IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30/08/2005

CORAM

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.46914 of 2002

M/s.Baliga Lighting Equipments
Pvt. Ltd.
represented by its Director
Mr.Mahesh Baliga
389, Medawalkam Road
Kovilambakkam
Chennai-600 117. .. Petitioner

-vs-

1. E.Ravikumar
2. N.S.Mohan
3. C.Narayananan
4. P.Viswanathan
5. K.Manickam
6. V.Venkatesan
7. P.Shanmugam

8. The I Additional Labour Court
Chennai-600 104. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records in the proceedings, Industrial Dispute No.492 of 1987, the order dated 2nd September 2002 passed by the learned I Additional Judge, Labour Court, Madras and quash the said proceedings as the said proceedings are vitiated by an error apparent on the face of the record.

!For petitioner : Mr.S.A.Rajan

^For respondents-1 to 7 : Miss R.Vaigai

:ORDER

This writ petition has been filed by the Management of Baliga Lighting Equipments Private Ltd., seeking for a Certiorari to quash the proceedings of

the Labour Court Chennai in I.D.No.492 of 1987 dated 2.9.2002.

2. The Management states that their industrial activity was established in the year 1962 and the company employed 63 workers in 1985. They belong to Guindy Industrial and General Workers' Union. Later on, some of them branched out and formed another Union, namely, Baliga Lighting Employees' Union. Both the said Unions are registered under the Trade Unions Act. According to the Management, majority of the workers belong to the Baliga Lighting Employees' Union and therefore, the company started entering into wage agreements with the said Union from time to time, almost once in three years. The workers of the other Union used to sign the agreement binding themselves to the terms which were agreed to by the Union which was a party to the agreement. On 14.8.1985, a wage settlement was signed by the said Union. The settlement came into force on 1.4.1985 and was to remain in force till 31.3.1988. The party respondents in the writ petition and three other workmen did not sign the letter of undertaking to continue their employment. About eight employees inclusive of the seven respondents did not sign the wage agreement and they started to give endless problem to the Management. In the affidavit, the various details relating to the alleged acts of indiscipline and highhanded behaviour of the employees have been enlisted. It is also stated that all the respondents indulged in go-slow tactics and also resorted to coercive activities against the implementation of the wage agreement and had also committed violence and wilful acts of waste and damage to the properties.

3. Consequently, a memo was issued on 13.9.1986 to all of them warning that they should give an undertaking in writing to adhere to the rules of discipline in the factory and to refrain from indulging in acts of indiscipline and were also directed to ensure full production norms.

They were also warned that they would be closely watched and their performance would be assessed. If no improvement was found, individual "lockout" in respect of the said workers would be issued with effect from 18.9.1986. A draft copy of the undertaking to be signed by the workers was also appended to the memo which was sent to each of the workers. However, the respondents, in spite of having received the notice and even in the face of a warning letter, did not change their behaviour. They continued to adopt go-slow tactics and disrupted the progress of the work in the factory. They were also quarreling with the superiors in all the activities of the Company which amounted to unfair trade practice. They had also encouraged, instigated and coerced other employees when they were discharging their work and have also been holding illegal meetings in the dining hall. The Management's directions to give an undertaking in writing to adhere to rules of discipline was not complied with by the respondents. As a result of their refusal to give the undertaking, they were locked out from the industry with effect 18.9.1986. The respondents who did not sign the agreement referred the matter for conciliation which ended in failure. When the Government was moved, the Government, in its proceedings dated 21.3.1986 in G.O.No.631, declined to refer the matter for adjudication. The respondents then preferred claim petitions and each one of them raised an industrial dispute before the labour Court.

4. According to the Management, the labour Court, instead of dealing with the disputes individually, erroneously clubbed all the matters together and permitted both parties to submit their written statements. Elaborate oral and documentary evidence were also taken. The following question was raised for consideration:
" Whether the non-employment of the eight respondents were justified and if not to what relief they are entitled and to compute the relief if any awarded in terms of money if it can be so computed. "

5. According to the Management, the question thus framed has been erroneously addressed.

6. Before the Conciliation Officer, the Management had made it clear that the respondents would be entertained for employment if they gave an undertaking as required by the Management. Before the labour Court, the dispute was taken up for trial and all the respondents were examined and cross-examined. According to the Management, some of the respondents had admitted that they were adopting go-slow tactics as a result of which, there was fall in the production. Evidence was let in by the Management also in which it was clearly stated that the respondents were locked out for their unfair labour practice.

7. The labour Court, considering the removal of the names of the respondents from the muster roll, held that the lockout imposed by the Management amounted to wrongful retrenchment and ordered reinstatement of the seven respondents with continuity of service with full backwages and attendant benefits. Hence, the above writ petition.

8. Mr.S.A.Rajan, learned counsel for the Management, made elaborate submissions on the facts of the case which led to the action by the Management against the employees and how they had indulged in many acts of indiscipline and according to the Management, they had also caused damage to the properties and were also indulging in coercing the loyal workers not to attend to the work. While they were in service, the respondents had also indulged in go-slow tactics resulting in grave loss to the Management as a result of distinct fall in the production. Learned counsel also contended that the lockout initiated against individual workers was permissible under law. It is not a punishment, but it is only a means of reprisal on the part of the Management to bring the workers to proper terms. Learned counsel relied on judgments of the Supreme Court in support of his contention that lockout of select individuals is permissible as long as it is shown to have been given effect to in a proper manner. All that the Management had insisted was to submit a letter of undertaking assuring that they will maintain discipline and will not adopt go-slow tactics. There is nothing wrong in insisting on such an undertaking being given considering that there were acts of violence around the factory and damage was caused to the properties belonging to the company. Therefore, the approach of the labour Court holding that there was a termination or retrenchment, was not at all justified. The respondents were out of service on their own choice of not submitting the undertakings as

insisted by the Management. The Management did not send them out on any specific charge for which alone an enquiry would be required. The employees were carefully forewarned about the decision to terminate their services in the event of the employees refusing to sign the undertaking.

9. Per contra, Miss R.Vaigai, appearing for the employees, contends that from the beginning the attitude of the Management was one of extreme vindictiveness and the undertaking which was required to be signed by the workers contained certain unagreeable and self-destroying terms and justifiably, the workers refused to sign the agreement. Under the guise of obtaining an undertaking to maintain discipline, the Management cannot force harmful terms and conditions and undertakings. In the event of any term of undertaking being illegal and unenforceable, the workers are certainly justified in refusing to sign the undertaking. Some of the conditions were totally one-sided and dangerous to the interest of the workers and hence, the respondents have rightly refused to sign the undertaking. In the said background, the labour Court had rightly found that the lockout amounted to retrenching/terminating the services of the respondents.

10. I have considered the submissions of both sides.

11. Though both the counsel had argued elaborately on the factual details relating to the alleged misbehaviour of the various employees as well as the law on the subject of lockout which permits lockouts against individual employees, it is not necessary to deal with the merits or the truth of allegations against the employees whose services have now come to an end the respondents. It is agreed by the learned counsel for the petitioner that the only reason why the respondents were not taken in service was their refusal to sign the agreement. It is not in dispute that even before the Conciliation Officer, the stand taken by the Management was that if the respondents agree to sign the undertaking, they will be taken back in employment. In their letter to the Assistant Labour Commissioner dated 13.5.1987, it is seen that they had requested the Assistant Commissioner to advise the workmen to prevail upon them to return to work after signing the prescribed undertaking. Therefore, it is an admitted fact that the nonemployment of the respondents arose only due to the fact that they refused to sign the undertaking.

12. It is true that there is nothing wrong on the part of the Management in insisting on the workers giving an undertaking in the event of there being large scale threat of breach of peace and damage to properties. But the terms of the undertaking have to be in conformity with the legal rights of the employees and cannot be worded in onesided manner to suit only the interest of the Management. In the

background of the pleadings as above and the point to be decided, the only issue which requires to be decided is as to whether there is any justification for the workers not to have signed the undertaking.

13. Ex.W10 is the memo dated 13.9.1986 served on the individual workers which is as follows:

" Some of the workers, especially the following have been indulging in go-slow for the last two months and their out turn of work is practically negligible. They have been found gossiping and leaving their place of work during working hours.
Such of those workers who indulge in the above practices and fail to adhere to proper production norms are hereby warned that the management will lock them out from the premises until such time as they give an undertaking in writing to adhere to rules of discipline in the factory, refrain from indulging in acts of indiscipline and ensure full production norms.
They will be watched closely and should there be no improvement, the lockout in respect of these workers will take effect from 18th September 1986.
"

14. To that notice, a draft undertaking was attached containing fourteen conditions which was required to be signed by the individual workers. The format of undertaking is as follows:

"VERNACULAR PORTION OF JUDGMENT DELETED"

15. To repeat what has already been stated, there is nothing wrong in the Management seeking for an undertaking from the workers for proper behaviour, conduct and discharge of their duties. Insistence of giving an undertaking that the workers will abide by the rules and regulations; will carry out their duties in a proper manner; will not indulge in any unlawful activities, etc., are certainly permissible and refusal on the part of the workers to give such an undertaking may provide a justifiable cause of action for the Management to take action. But what is really objectionable is Clause No.13, which is to the effect that the Management may please forget and condone their past misconduct. It is this clause which is objected to by the workers, and in my opinion, rightly. The said clause No.13 is unfair and cannot be insisted and expected to be signed

by a worker who claims to be a disciplined worker and had not committed any misconduct and had not been found guilty of any misconduct. Clause No.13 is a clear infringement of the basic rights of a worker and therefore, there cannot be any insistence that the workers should sign the agreement. The said clause pre-supposes as though the worker had committed any misconduct and that he must be pardoned for his past misconduct. Apart from the fact that a worker who claims to have not indulged in any misconduct cannot be forced to sign such an agreement, it is necessary to bear in mind that signing of such an agreement would result in the worker exposing himself to subsequent action which could also be sustained without any further enquiry. Clause No.13 is nothing but a confession and self-inculpatory which cannot be accepted by any worker who claims that he has not committed any misconduct, nor has he been found guilty in a properly conducted enquiry.

16. Though several judgments were relied upon by the learned counsel for the petitioner in support the contention that there was nothing wrong on the part of the Management in insisting on an undertaking being executed by the worker, learned counsel for the Management has not been able to produce any authority which would justify compelling the worker to sign an undertaking

as the one under Clause 13.

17. A Division Bench of the Gujarat High Court had occasion to deal with a case of Management insisting on written undertaking not to go on strike in future and to seek pardon for the past conduct vide SWASIK TEXTILES ENGINEERS P. LTD. Vs. RAJANSINGH SANTSINGH AND OTHERS (19 84-II-LLJ-97). After considering the clause in the agreement seeking for pardon for the past conduct, the Division Bench has observed as follows:
"7. By executing writing, the respondents were required to admit that they had participated in the strike which was illegal. Besides giving assurance for not participating in such illegal strike in future and seeking pardon for having participated in the illegal strike, they were also required to state that it would be open to the petitioner to impose any penalty on them for participating in the illegal strike, that penalty would be binding on them and that they would not question the validity of imposition of such penalty. Even assuming that it was open to the petitioner to take disciplinary proceedings against the respondents for participating in the aforesaid strike, we fail to see what right or authority the petitioner had to demand the aforesaid writing from the respondents. By demanding such writing, what in effect and substance the petitioner was proposing to do was to hold the respondents guilty and impose punishment upon them without framing any charge or holding any inquiry against them. "

18. I am inclined to agree with the view thus expressed by the Division Bench. A worker cannot be compelled to sign an undertaking which amounts to admission of past conduct. For a worker who asserts that he is not guilty of any misconduct and that he has not been found guilty of any misconduct in the past, cannot be expected to sign the agreement containing such a clause.

19. Therefore, I am inclined to uphold the contention on behalf of the respondents that the insistence of the Management that the respondents should sign the form of undertaking, was improper and cannot be conceded. Having regard to the admitted fact that the nonemployment of the respondents was only due to the fact that they had not signed the agreement, I do not find any ground to interfere with the award of the labour Court.

With the result, the writ petition is dismissed.

Index: Yes
Internet: Yes
30.08.2005
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To:
The I Additional Judge
Labour Court
Chennai-600 104.