

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.Nos.2684 to 2691 of 2003

B.S.Leather & Company
Rep. by its Partner

...Petitioner
(in WP.Nos.2684 to 2691 of 2003)

Vs

1.The Presiding Officer
Labour Court, Vellore.
2.A.Subramani

...Respondents
(in WP No.2684 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2.S.Krishnaveni

...Respondents
(in WP No.2685 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2.C.Seetha

...Respondents
(in WP No.2686 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2.M.Somasundram

...Respondents
(in WP No.2687 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2.D.Jagadeesan

...Respondents
(in WP No.2688 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2.S.Dass

...Respondents
(in WP No.2689 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2. M.Ranjit Kumar

...Respondents
(in WP No.2690 of 2003)

1.The Presiding Officer
Labour Court, Vellore.
2.G.Gunalan

...Respondents
(in WP No.2691 of 2003)

Writ Petition No.2684 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.179 of 1998 by the 1st respondent.

Writ Petition No.2685 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.182 of 1998 by the 1st respondent.

Writ Petition No.2686 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.188 of 1998 by the 1st respondent.

Writ Petition No.2687 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.181 of 1998 by the 1st respondent.

Writ Petition No.2688 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.189 of 1998 by the 1st respondent.

Writ Petition No.2689 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.184 of 1998 by the 1st respondent.

Writ Petition No.2690 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.183 of 1998 by the 1st respondent.

Writ Petition No.2691 of 2003 filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records and quash the Award passed on 8th August 2002 in I.D.No.180 of 1998 by the 1st respondent.

For petitioners	:	M/s.Gupta & Ravi (in WP Nos.2684 to 2691 of 2003)
For R2	:	Mr.E.Srinivasan (in WP Nos.2684 to 2691 of 2003)

C O M M O N O R D E R

These writ petitions have been filed to call for the records and quash the award dated 08.08.2002 passed in I.D.Nos.179 of 1998, 180 of 1998, 181 of 1998, 182 of 1998, 183 of 1998, 184 of 1998 188 of 1998 and 189 of 1998 respectively by the 1st respondent.

2. For the sake of convenience, the parties will be referred to by their name.

3. Heard the learned counsel appearing for B.S. Leather & Company (for brevity "the Management") and the learned counsel appearing for A.Subramani, S.Krishnaveni, C.Seetha, M.Somasundram, D.Jagadeesan, S.Dass, M.Ranjit Kumar and G.Gunalan, who will be henceforth collectively referred to as "workmen".

4. B.S. Leather Company is the employer under whom the workmen were employed. It is the case of the workmen that on 15.12.1997, the Management retrenched them from service without any enquiry. They moved the Labour Officer under Section 2A of the Industrial Disputes Act, 1947 on 18.12.1997 and raised an Industrial Dispute. The Management participated in the Conciliation proceedings, but did not file any counter. Since the Conciliation talks failed, the Labour Officer submitted a failure report to the Government. The Government referred the matter to the Labour Court for adjudication. Before the Labour Court, on behalf of the workmen, two witnesses by name G.Gunalan and A.Subramani were examined and 12 documents were marked and on behalf of the Management, one B.S.Kumar was examined and 14 documents were marked. After considering the evidence adduced by both sides, the Labour Court, by award dated 08.08.2002, held that G.Gunalan, S.Krishnaveni, M.Ranjith Kumar, S.Dass, C.Seetha and D.Jagadeesan were illegally retrenched on 15.12.1997 and ordered their reinstatement with backwages.

5. As regards A.Subramani and M.Somasundram, the Labour Court held that they will not be entitled to reinstatement, as they were gainfully employed after 15.12.1997 and that they will be entitled only to retrenchment compensation.

6. After passing of the award, the Management reinstated the above said six persons into service and thereafter, has challenged the award dated 08.08.2002 by filing these eight writ petitions on the ground of grant of backwages to the above said six workmen and retrenchment compensation to two persons.

7. The learned counsel appearing for the Management

submitted that even in the claim statement filed by the workmen before the Labour Court, they have not even pleaded, that they were retrenched on 15.12.1997. He also submitted that the workmen have not proved that they were not gainfully employed during the pendency of the proceedings and therefore, they will not be automatically entitled to backwages and reinstatement. He further submitted that the workmen went on strike from 15.12.1997 and they had voluntarily abandoned their service and therefore, they will not be entitled to backwages.

8. The above submissions were refuted by the learned counsel appearing for the workmen.

9. This Court gave its anxious consideration to the rival submissions.

10. Admittedly, the Management has challenged only that portion of the award dated 8.8.2002, by which, the Labour Court has ordered back-wages to six of the workmen and retrenchment compensation to two of the workmen.

11. The learned counsel appearing for the workmen submitted that in the petition filed by the workmen before the Labour Officer, the workmen had clearly pleaded that they were illegally retrenched on 15.12.1997 and that the Management did not file any counter before the Labour Officer refuting the allegations. He also submitted that in the claim statement filed before the Labour Court, the workmen have clearly stated that the petition filed before the Labour Court shall also be read as part and parcel of the claim statement.

12. On a reading of the evidence adduced by both sides, it is seen that the Management had taken a clear stand before the Labour Court that the workmen had gone on strike on 15.12.1997 and that the Management had sent two notices dated 19.12.1997 and 22.12.1997 calling upon them to report to duty, despite which, they did not report to duty. The two letters have been marked as Exs.M.7 and M.9 before the Labour Court.

13. According to the workmen, these two letters were sent only after they had submitted a petition on 18.12.1997 under Section 2A of the Industrial Disputes Act to the Labour Officer and therefore, these two letters are clearly an after-thought.

14. I am unable to persuade myself to agree with this submission, because, though the workmen had submitted a petition under Section 2A of the Industrial Disputes Act to the Labour Officer on 18.12.1997, the notice on these petitions would not have been served on the Management immediately. Obviously, it will take some time for the service of notice on the Management. It would have been an ideal situation, had the Management filed

their counter before the Labour Officer stating that they are willing to give work to the workmen if they report to duty. Unfortunately, this was not done.

15. As regards the allegation of the Management that the workmen went on strike from 15.12.1997, the Management has marked the complaint dated 15.12.1997 as Ex.M.1 that was lodged to the local police seeking police protection to the loyal workers who were not willing to participate in the strike. In the complaint dated 15.12.1997, the Management has given the names of five workers including S.Dass and A.Subramani. This has been admitted by Gunalan (PW1) in his cross examination. In fact, the complaint given to the police itself has been marked in the cross examination of G.Gunalan. In the cross examination, G.Gunalan has further admitted that pursuant to the complaint given by the Management, the police called them for enquiry to the police station and thereafter let them off. Thus, from the evidence of G.Gunalan and from Ex.M.1, it is apparent that there was some industrial unrest on 15.12.1997. Immediately thereafter, i.e., within three days, the workmen have raised an Industrial Dispute before the Labour Officer on 18.12.1997.

16. Under such circumstance, there appears some force in the submission of the learned counsel for the Management that the workmen were not retrenched from service by the Management but they had resort to strike on 15.12.1997 and immediately thereafter, they have approached the Labour Officer by filing a petition under Section 2A of the Industrial Disputes Act. Of course, in these writ petitions, it is not open for this Court to hold that there has not been retrenchment of the workmen, because, the Management has not challenged that findings, but has only challenged the grant of backwages.

17. As regards backwages, there is no shred of evidence on the side of workmen to show that they were not employed during the pendency of the proceedings before the Labour Officer and Labour Court and neither in their claim petitions nor in the oral testimony of Gunalan and Subramani, there is any averment to the effect that the workmen were un-employed. It is for the workmen to assert that they were un-employed and once that assertion is made, the burden shifts on the Management to prove that they were gainfully employed. In this case, the Management have established that M.Somasundram and A.Subramani were gainfully employed and that is why, the Labour Court did not award reinstatement but had awarded retrenchment compensation.

18. The learned counsel appearing for the workmen placed strong reliance on the following passage in the Judgment of Supreme Court in Allahabad Jal Sansthan -Vs- Daya Shankar Rai and another [(2005) II LLJ 847]

"18. In view of the fact that the respondent had been reinstated in service and keeping in view the fact that the had not raised any plea or adduced any evidence to the effect that he has remained unemployed throughout from January 24, 1987 to February 27, 2001, we are of the opinion that the interest of justice would be subserved if the respondent is directed to be paid 50% of the back wages."

19. In view of the above, this Court does find that the Labour Court should not have granted backwages automatically. Hence that portion of the Labour Court award dated 08.08.2002 granting full backwages to the six workmen is hereby set aside. To meet the ends of justice, the Management is directed to pay 50% of the backwages to six persons, viz., G.Gunalan, S.Krishnaveni, M.Ranjith Kumar, S.Doss, C.Seetha and D.Jagadeesan. In the result, WP Nos. 2684 and 2687 of 2003 are dismissed and WP Nos. 2685, 2686, 2688, 2689, 2690 and 2691 of 2003 are partly allowed with a direction to the Management to pay 50% of the backwages from 15.12.1997 to 08.08.2002 (i.e. date of award). No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mk

To

The Presiding Officer
Labour Court, Vellore.

सत्यमेव जयते

+1cc to Mr.Gupta & Ravi Advocate SR.No.401

+1cc to Mr.E.Srinivasan Advocate SR.No.259

W.P Nos.2684 to 2691 of 2003

SSK(CO)
GN(30/01/2017)