
(1994) 08 MAD CK 0009
In the Madras High Court

Agro Gargo Transport Limited, Harbour Constitution Road
Vs
E. Murugan and Another

APPELLANT
RESPONDENT

Date of Decision : 24-08-1994

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1994) 2 MLJ 507

Hon'ble Judges : K.A. Swami, J

Bench : Division Bench

Judgement

K.A. Swami, J.—This appeal is preferred against the order dated 4.7.1994 passed by the learned single Judge in W.P. No. 10518 of

1984. As the learned single Judge has dismissed the writ petition, the petitioner therein has come in appeal. 2 In the writ petition, the petitioner/

Management has sought for quashing the order dated 17.9.1984 passed by the Additional Labour Court, Madurai in I.D. No. 115 of 1983. That

dispute relates to the dismissal of the first respondent herein from the Service of the appellant. Respondent No. 1 was a driver. There was

domestic enquiry held against him on certain charges. The domestic enquiry resulted against him and consequently he was removed from service.

Hence dispute was raised before the Labour Court.

3. Before the Labour Court, the case pleaded by the first respondent is that he was directed by the enquiry officer to go out of the enquiry room

did as such he was not permitted to cross-examine the witness therefore, the whole enquiry was ex pane. On the contrary it is the contention of the

management that respondent No. 1 abused the management witnesses and went out of the enquiry room on his own accord and he did not avail

the opportunity or cross-examining the witnesses, therefore, it cannot be said that the domestic enquiry was held ex parte as respondents No. 1

went out of the room on his own The Labour Court on a consideration of the rival contentions in paragraphs 22 and 23 has summarised its

conclusion and held that the domestic enquiry was not fair and proper and thereby has given an opportunity to the management to let in evidence to

prove the charged and to the respondent No. 1 to adduce rebuttal evidence.

4. Learned single Judge has held that it is not the stage to record a finding in one way or the other, as the dispute is still pending before the Labour

Court and, therefore, dismissed the writ petition. In paragraph 7 of the order, learned single Judge has stated thus:

I do not propose however at this stage to finally close any such contention on behalf of the Management, but I may observe that it is always

possible to draw an inference of fact from a set of proved facts and on many occasions, such facts, appear to touch the limits of conjectures, but a

little imagination to come to conclusion on the basis of a set of evidence, can never be called a conjecture. Without such imagination, no finding of

fact can ever be recorded. It is in this sense, that the Courts in India have pointed out that resort to conjectures and surmises should be avoided by

the courts and tribunals, but, inference on facts is permitted. I have found no merit in the case of the petitioner. This writ petition is accordingly

dismissed with costs. Hearing fee Rs. 1,500 only.

5. Before us, learned Counsel for the appellant placed reliance on a decision of the Supreme Court in State of Haryana and Another Vs. Rattan

Singh, . That case did not arise out of an Industrial Dispute however, it related to a domestic enquiry held under the rules framed under Article 311

of the Constitution of India. While dealing with the domestic enquiry it has been observed thus:

The essence of a judicial approach is objectively, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of

course, fair play is the basis and if perversity of arbitrariness as bias or an surrender of independence of judgment vitiate the conclusion reached.

Whereas learned Counsel for the appellant placed reliance on the observation made in the latter portion of the very same paragraph 4, which is to

the-following effect:

Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support

of a finding is certainly in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.

On a reading of the earlier observation and the latter observations together in the aforesaid decision, it is seen that it has been laid in categorical I

terms that the domestic enquiry must be fair and it must be in conformity with the rules of natural justice. It is also the established legal position that

normally the High Court, under Article 226 of the Constitution, does not interfere at the stage, as it is in the present case, on a finding recorded on

a preliminary issue because it is open to the management to take up all the contentions at the later stage, if the award goes against it. As such, the

management does not lose the right to challenge the correctness of the finding recorded by the Labour Court, Here, it may be relevant to notice a

decision of the Supreme Court to notice a decision of the Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, wherein it

has been held that it will be legitimate for the High Court to refuse to intervene at this state of the proceeding before the Labour Court on a finding

recorded on a preliminary issue. The relevant portion of the judgment is as follows:

22. We are therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour

Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no

domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the

parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it

will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding

to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the

Labour Court by questioning its decision with regard to the preliminary issue when the matter if worthy, can be agitated even after the final award.

It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

6. Taking into account all these aspects of the matter, we decline to interfere with the order passed by the learned single Judge and keep open all

the contentions advanced on both sides. The appeal is, therefore, dismissed. As the matter is of the year 1984, we direct the Labour Court to

decide the dispute within four months from the date of receipt of a copy of this judgment. Copy of the judgment be sent to the Labour Court in

four days.