
(1962) 11 MAD CK 0001
In the Madras High Court

A.E. Shanmugham

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 13-11-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 17A, 20(3), 25F, 33(2)

Citation : (1963) 1 MLJ 331

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The petitioner was dismissed from service on 22nd April, 1960, by the management, on a finding that the petitioner had engaged himself as an Ayurvedic and Siddha Practitioner, which was prejudicial to the interest of the employer. The propriety of this dismissal was challenged by the petitioner, in an application u/s 33-I on the ground that there was a reference pending the industrial dispute for adjudication on the date of the dismissal. It would appear that there was an award on 26th March, 1960 which was published on 20th April, 1960. The charge against the petitioner was framed on 21st November, 1959 and, as I said, he was dismissed from service on 22nd April, 1960. The Labour Court, Madras, has found that the dismissal was improper and it was an act of victimisation. Nevertheless, the Labour Court proceeded thus:

This is a case which cannot be treated as a dismissal because there is no misconduct as such meriting punishment. The management cannot also be directed to take back this worker, when they entertain apprehension that it will prejudicially affect their interest. Having regard to all the circumstances, I think it will be proper, in the interest of both sides to treat the termination as in the nature of retrenchment and my order is that the

termination in this case will be treated as retrenchment.

On that reasoning, the Labour Court declined to reinstate the petitioner, but awarded retrenchment compensation on a certain rate. This petition is to quash the award.

2. It is obvious in the context of Section 17-A and Section 20(3) of the Industrial Disputes Act that the reference for adjudication of Industrial

Dispute No. 4 of 1959 was pending on 22nd April, 1960, when the petitioner was dismissed from service. It does not appear that the

management even applied u/s 33(2) for approval of the dismissal. The Labour Court, was, therefore right in coming to the conclusion that the

dismissal was improper not only on that ground but also on the merits.

3. When the Labour Court found that the dismissal was improper and that it so declared, the effect of it was that the petitioner should be deemed

to have continued in service. In such circumstances, it was the duty of the Labour Court to have ordered reinstatement. Instead, it treated the

dismissal as a sort of retrenchment, which clearly it had no jurisdiction to do. Retrenchment is governed by the provisions of Section 25-F of the

Industrial Disputes Act, and the termination will amount to retrenchment only if the requisites of that section are satisfied. It is not open to the

Labour Court to ignore the statutory provisions and treat the dismissal, which it held to be improper, as a sort of retrenchment and grant

compensation on that basis.

4. The award of the Labour Court, in so far as it held that the petitioner should be deemed to have been retrenched from service and granted

retrenchment compensation on that basis, is hereby quashed. The result is the Labour Court will consider afresh the relief to be granted to the

petitioner and dispose of the matter. The petition is allowed to that extent. No costs.