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**Court : Chennai**

**Decided On : Sep-09-1958**

**Reported in : AIR1959Mad343**

**Judge : Balakrishna Ayyar, J.**

**Acts : [Industrial Disputes Act, 1947](#) - Sections 10 and 14; Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955; Industrial Employment (Standing Orders) Act, 1946**

**Appeal No. : Writ Petn. No. 184 of 1958**

**Appellant : The Management of "tamil Nadu" Madurai**

**Respondent : Working Journalists of Tamil Nadu Represented by the Madras Union of Journalists, Madras and ors.**

**Advocate for Def. : S. Mohan Kumaramangalam, ;K.V. Sankaran and ; G. Ramanujam, Advs. for ;Addl. Govt. Pleader**

**Advocate for Pet/Ap. : V. Thyagaraja Iyer, Adv.**

**Disposition : Petition allowed**

## **Judgement :**

### **ORDER**

#### **Balakrishna Ayyar, J.**

1. This is a petition for the issue of an appropriate Writ to quash the order made by the Labour Court. Madurai in I. D. No. 1 of 1957.

2. The mater facts are these. The petitioner is the management of a Tamil doily newspaper called 'Tamil Nadu' which is being published from Madurai from about 1951. Three individuals named Ponnuswami Subramanian and Ramiah were working as Proof Readers in the 'Tamil Nadu.' Two of them have studied in the fourth form and the third in the sixth form. On 20-12-1955 Central Act 45 of 1955 called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 came into force. Under Section 8 of the Act the Central Government constituted a Wage Board for fixing the rates of wages of working journalists in accordance with the provisions of the Act.

The decision of the Wage Board was published on 11-5-1957. According to the scheme adopted by the Board the 'Tamil Nadu' was classified as a 'g' Class newspaper. The Wage Board directed that persons employed as Proof Readers in a 'g' Class newspaper should be paid an initial salary of Rs. 90 besides certain allowances. In its application to the 'Tamil Nadu' these directions meant that the management would have to pay each of these three individuals in all Rs. 138-12-0 per month. This was very much more than these persons had been actually receiving.

3. The Wage Board defined the functions of a Proof Reader in these terms :

'Proof Reader is a person who cheeks up printed matter or proof with edited copy to ensure strict conformity of the former with the latter. Factual discrepancies, slips of spelling, grammar and syntax may also be discovered by him and either corrected or got corrected'.

4. On 20-6-1937 the management served a notice, Ex. W. 5 on Subramanian. The notice set out the duties of a Proof Reader as defined by the Wage Board, and, went on :

'These functions can be exercised by a person who is adequately qualified. We find that you do not possess the required qualification for a proofreader.

We therefore find your services are unnecessary and superfluous for the work and we are terminating your services with effect from 21-6-1957.

You will be paid three months wages in lieu of notice and also gratuity for two months worked but at fifteen days average pay.'

On the same day a notice in similar terms was served on Ponnuswami (Ex. W 6). On 15-5-1957 the 'Tamil Nadu' issued an office order, Ex. M, 10 to Ramiah in these terms:

'Proof-reader, L. Ramaiah, is transferred with immediate effect to Visalakshi Achakam, Madurai.'

This Achakam, it was explained to me is another printing concern under the management of the petitioner. On Ex. M-10 a note appears in Tamil which may be translated as follows:

'He intimated that he would state his final decision after returning from 'oor'.'

On 20-5-1957 Ramiah signed at the bottom of Ex. M-10. Apparently it was intended to be an acknowledgment of the receipt of the order. The same day Ramiah wrote Ex. W-3 to the management protesting against his transfer and sent a copy of his protest to the General Secretaiy of the Madras Union of Journalists. On 21-5-1957 he handed in a joining report at the Visakakshi Achakam (Ex. M-II). On 22-5-1957 he applied for casual leave for two days on the ground mat he was not feeling well in 'body and mind' (Ex. M-12). On 24-5-1957 he applied for two more days' casual leave (Ex. M-13), On 27-5-1957 he applied for leave till 1-6-1957 (Ex. M-14).

Along with Ex. M-14 he sent a medical certificate in which it was stated that he was suffering from 'pyuria' and required rest and a Mention for one week. On 3-6-1957 he applied for further leave from 2-6-1957 to 16-6-1957 (Ex. M-15). (16-7-1957 appearing in the copy of Ex. M-15 that has been given to me is apparently a clerical error for 16-6-1957). Along with Ex. M-15 Bamiah sent a certificate from a medical practitioner to say that he was suffering from influenza.

5. On 20-6-1957 the management wrote Ex. M-16 to Ramiah as follows :

'We find that you are affected by ill health continuously and you are not fit physically also for any work in our press. Ever since you joined duty here you have not rendered service on account of ill health.

We are, therefore, hereby constrained to terminate your services on the ground of continued absence on account of ill-health from 21-6-57' (Ex. W-16).

6. The management appointed three others in the place of Ponnuswami, Subramanian and Ramiah. Of these one is a B. A. with a first class in Tamil, a second is a B. A. and F. L., and the third is a B. A. and B. L.

7. Ponnuswami, Subramanian and Bamiah complained that the termination of their services was unlawful. Their case was taken up by the Madras Union of Journalists, and, certain conciliation proceedings were initiated. On 15-7-1957 the Labour Officer, Madurai reported to Government that efforts at settlement had failed. On 4-9-1957 the Government passed an. order in their Department of Industries, Labour and Co-operation, bearing G. O. Ms. No. 2924, referring the matter for adjudication by the Labour Court at Madurai. The notification begins :

'Whereas the Government are of opinion that an industrial dispute has arisen between the workers and the management of 'Tamil Nadu', Madurai, in respect of matters mentioned in the annexure to this Order;

And whereas in the opinion of the Governor of Madras, it is necessary to refer the said dispute for adjudication;' etc.

8. The questions set out in the annexure to the notification read as follows :--

'(1) Whether the discharge of V. Ponnuswamy, and H. Subramanian, Proof-readers, is justified and to what relief they are entitled.

(2) Whether the transfer of L. Ramiah to Visalakshi Achakam and his subsequent discharge are justified and to what relief he is entitled.'

9. On 12-2-1958 the labour Court, Madurai, passed an award finding that the discharge of Ponnuswami and Subramaniam was not justified and that they were entitled to be reinstated with back wages. In respect of Ramiah it found that his transfer to the Visalakshi Achakam was not a bona fide one because the transfer was prompted by the desire of the management to avoid giving him the benefits of the decision of the Wage Board. The Court directed that he too should be reinstated with back wages from the date of Ex. W-16, the order, terminating his services.

10. The present petition has been filed by the management for the issue of a writ to quash the order embodying these directions of the labour Court.

11. The first contention of Mr. Thyagarajan, the learned advocate for the petitioner, may be thus summarised. Unlike an ordinary civil court a labour court has no general, much less inherent, jurisdiction in any class of matter. Beyond those which can be derived from or traced to Sections 7, 10, 14 and 15 of the Industrial Disputes Act, a Labour Court has no power or authority whatever. Before it can acquire jurisdiction in any particular case an industrial dispute must be referred to it by the appropriate government and its jurisdiction is limited to the disputes so referred.

If say, questions X and Y are referred to the Labour Court it will have no power or jurisdiction to adjudicate on dispute Z. If the disputes referred to it are between A and B, it cannot adjudicate on a dispute between B and C. In the present case, the order of the Government very specifically recites that the parties to the dispute were the workers of 'Tamil Nadu' on the one side and the management of 'Tamil Nadu' on the other. As a matter of actual fact, however, the workers of 'Tamil Nadu' were never before the Labour Court.

The only persons before the Labour Court were a small section of the workers of 'Tamil Nadu' and consisting of the working journalists on that paper, and, these working journalists were represented not by anybody on behalf of the workers of 'Tamil Nadu' but by the Madras Union of Journalists. The working journalists of 'Tamil Nadu' cannot be equated to the workers of 'Tamil Nadu', a part is not the whole.

12. In the award which the Labour Court passed it set out the array of parties as follows:

Between Working Journalists of 'Tamil Nadu', represented by the Madras Union of Journalists, Madras. Petitioners And The Management of 'Tamil Nadu',

Madurai Respondent, The claim statement before the Labour Court was filed not by the Workers of 'Tamil Nadu' at all but by the General Secretary of the Madras Union of Journalists on behalf of the Working Journalists of 'Tamil Nadu'. In effect, therefore, the position is that while the dispute which Government referred to the Labour Court was between A and B, the adjudication was between C and B. A being the workers of 'Tamil Nadu', B the management and C the Working Journalists of 'Tamil Nadu' represented by the Madras Union of Journalists.

13. On the other side Mr. Mohan Kumaramangalam explained that an examination of the papers leading up to the order of reference which the Government made would show that all through the claim of Ponnuswami, Subramanian and Ramiah had been espoused by the Union of Journalists. In the report which the Labour Officer, Madurai made to Government on 15-7-1957 he made it plain that the dispute was between the working journalists and the management of 'Tamil Nadu' and that at the conciliation proceedings which he held the Working Journalists were represented by the General Secretary of the Madras Union of Journalists and by a member of its Executive Committee. The dispute which the Government intended to refer to the Labour Court was the dispute reported on by the Conciliation Officer. The recital in the order of the Government that the dispute was between the workers of 'Tamil Nadu' and the management of 'Tamil Nadu' is only an unimportant error.

14. I have no means of determining whether the statement in the G. O. that the dispute was between the workers of 'Tamil Nadu' and the management of 'Tamil Nadu' was the result of an accidental or inadvertent slip or error, or whether the order was phrased that way deliberately and advisedly. In any case, even if it was a mistake, it was for the Government to 'rectify the mistake, and, they should have been invited to do so before the adjudication started.

15. It may be thought that as the management got an opportunity of presenting its case before the Labour Court it has suffered no prejudice. But, when the matter relates to jurisdiction, the question of prejudice becomes irrelevant. Let us suppose that a Second Class Magistrate tries and convicts a person of murder. The Magistrate may have heard and considered evidence fully, fairly and carefully and reached a conclusion to which no exception could possibly be taken. Nonetheless the conviction would be void on the ground that he had no jurisdiction. Where there is no jurisdiction the plea that there has been no prejudice will not avail. On this ground alone the order of the Labour Court is liable to be quashed.

15-A. But this is not all. Under the common law an employer is entitled to terminate the services of any of his employees on giving him the customary notice or wages in lieu of notice. This right can be abridged or abrogated only by contract statute or other rule of law. In many cases employees enter into contracts with their employers in which the term or duration of their engagement is fixed.

In such cases when the stipulated period ends the relationship of employer and employee would end automatically without need for notice. Sometimes such contracts provide that even during the currency of the contract the engagement, can be terminated by either party giving to the other notice. In such a case if the employer gives to the employee the notice specified in the agreement he will be entitled to terminate his services. Where, however, the management employs a large number of persons the terms and conditions under which the services of any employee can be terminated are frequently incorporated in the standing orders issued by the management.

These take the place of individual contracts. The matter is now placed on a statutory footing by the Industrial Employment (Standing Orders) Act, 1946 Section 3 of the Act requires employers to whom the Act applies to submit to the Certifying Officer five copies of the draft standing orders which they propose to issue. Section 4 specifies the conditions which have to be satisfied before those standing orders can be certified.

Generally speaking Section 5 requires the Certifying Officer to hear the employers and the workmen in respect of what they may have to say as regards the draft standing orders and finally he has to certify them with such modifications as he considers fit to make. Section 6 provides for appeals. Section 7, indicates the date from which the standing orders take effect. The schedule to the Act sets out matters that have to be provided for in standing orders, Items 8 and 9 of that schedule read as below:

'8. Termination of employment, and the notice thereof to be given by employer and workmen.

9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.'

It will be noticed that item 8 speaks of termination of employment and notice thereof to be given by employer and workmen. This entry would be entirely meaningless if an employer did not have the right to terminate the employment of any of his employees by giving him notice in the manner provided for in the standing orders. It will be noticed that these two entries make a distinction between termination of employment by the issue of notice and dismissal for misconduct.

16. I now go to the [Industrial Disputes Act, 1947](#), Section 25C confers on workmen a right to compensation when they are laid-off, that is to say, when the employer cannot give them work for short periods. Section 25F prescribes the conditions which must be satisfied before an employer can retrench a workman. The word 'retrenchment' has been held by the Supreme Court in *Barsi Light Railway Co., Ltd. v. K. N. Joglekar*, AIR 1957 SC 121 as meaning the discharge of surplus

labour or staff by the employer otherwise than as a punishment. Section 25FF and Section 25FFF provide for compensation to workmen where an undertaking is transferred from one to another or when an undertaking is closed down.

17. If it is not a case of lay-off or retrenchment or the transfer of an undertaking or the closing down of an undertaking but a case where an employer proposes to dismiss a workman for misconduct, then various rules provide that he should hold an enquiry which should conform to the principles of natural Justice.

18. The case of Ponnuswami, Subramanian and Ramiah do not fall into any of these categories. There was no specific written contract between the management of the 'Tamil Nadu' on the one hand and either Ponnuswami or Subramanian or Ramiah on the other. Nor does it appear that the management of 'Tamil Nadu' had framed any standing orders under the Industrial Employment (Standing Orders) Act. These are not cases of lay-off or of retrenchment or transfer of an undertaking or closure of an undertaking. Nor again were these cases of dismissal for misconduct.

19. Sub-section (1) of Section 41 of the Madras Shops and Establishments Act, 1947 directs that no employer shall dispense with the services of a person employed continuously for a period of not less than six months except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of notice. Sub-section (2) of Section 41 gives the person employed a right of appeal to the prescribed authority.

20. It was admitted before me that the cases of Ponnuswami, Subramanian and Ramiah do not come under this Act.

21. The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 amends the Industrial Disputes Act in its application to working Journalists in certain particulars. But, in this Act too I can see nothing taking away the power of an employer to terminate the services of an employee by giving him the customary or prescribed notice. In fact, in none of the statutes shown to me during the arguments -- except the Madras Shop and Establishment Act which has no application here can I discover anything -- subject of course to what I have said

about lay off, retrenchment, dismissal and other matters -- which takes away the power of an employer to terminate the services of any employee by giving him reasonable notice.

On the other hand, the Legislature has inserted item 8 in the schedule to the Industrial Employment (Standing Orders) Act, 1946 relating to the termination of employment and the notice thereof to be given by employer and workmen and that necessarily postulates that both employers and employees have a reciprocal right to terminate their engagement on notice. If there were no such right the entry would make no sense.

22. I put aside the case of Ramiah for the time being. So far as Ponnuswami and Subramanian are concerned, the matter is plainly one in which the management of the Tamil Nadu terminated their services and replaced them by others who, in its judgment, were more suitable for the work. This the management was fully entitled to do within the framework of the existing statutes, rules and regulations. That being so, I find it difficult to see how the Labour Court could have ordered their reinstatement. Even a Labour Court cannot tell a person that he cannot do what in law he is entitled to do.

23. The Second Schedule to the Industrial Disputes Act of 1947 enumerates matters within the jurisdiction of Labour Courts. Item 3 of that schedule reads,

'Discharge or dismissal of workman including reinstatement of, or grant of relief to, workmen wrongfully dismissed.'

The expressions 'termination of service', 'discharge from service' and 'dismissal from service' have acquired a fairly definite connotation. Whatever scope there may be for argument about the expressions 'discharge from service' or 'termination of service', 'dismissal from service' means something very different, and, under Item 3 the Labour Court would have jurisdiction to order reinstatement only in case of workmen wrongfully dismissed. Where there has been no dismissal or where the dismissal was not wrongful, the Labour Court has no jurisdiction whatever to order reinstatement. As I explained before, an employer is entitled to terminate the services of any employee by giving him notice and replace him by another whom

he considers more competent. That would not be a case of wrongful dismissal which will give the Labour Court jurisdiction to interfere.

24. Ponnuswami and Subramanian gave evidence to say that when they were served with orders terminating their services they made representations to the management and that they were then told that the management did not want to pay them the new scales of pay fixed by the Wage Board, that if they wanted to continue in service they might resign and that they would then be re-employed as clerks but however would be allowed to do the duties of Proof Readers as before. The Labour Court accepted the evidence of these individuals as it was entitled to. From that evidence the Labour Court also concluded that the management was not prepared to pay these persons the scales of pay recommended by Wage Board and, that too is a conclusion which that Court was entitled to reach.

25. But that conclusion, however, is not sufficient to dispose of the matter or to support the order made by the Labour Court. I am not suggesting that any employer or in fact any one is entitled or even should be permitted to circumvent or evade compliance with legal obligations -- whether these obligations be in respect of wages due to labour or taxes due to government or honest service to the public. Far from that. But, granting all this, an employer is entitled to say: We are now required to pay wages at such and such rates. For that money we can get persons with superior qualifications or with more advanced training. So we propose to terminate the services of the old hands and take in a more qualified or better lot. This may work hardship on people who have been long in service. Nonetheless the management is entitled to say that.

26. On this aspect of the matter, the Labour Court made certain comments. One was that the chief proof reader Nataraja Pillai was retained in service, that he had studied only up to the III form and though he claimed that he had obtained the title of Vidwan, that was from a Trichy institute which was not recognised by the Government and which institution had become defunct. On this comment it is enough to say that no management is under an obligation to send out all its old hands ; much less is it required to do so simultaneously. If it decides to replace old hands by others more highly trained it is open to it to adopt a phased programme

and make the change over gradual. In fact, if large changes have to be made the inevitable hardship would be reduced if the change is spread over a time and is suitably phased. The order and the stages in which the change should be effected is entirely a matter within the discretion of the management.

27. In dealing with the case of Ramiah the Labour Court made certain observations which may be conveniently referred to here. It pointed out that Ramiah had studied up to the IV Form and worked as proof reader for a year and three months in 'Dinaohaithi', a Tamil daily and for two years in 'Arunan', a bi-monthly before he joined the 'Tamil Nadu'. Ramiah also deposed, that he was subjected to a test by the management before he was recruited as a proof reader, and that even thereafter he was given tests two or three times in all of which he was successful. On this evidence the Labour Court concluded that Ramiah must have been an efficient man and that therefore there was no need to replace him. But surely it is not for the Labour Court to determine what standard of efficiency will suffice it is for the management to decide that. The running of the concern is not vested in the Labour Court.

28. So far Parliament has passed no Act prohibiting employers from taking steps which would increase the quality of their services to the public. In respect of certain kinds of employment the law prescribes that no person shall be employed to discharge the duties of a post unless he possesses certain minimum qualifications, general or technical as the case may be. Subject to that minimum it is for the employer to decide what higher standard he will insist on. The Labour Court cannot say you have got on like this for five years; you must get on like this for five years; you must get on like this indefinitely. It is not difficult to visualise where such a line will take us.

Let us suppose that there is a shop-keeper who trades in a small way with the assistance of a clerk who has been only a few years in school. His business expands or he seeks to expand his business and wants to replace his clerk by another who knows some English or to keep accounts. If the view of the Labour Court were right the shop-keeper cannot do that. Again, let us suppose that a school is started in a small village with a number, of untrained teachers. The

management, if the reasoning of the Labour Court were right, would be precluded from replacing the untrained teachers it started with by trained hands.

It would be precluded from replacing teachers who have passed only say the School Final Examination by others who have taken degrees. A private nursing home which starts with doctors who possess minimum qualifications will be barred indefinitely from replacing them by others who may have received advanced training in the most up-to-date methods in outside countries. I am not suggesting that a school or a shop or nursing home is a factory but they will serve to illustrate my meaning. Enforcement of ideas of this kind would stifle all progress.

29. Mr. Mohankumaramangalam advanced an argument with reference to the conditions of service in Government. He pointed out that Government prescribes certain minimum standards of qualification for entering into Government service but that once a man is recruited he is not replaced merely because some one with superior qualifications is available. That is no doubt so. But there is no analogy between conditions in Government service and conditions in private employment. Conditions in Government service are governed by a complex code consisting of constitutional provision, statutory enactments, rules framed under statutes and a large mass of rulings and precedents.

Besides, there used to be certain traditions about what is done and what is just not done which in particular instances gave even more elective protection than rules and regulations. There is no justification for the transfer en masse of the provisions relating to Government service into what is called the private sector. There are also important differences in other respects. The theory is that the whole time of Government servant is at the disposal of the Government.

But, that theory does not apply to private employment. Again, there are regulations about overtime and various other matters which exist in the private sector but which do not exist in various sections of Government service. Finally on the economic plans there are vital differences. Government can levy taxes; employers in the private sector cannot; if a private employer were to content himself with standards of courtesy, carefulness, cost, quality and efficiency with which some departments of Government appear to be pleased, it will not be long before he

finds himself in the bankruptcy Court.

30. The position of Ramiah: is different from that of the other two. His services were not terminated by the 'Tamil Nadu' since he was transferred from the 'Tamil Nadu' to Visalakshi Achakam. Now, within certain limits which are not very clearly defined, even a private employer has the right to transfer an employee from one branch of his business to another, and, even from one business to another. Thus for example, a bank may transfer one of its clerks from its office in Mount Road to an office in Broadway and the employee will not be heard to say that the transfer is illegal or improper.

But then, if a private employer who has a trade say in hides and skin's and also another trade say in drugs and medicines transfers an employee from the drugs business to the hides and skins business, the position would probably be different and the employee entitled to complain. A good deal depends among other things upon the nature of the post to which he is transferred. In the present case there is evidence that 'Tamil Nadu' is a daily newspaper, but not the Visalakshi Achakam. But that is not sufficient to conclude the matter. Without more evidence than is available it is not possible to record a conclusion on the question whether his transfer was justified or not.

31. I shall, however, assume that the transfer was not justified. In that case the position of Ramiah would be that of a person whose services in 'Tamil Nadu' had been wrongly terminated. The termination would be wrongful because he was not given notice or wages in lieu of notice. Still it would not be a case of wrongful dismissal within the meaning of item 3 to the Second Schedule of the Industrial Disputes Act.

32. I have already recorded the view that a management is entitled to terminate the services of its employees in order that it may replace them by others who in its view possess superior qualifications. The management of the 'Tamil Nadu' was entitled to terminate the services of Ramiah by giving him the usual notice. But it did not do that; instead it offered him another post which he did not take. In the circumstances what Ramiah is entitled to is wages in lieu of notice together with such gratuity or bonus as he may have earned. He is not entitled to be reinstated.

33. One other matter remains to be referred to. Visalakshi Achakam terminated the services of Ramiah because he was continuously absent on one ground or other. He produced medical certificates in support of two of his applications for leave. The management, in the circumstances could have properly said that they did not want to keep a man whose health was so poor, and, on that ground terminated his services.

34. It was however argued that the subsequent conduct of Ramiah could not be taken notice of at all. To that proposition I am not willing to subscribe. I shall explain why, by a simple illustration. Let us take the case of say a Head Accountant in a Taluk Office, He is transferred to another post. Let us suppose that the transfer was improper. But, it is found that in the new post which he joined he misappropriated Government money. Can it be said that his subsequent conduct cannot be taken notice of and that he should be reinstated in his former post as Head Accountant? This illustration will suffice to dispose of this argument.

35. In the result, the writ petition is allowed, but, in the circumstances of the case, without costs.

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