfortunately, regarding the workmen falling under clause C read with Annexure E, the Management did not follow the settlement and unjustly terminated their services in utter violation of the Settlement. In such circumstances of the case, the Labour Court should have ordered reinstatement along with payment of retrenchment compensation. But, without giving the consequential relief of reinstatement also, the labour court unfairly restricted itself by ordering retrenchment compensation alone; therefore, the said portion of the Award is unlawful and it is liable to be set aside.

6. It is further contended that the faint argument placed before the Labour Court by the Management was that in Clause 4 (c) of the Settlement, no where it was stated that the casual employees who were to be taken as apprentice should be taken on the permanent rolls of the company. But, the Labour Court did not take pains to highlight the flaw in the said argument by properly appreciating the fact that the Settlement agreed for the termination of 99 casuals alone, thereby, the position became implicitly clear that other causals falling under Annexure-B, D and E should be retained in the service of the Company. Therefore, termination of the causals on the ground that the training period of two years had come to an end is nothing but an act done with mala fide intention and in violation of the terms of the Settlement.

Further, when the Management was claiming that those casuals were only trainees, the burden was upon the Management to prove that they were only trainees and in that perspective, it should have also let in evidence to speak about the nature of training given to them, but, very unfortunately, no evidence was let in before the Labour Court to prove the fact that those casuals were given training. However, the Labour Court, after noting the aspect that the casuals were already working under the petitioner- Management, therefore, putting them on training for a period of two years and thereafter, sending them out on completion of two years would be wholly unjust, rejected the case of the Management in that regard and arrived at the conclusion that the termination of the employees would fall within the ambit of Section 2(oo). According to the learned counsel, as the condition precedent as outlined in Section 25F of the Act admittedly having not been followed, the termination is rendered void ab initio. In that perspective, when the Labour Court awarded retrenchment compensation, in the same line, it should have also ordered for reinstatement; but, unfortunately, it was not done. In such circumstances, since by this time, the employees reached the age of superannuation, they should be compensated by directing the Management to pay the monetary benefits.

7. Mr.R.Rajaram, learned counsel appearing for the impleaded workmen has not filed any counter affidavit much less a formal counter in support of the case of those workmen or in challenging the negative portion of the Award passed against them by the Labour Court.

Though the impleaded respondents could have filed a separate writ petition in challenging that portion of Award whereby they were denied reinstatement, the fact remains that no such petition was filed by them and again, after being impleaded as respondents, no counter has been filed.

However, while arguing the case, learned counsel would submit that the Award passed by the Labour Court in refusing to grant the benefit of reinstatement despite holding that the management has violated the provisions of Section 25(F) of the ID Act, clearly reflects the non-application of mind on the part of the said Court. According to him, the contention of the management that in clause 4(c) of the Settlement, nowhere, it has been stated that the casuals, who were to be taken as apprentice, should be taken on the permanent rolls of the company, being contrary to the scheme behind the Settlement itself, the Labour Court should have rejected such contention as untenable. He states that the settlement should be read in full and as a whole to understand the purpose, object and intention thereof. The settlement agreed for the termination of 99 casuals alone, therefore, other casuals in Annexure B, D and E should have been retained in the service of the Company. To say and interpret otherwise would go contra to the Settlement, for, the Management, in their own letter, dated 05.06.1982, addressed to the Director of Employment and Training, had requested to relax the minimum educational qualification prescribed in the Apprentices Act so as to accommodate the casuals. In

his letter, dated 01.07.1982, the Director of Employment and Training refused to relax the minimum educational qualification stating that there was no provision in the Act there-for, whereupon, the Management took a decision to appoint 26 casuals as trainees and appointed them so by an Office Order dated 04.11.1982. Consequently, 20 casuals covered under clause 4(b) and Annexure-D were also appointed as trainees. Therefore, it has to be construed that the management clubbed 26 casuals along with 20 causals. But unfortunately, the Management retained the service of 20 trainees and terminated 26 trainees who were appointed on 04.11.1982 at the end of the 2 year training period. That is why the Labour Court rightly directed for payment of retrenchment compensation by the management, however, erroneously, it declined to order reinstatement. In such circumstances, learned counsel pleads that the writ petition filed by the management may be dismissed and the relief sought for by the workmen be granted.

8. I have carefully considered the rival submissions advanced on either side.

It is seen that the petitioner-Management, which had its Unit at Ranipet for manufacture of products relating to Tower Packing meant to be supplied to Chemical Fertilizer Industries, had to close down the said unit due to decline in demand and consequently, a notice under Section-25FFA of the ID Act was issued, indicating the proposal to close down the Tower Packing Unit with effect from 10.04.1982 and the aggrieved workmen raised an Industrial Dispute. However, both sides reached at a Settlement dated, 23.04.1982, whereby, it was agreed that 1 Supervisor and 31 regular workmen would be deployed at other Departments. As regards 186 casual workmen, 20 of them were agreed to be taken as apprentices for a period of two years with a guarantee of regular employment on completion of training. More over, 34 casual workmen were also agreed to be given an opportunity to work as apprentices under the Apprentices Act, for a period of two years with no assurance of regular employment. In the above said settlement, both the parties agreed for termination of 99 casual workmen on payment of wages for the Notice period, closure compensation, ex-gratia and other dues, if any. Thus, the claim and counter-claims of both sides have to be looked into and decided based on the Settlement which came into existence at the behest of the management as well as the Unions represented by the workmen.

9. Now, the issue needs to be gone into is as to whether, in the the light of the Settlement to which both sides are parties, the termination of the casuals by the Management is justified, or in other words, whether there was any violation of the terms on the part of the management to unjustly deny the casuals'' employment for which they were legally entitled to. Consequently, the incidental issue would be, whether the Labour Court was right in ordering retrenchment compensation and wrong in refusing to direct for reinstatement.

10. It is seen from the Settlement, dated 23.04.1982, that the names of the workers whose services were terminated due to closure of Tower Packing Unit were given in

5 Annexures viz., A, B, D, E and F. Clause-4 of the Settlement, dealing with casual workmen, has 4 sub-clauses - 4(a), 4(b), 4(c) and 4(d).

As per clause 4(a), 33 casuals whose names were given in Annexure-B would be retained and they would be taken on the Probationary rolls of the company from 02.05.1982 purely with a view to alleviate their difficulties on the representations made by the Unions, who are signatories to the Settlement.

As per Clause 4(b), 20 casuals, whose names were shown in Annexure-D, would be taken as trainees with effect from 02.05.1982 for a period of two years on a consolidated stipend of of Rs. 230/- per month in the first year and Rs. 260/- in the second year. It was also made clear that subject to the employees being found medically fit by the Factory Medical Officer and further, their work and conduct being satisfactory, those 20 casuals would be taken on the rolls of the company on the minimum of the grade as mentioned in Annexure-C.

Clause 4 (c), which has given rise to all the disputes here, says that 34 casuals whose names are borne in Annexure-E, would be taken as Apprentices according to the provisions of the Apprentices Act, 1961 and the rules made thereunder. It is further mentioned therein that the formalities under the Apprentices Act, 1961 shall be completed by 30.06.1982.

Clause 4(d) deals with the service of 99 casuals whose services were agreed to be terminated by payment of their wages for the Notice period, closure compensation, ex gratia and other dues if any, calculated in accordance with the statutory provisions and the rules framed thereunder. Those 99 casuals were also directed to execute a No-claim Certificate for having received payments from the company in full and final settlement of their claims.

11. Subsequent to the settlement detailed above, the petitioner/Management, by their letter dated 5h June, 1982, addressed to the Director of Employment and Training and State Apprenticeship Advisor, Chepauk, Cehnnai-5, had brought to his notice the factum of settlement reached on 23.04.1982 before the Special Deputy Commissioner of Labour, Madras, between the management and 4 Trade Unions viz., Parrys Employees Union, Ranipet Labour Union, EID Parry Labour Union and Parry Casual Workers Union. In the said letter, the management also informed the Director of Employment that, except 7 casuals, others do not meet the requirement of minimum qualification under the Apprentices Act. By stating that those unqualified casuals had gained sufficient practical knowledge, the Management sought for relaxation regarding the educational qualification since the minimum qualification prescribed is a pass in 8th Standard, which the rest of the employees did not possess. In reply to the same, by letter, dated 01.07.1982, the Director of Employment and Training, while informing the management that there was no provision in the Act to relax the educational qualification, made it clear that the only course available for them is to engage qualified candidates as Apprentices. Since the

Director of Employment refused to relax the minimum educational qualification for 27 casuals, the management held a meeting on 27th October, 1982 with the representatives of the Ranipet Labour Union. In the said Meeting, after noting the refusal of the Director of Employment to exempt the minimum educational qualification for the casuals, who failed to pass the 8th Standard, it was decided to take them as ''Company''s Trainees'' subject to the specific condition that there would not be employment guarantee whatsoever after the end of 2 year training period and they cease to be company''s trainees from the date onwards when they complete 2 year training period. In respect of 8 or 9 ex-casuals who possessed educational qualification, it was specifically mentioned that they would be taken as apprentices under the Apprentices Act, 1961 and the Union also agreed to that position. Further, the Union also stressed for implementation of such decision as early as possible, preferably by 5th November, 1982. Only subsequent to that, the management, by its proceedings, dated 4th November, 1982, framed a scheme explicitly mentioning that 26 employees, who do not possess the requisite qualification for recruitment as Freshers in Ceramics Trade under the Apprentices Act, 1961, would be taken as Company''s Trainees with effect from 05.11.1982 only for a period of two years on a consolidated and all-inclusive stipend of Rs. 230/- per month in the first year and Rs. 260/- per month in the 2nd year. The other conditions mentioned are as follows:-
They will undergo training in various sections of the factory as decided by the authorities from time to time.

They will not be eligible for any other benefit except those mentioned therein.

They will follow the factory hours of work of six days in a week.

...

At the end of two years, the training will automatically cease and there will be taken no obligation whatsoever on the part of the company to take them to the permanent roll.

They will be subject to rules and regulations made by the company as are in force at present or amended or extended from time to time.

12. Thus, delving deep into the whole spectrum of scenario, it is pretty clear that, in respect of 34 casuals, whose names were found in Annexure-E, though the Settlement says that they would be taken as Apprentices, in view of the fact that out of 34, only 7 were having the minimum requisite educational qualification of pass in 8th Standard, others were found to be unqualified for appointment as Apprentices under the Apprentices Act, 1961. However, taking a very lenient and labour-oriented view, the Management took honest efforts to have the minimum educational qualification for those casuals exempted by addressing the Director of Employment and Training, however, the said Authority refused to relax the minimum educational

qualification stating that there was no provision in the Act to grant relaxation and also advised the Management to take in candidates, who possess the requisite qualification. Subsequently, the management convened a meeting on 27.10.1982 with the representatives of the Ranipet Labour Union. After the representatives of the Union were properly apprised of the subsequent developments about the refusal by the Directorate of Employment in relaxing the minimum educational qualification for the casual employees under Annexure-E except 7 amongst them, both the management and the representatives of the Union agreed that those unqualified casuals be given two years of training in the Factory at a consolidated stipend of Rs. 230/- per month in the first year and Rs. 260/- per month in the 2nd year in order to help them to acquire a valuable training so that they have better prospects in getting employment elsewhere after the training period, with a specific condition that, at the end of the 2 year period, the training would automatically cease and that the company would not have any obligation whatsoever to take them to permanent roll. When the representatives of the Labour Union also participated in the meeting and agreed to the formula drawn by the Management to help the causals, on completion of the two year period from 04.11.1982, their training virtually had come to an end. Therefore, there cannot be any demur against the Management and it is not open for the counsels appearing for the workmen to say that on their cessation of work beyond the period of two years, failure on the part of the management to absorb them as regular employees is violative of Section 25F of the ID Act. The Labour Court has completely lost sight of this core aspect which ultimately prompted it to order for retrenchment compensation which is, in the facts and circumstances, totally unwarranted. Therefore, it is just and proper that the said portion of the Award in directing payment of retrenchment compensation by the management is set aside. Consequently, the claim of the workmen for reinstatement also fades and the plea in that regard is rejected.

13. In the result, W.P. No. 15786 of 2002 is allowed, setting aside the Award passed in directing the management for payment of retrenchment compensation to the workmen, and W.P. Nos.38936 of 2002 and 5863 of 2004 stand dismissed. No costs.