Madras High Court
Management Of Halda Service ... vs Presiding Officer, Ii Addl. ... on 8 August, 2001
Equivalent citations: (2002) IVLLJ 136 Mad
Author: D Murugesan
Bench: D Murugesan
ORDER D. Murugesan, J.

1. The members of the 2nd respondent union filed a petition before the conciliation officer as against the non employment of 22 workmen by the writ petitioner management. The writ petitioner management filed a reply disputing the claim. The conciliation officer submitted a failure report. Thereafter, the dispute was referred to the 1st respondent for adjudication on the issue as to whether the non employment of the members of the 2nd respondent union on November 23, 1987 is justified or not. The Labour Court adjudicated upon the dispute in I.D. No. 496 of 1988 and found reasonableness in the dispute and accordingly directed reinstatement of the workmen with back wages. It is against the said award, the present writ petition has been filed.

2. Mr. S. Ravindran, learned counsel for the petitioner management would challenge the said award on four grounds namely (1) the petitioner is a partnership firm and is a dealer for spare parts of Halda typewriters. The petitioner also used to undertake repair works and service maintenance contracts for Halda typewriters. Like the petitioner, there are two other firms wherein one of the partners of the petitioner firm namely P. G. Rangabashyam is also a partner in those firms. Those two firms are Business Machine Syndicate and Baba Office Equipment Service Station. In the firm of the petitioner under the name and style of Halda Service Centre, there are 14 workmen. The other two firms have employed 4 workmen each and all the three firms are different even though one of the partners of the writ petitioner management is also a partner of the other firms. However, the Labour Court directed the reinstatement of the 8 workmen who were employed in the other two firms also with back wages treating all the three firms as one unit. The learned counsel in this context would submit that even though the Labour Court has come to the conclusion that all the three units are inter-linked and it found that merely because for administrative convenience an arrangement between the three units for employing the members of the 2nd respondent union in all the three units, cannot be the ground to claim the individual character of each unit for the purpose of the workmen of the other two units also claiming reinstatement. The said finding is contrary to the evidence and the same was not the dispute referred to the Labour Court for adjudication. (2) As per the claim statement, the members of the 2nd respondent union have raised a dispute in respect of their non-employment at the hands of the writ petitioner management on November 23, 1987. Even though the reference is in respect of the non-employment of the members of the 2nd respondent union on November 23, 1987, there is no finding as to whether the non-employment in fact took place on November 23, 1987 and; if so, whether the same was justified or not. In the absence of any finding, the award of reinstatement with back wages cannot be granted. (3) The Labour Court ought not to have gone into the factum of subsequent order of closure by the writ petitioner management on February 16, 1988 which was with reference to Halda Service Centre only as the same and the was not the subject matter of reference and the issue before the Labour Court for adjudication as could be seen from the points for determination drawn by the Labour Court itself and (4) in any event, the members of the 2nd respondent union submitted a charter of demands on

April 20, 1987 and a settlement was arrived on May 18, 1987 making provisions for increase in wages and other allowances including incentive. However, such increase in wages has not been paid to one Elumalai, mechanic working in the writ petitioner firm. Therefore, the members of the 2nd respondent union went on strike on November 9, 1987. Since the said strike was without notice and also the customers of the writ petitioner firm started complaining of non service of the typewriters and the learned counsel referred to two such complaints from the customers dated November 13, 1987 and November 16, 1987. Therefore, the writ petitioner management put up a notice in the board drawing the attention of the members of the 2nd respondent union to resume duty after calling off the agitation, failing which they will be liable for further action. Subsequent to that by another notice dated November 20, 1987, the members of the 2nd respondent union were once again informed to join duty on or before November 23, 1987 failing which the management will be left with no other option except to terminate their services. Pursuant to the said notice 14 of the members of the 2nd respondent union turned up for work on November 23, 1987. In view of the sudden and illegal strike which resulted in the petitioner earning a bad name from its customers, the petitioner insisted an undertaking from the members of the 2nd respondent union and thereafter 14 members of the 2nd respondent union submitted undertakings on December 9, 1987 agreeing to report for duty. However, they objected to the signing of the witnesses in the said undertaking and when the petitioner insisted on such undertaking, the workmen did not turn up for duty even after December 9, 1987. Thereafter a notice of termination was issued on December 30, 1987. The writ petitioner firm viz., Halda Service Centre was closed by order dated February 16, 1988. From the facts narrated above, it would be clear that there was no question of any non-employment at the instance of the writ petitioner management since the members of the 2nd respondent union went on strike on their own without due notice and they did not resume duty inspite of repeated opportunities given. Therefore, on merits also the Labour Court finding that there was a non-employment at the instance of the writ petitioner management is bad.

3. On the other hand, the learned counsel for the 2nd respondent would contend that even In the settlement dated May 18, 1987 as against the 14 workmen of Halda Service Centre, nearly 19 workmen have signed the settlement and the remaining workmen are from the other two units of the writ petitioner. In the claim statement also, the members of the 2nd respondent union have referred to the non-employment of 22 employees which was considered by the Government while referring the matter for adjudication in respect of all the 22 employees. The Labour Court also rightly found that the writ petitioners have got three units inter-linked to each other and established in different names only for administrative convenience and for income tax purpose. The Labour Court also found that the employees under one unit were directed to work in the other units and there is correspondence in respect of one employee between three units. Therefore, the Labour Court very rightly came to the conclusion that all the three units can be considered as one unit as they are interlinked with each other. In so far as the second submission of the learned counsel for the petitioner, the learned counsel submitted that in fact, the Labour Court has found the non-employment as unjustified duly taking into consideration of the undertaking given by the members of the 2nd respondent union on December 9, 1987 and therefore the finding based upon the said admitted documentary evidence cannot be assailed before this Court. The learned counsel, in so far as the third submission of the learned counsel for the petitioner, submitted that subsequent to the claim statement, evidence were let in with regard to the undertaking given by the members of

the 2nd respondent union on December 9, 1987 as well as the order of closure made by the writ petitioner management on February 16, 1988. Therefore, there is nothing wrong in the Labour Court going into the question of closure and consequently ordering back wages also while adjudicating the claim of the 2nd respondent union. Finally on merits the learned counsel for the 2nd respondent submitted that when the members of the 2nd respondent union turned up in office on November 23, 1987, the management insisted upon an undertaking from the members of the union which is totally unjustified and unwarranted when the members of the union have expressed their willingness to join duty. They could not join duty only because of the insistence of the petitioner for giving an undertaking. Admittedly, the members of the 2nd respondent union were not permitted to join duty on or after November 23, 1987. Therefore, on merits, the non-employment cannot be justified.

4. In so far as the first contention of the learned counsel for the petitioner, it is seen that in the settlement dated May 18, 1987, 19 workmen have signed. It is the case of the petitioner that there are only 14 workmen working in Halda Service Centre and the other two units are entirely separate entities. However, there is no explanation from the side of the petitioner as to how the 19 workmen have signed the settlement which has been entered into in the name of Halda Service-Centre. Further, it was the specific case of the members of the 2nd respondent union before the conciliation officer that there was non-employment of 22 workmen which claim was considered by the Government and the Government also referred the matter of non-employment of 22 workmen. Even though the petitioner has taken a stand that these three units are entirely different, the Labour Court on merits has come to the conclusion that even though the three units are being run by different partners wherein P. G. Rangabashyam is the partner in all the firms, the partnership firms were created only for the income tax purpose and for administrative convenience. The Labour Court also found that one Karikalan who was a mechanic in Halda Service Centre was asked to work in the other units and for the said purpose documents were also produced to establish that the workmen of the petitioner unit were asked to work in other units which will indicate that all the three units are inter-linked and were treated as separate entities for the purpose of administrative convenience only. Therefore, the contention of the learned counsel for the petitioner that all the three units for the purpose of non-employment should be considered as different and distinct entitles cannot be accepted since even in the agreement entered into by the writ petitioner management in the name of Halda Service Centre, the workmen of other units have also signed which would indicate that the petitioner himself had treated all the three units as one. Therefore, I do not find any error in the finding of the Labour Court in coming to the conclusion that the dispute of non-employment relates to all the 22 workmen belonging to three units. Therefore, I reject the said contention of the learned counsel for the petitioner.

5. In so far as the second and third contentions of the learned counsel for the petitioner, it is to be seen that the dispute was raised before the conciliation officer only in respect of the non-employment of the members of the 2nd respondent union with reference to the date on which they were refused work viz., November 23, 1987. In the petition before the conciliation officer, the members of the 2nd respondent union have not stated anything about the subsequent events namely their undertaking dated December 9, 1987 and the notice of the management issued on December 30, 1987 and the subsequent order of closure dated February 9, 1988. This Court is not favoured with the actual date on which the petition was filed before the conciliation officer and

therefore this Court has necessarily to go into the date on which the claim statement is filed. The claim statement was filed during December 1988, even on which date, the members of the 2nd respondent union have not stated anything about the undertaking given by them on December 9, 1987 and the notice issued by the management on December 30, 1987 and the consequential order of closure dated February 16, 1988. In the absence of these claims, the Labour Court is only called upon to decide the question as to the non-employment of the members of the 2nd respondent union on November 23, 1987 and the same was justified or not. A reading of the entire award does not indicate any finding of the Labour Court as to whether the non-employment of the members of the 2nd respondent union on November 23, 1987 was justified or not. When a specific question is posed to the learned counsel for the 2nd respondent, the learned counsel was not in a position to draw the attention of this Court as to any such finding in the award. When the reference itself is one for adjudication as to the non-employment of the members of the 2nd respondent union on November 23, 1987, in the absence of any finding as to whether such non-employment was justified or not, the Labour Court ought not to have awarded reinstatement with back wages. Curiously, it is to be seen that the Labour Court has taken the issue which has not been pleaded in the claim statement and decided the reference in favour of the 2nd respondent union. The discussion and the finding of the Labour Court in regard to the subsequent undertaking given by the members of the 2nd respondent union on December 9, 1987 and even when such an undertaking was given, the writ petitioner has not permitted the members of the 2nd respondent union to resume duty is totally outside the scope of the reference. The Labour Court further proceeded on the basis that the closure itself is illegal and the same was made only to defeat the rights of the members of the second respondent union. Such a discussion and finding as to the subsequent event in favour of the members of the 2nd respondent union in my view, is also outside the scope of the reference and such finding cannot be the basis for the award of reinstatement with back wages. When once this Court comes to the conclusion that there is no finding as to whether the non-employment of the members of the 2nd respondent union was justified or not, further award of reinstatement with back wages cannot be sustained. For the said reasons, the writ petition has to be allowed.

6. It is stated by the learned counsel for the petitioner which was not disputed by the learned counsel for the 2nd respondent that out of 22 workmen, 7 workmen have entered into a settlement and the award of reinstatement with back wages is only in relation to the remaining workmen. Accordingly, the award passed in respect of 15 workmen directing the writ petitioner management to reinstate with back wages is set aside and the matter is remitted back to the 1st respondent for reconsideration in respect of the issue as to whether the non-employment of the 15 workmen alleged to have occurred on November 23, 1987 is justified or not. The Labour Court has to consider the said issue only with reference to the documents relating to the non-employment on November 23, 1987. In view of my finding that there was no pleading in respect of the undertaking given by some of the workmen on December 9, 1987 and the subsequent notice issued by the writ petitioner management on December 30, 1987 and the order of closure dated February 16, 1988, the Labour Court need not attach any importance to those events to come to the conclusion as to the question of non-employment. The Labour Court is directed to pass final award within a period of three months from the date of receipt of a copy of this order after giving notice to both the parties. The writ petition is ordered on the above terms. No costs. Consequently, connected W.M.Ps. are closed.