

Binny Limited Vs. Presiding Officer, Additional Labour Court, Bangalore and Others

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Court : Karnataka

Decided On : Jan-17-2000

Reported in : (2000)ILLJ78Kant

Judge : G.C. Bharuka and ;N.S. Veerabhadraiah, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 10(4) and 25-F

Appeal No. : Writ Appeal No. 446 of 1999

Appellant : Binny Limited

Respondent : Presiding Officer, Additional Labour Court, Bangalore and Others

Advocate for Pet/Ap. : Sri K. Kasturi, Adv.

Judgement :

1. The management has preferred this appeal against the order dated October 27, 1998 passed by the learned Single Judge in Writ Petition Nos. 31121 to 31209 of 1994.
2. The learned Single Judge has found that the interim order passed by the Labour Court granting the interim relief of payment of 50% of the average wages subject to modification that it will be payable only for the period up to April 19, 1996, on

which day they were again employed.

3. It is not in dispute that the respondents had been on the badli list of the appellant-Management, and they had been working as badli workers as and when permanent workmen remained absent, went on leave or retired etc. The said list was being maintained and work was offered to the respondents and persons similarly situated pursuant to an industrial settlement dated July 19, 1989 (Annexure-B to the writ petition). Paragraph 28 of the Memorandum of Settlement to the extent to which it is relevant reads as under:

'It is agreed between the parties that in the case of absenteeism and leave, badlis will be given preference for work in those places'.

4. It is the case of the Management that because of the closure of various manufacturing divisions, a notice dated November 25, 1992 was published informing the badli workmen not to report for duty since it will not be possible to offer any work to them. The said notice has been placed as Annexure-R1 which reads as under:

'Date: November 25, 1992.

Notice:

Due to unavoidable reasons the Management is not in a position to give work to badli workmen. Therefore, badli workmen are informed that they need not report for duty'.

Based on the said notice, an industrial dispute was raised by the respondents before the Additional Labour Court, Bangalore in I.D. No. 68 of 1993 and connected matters taking the plea that the said notice amounts to retrenchment within the meaning of Section 2(oo) of the [Industrial Disputes Act, 1947](#) (the 'Act' in short). Since they have been retrenched without compliance to the requirements of Section 25-F of the said Act, they are entitled to be reinstated with all back wages. Though the said dispute was raised and registered in May 1993 but the same remains undisposed of till this date. In the meantime, by an order dated September 14, 1994 (Annexure-H) at page 212, the Labour Court by way of an

interim relief under Section 10(4) of the Act passed an order for grant of 50% of the average pay. The said order was subjected to challenge before this Court in the above referred writ petition, which have been disposed of by the learned Single Judge by the impugned order as noticed above.

5. It is a matter of record, that this Court, keeping in view the submissions made at the Bar and the stand taken by the Management, had passed an interim order dated April 17, 1996 which was to the following effect:

'It is submitted by Mr. Kasturi, the learned Counsel for the Management that respondent-workmen who are 'badli' workmen can report for work and work will be offered to them as and when available. The Management submits that it may be possible to provide work for the respondent-workmen for a period of 15 days per month. This is placed on record. This arrangement is without prejudice to the contentions of the parties in the writ petition. The workmen respondents shall report for work from Friday April 19, 1996'.

Admittedly, the respondents had been provided job as per the said interim order as has been duly taken note of by the learned Single Judge in the impugned order at paragraph 6. In the present appeal, Sri Kasturi, Counsel appearing for the appellant-Management has assailed the order on two grounds, namely (1) the Tribunal as well as the Court below have erred in computing the back wages. Since it is the case of badli workers, it is difficult to ascertain to what they had earned in a particular month and it is a matter of evidence; and (2) that keeping in view the settlement as extracted above, the notice given to them for not reporting to duty cannot amount to retrenchment under Section 2(oo) of the Act. But we are of the considered opinion that by providing job in terms of the interim order passed by this Court, the workmen had been granted appropriate interim relief, moreover the dispute itself being of 1993 and the right to claim back wages is dependent on some acceptable materials to be adduced so in evidence. The interim relief by way of back wages may be 50% or otherwise cannot be an appropriate solution.

6. Under the above circumstances, we set aside the order passed by the Labour Court under Section 10(4) of the Act as also the order passed by the learned Single Judge, with a direction that the Labour Court must resolve the present

dispute by passing an appropriate order within 4 months from the date of communication of this order. If either of the parties fail to co-operate, it can proceed ex parte. If the Additional/Labour Court is not available, the matter must be taken up by the regular Labour Court.

7. The delay is accordingly allowed in the terms stated above.

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