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**(2000) 05 MAD CK 0003**

**In the Madras High Court**

**Case No :** Writ Petition No. 14965 of 1992, W.M.P. No's. 21305 of 1992 and 12262 and 12263 of 1993

Anna Co-operative Spinning Mills

APPELLANT

Vs

Additional Labour Court and Another

RESPONDENT

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**Date of Decision :** 09-05-2000

**Acts Referred:**

**Citation :** (2000) 3 LLJ 836

**Hon'ble Judges :** V. Kanagaraj, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

V. Kanagaraj, J.—The Anna Co-operative Spinning Mills, Andipatti, Madurai has filed this writ petition against the Additional Labour Court, Madurai and an individual employee praying to issue the writ of certiorari calling for the records of the first respondent in respect of the Award dated May 18, 1992 made in I.D. No.400 of 1990 and quash the same.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the second respondent was working in the Simplex Department of the Mill as a worker and at times, he would be asked to work as a Maistry also, that in February 1989, he was paid as wages a sum of Rs. 135.96 for which a register is maintained by the timekeeper; that after entering all the wages due to each of the workers, the Register is taken to the petitioner Management and the cashier makes the disbursement to all the workers on the basis of the figures given in the register.

3. The further case of the petitioner-Management is that the second respondent surreptitiously entered the office of the timekeeper and tampered with the register fraudulently altering the figure of Rs. 135.96 for the month of February, 1989 to Rs. 735.96, thus receiving an excess amount of Rs. 600; that after payment of the said amount, he again entered the office of the timekeeper and realtered the

figure to Rs. 135.96; that because of the realteration of the figure, the cashier was not in a position to account the shortfall of Rs. 600 and hence he made good the loss from his pocket; that emboldened by the non-detection of this fraudulent act, the second respondent tried to repeat the same for the month of July, 1989 by altering the figure of Rs. 111.50 as Rs. 711.50 and this time, an attempt was made to receive a sum of Rs. 600 in excess of wages on August 7, 1989; but on this occasion, his fraud was detected and he was caught red-handed by the cashier and on verification of the figures for the month of February, 1989 at page 67 of the wages register, it was found that the figure 7 again was erased and substituted by figure "1"; that obviously it was the second respondent who had committed the fraud by tampering the wages register.

4. The last phase of the case of the petitioner is that on complaint by the cashier dated August 7, 1989, the show cause notice dated August 16, 1989 was issued to the second respondent further suspending him from service on that date itself; that he submitted his explanation with which not being satisfied, it was decided to hold a domestic enquiry and a practicing lawyer at Madurai was appointed as the enquiry officer; that the date of enquiry, accompanied by the copy of the complaint was furnished to the second respondent well in advance and with due opportunity for the second respondent to be heard and on completion of the entire disciplinary proceeding in accordance with the principles of natural justice and as per the procedures of the certified Standing Orders, the enquiry officer submitted his report on December 16, 1989 finding the second respondent guilty of the charge levelled against him and since amounted to the serious and grave one, the petitioner issued a second show cause notice furnishing copy of the enquiry report, to the second respondent, proposing the penalty of dismissal from service; that the second respondent submitted his explanation to the second show cause notice and since they were not satisfactory, he was removed from service by the order dated January 31, 1990.

5. The petitioner would further submit that aggrieved, the second respondent raised a dispute, on failure of conciliation, which having been referred to the first respondent for adjudication, the first respondent proceeded in I.D. No.400 of 1990 and inspite of having brought forth all the facts with the further prayer of permitting the petitioner to adduce additional evidence in the event of the first respondent arriving at a conclusion that the enquiry was defective or vitiated in any manner, first respondent by its award dated May 18, 1992 passed in accordance with the principles of natural justice analysing the evidence arrived at the conclusion that the finding of the enquiry officer and that the guilt recorded by the enquiry officer was not borne out by the evidence on record and directed the petitioner-management to reinstate the second respondent with full back wages and continuity of service. It is only against this Award passed by the first respondent, the petitioner-Management has come forward to file this writ petition on certain grounds brought forth, thereby praying for the relief extracted supra.

6. In the counter affidavit filed on behalf of the second respondent, he would submit that he joined service in the year 1985 and at the time of his dismissal from service, he was drawing a salary of Rs. 454 besides denying the statement that he was asked to work as Maistry temporarily at times. Narrating the charge about the stages of enquiry, the second respondent would state that inspite of having made a request to the enquiry officer to permit him to recall the management witnesses, without any answer keeping him under the impression that the matter was being adjourned, surprised him with the enquiry report dated December 16, 1989, thus leading to lack of opportunity for him to exhaust all his remedies during the enquiry proceeding; that the petitioner without accepting his further explanation, ultimately dismissed him from service on January 31, 1990; that the charge that he tampered with the wage register altering the figures regarding the salary for the month of February, 1989 had been rejected by the Labour Judge mainly since M. W. 1, the cashier did not make any complaint in the said month or subsequent months; but the allegations were made only after 5 months of the occurrence; that secondly there was no direct witnesses to prove the allegation of alteration; that the statement that the second respondent surreptitiously entered the office of the time keeper and tampered with the register kept therein, is presumptuous for which also there is no direct evidence and hence the Labour Court rightly rejected the allegations as unbelievable and not proved; that the further allegation that he was caught red handed has also not been supported by the evidence; that the reason assigned, facilitating the second respondent to tamper the register has not been accepted by the Labour Court; that there was also no direct evidence for rewriting or realtering the figures; that the Court below also considered the evidence of the worker with reference to the dismissal order on the ground of the union activities in which the worker was involved in the said mills and hence it is apparent that the management with the view to bring him from involving in unionising the workers has falsely charged and dismissed him from service; that only on appreciation of the evidence properly and not merely appreciating the enquiry report alone, the conclusions have been arrived at by the Labour Court and there is no need for the Labour Court to afford further opportunity to adduce additional evidence; on such and other reasons, the counter affidavit filed on behalf of the second respondent would pray to dismiss the writ petition with costs.

7. During arguments, the learned counsel appearing on behalf of the petitioner-Cooperative Spinning Mills Limited, besides laying emphasis on those facts pleaded in the writ petition, he would also put forth certain salient features of the case in a nutshell stating that on August 7, 1989, the manager received a complaint from the cashier to the effect that the wages register had been altered by the second respondent; that on August 15, 1989 the second respondent was suspended and the charge memo was issued; that on August 18, 1989, the second respondent submitted his explanation; that the management did not accept the explanation and ordered for a domestic enquiry to be conducted; that on behalf of the management, the Manager Aavudaiyappan was examined as

M.W. 1 and the cashier as M.W.2 and it is the cashier who gave the complaint; that the second respondent participated in the enquiry and examined himself as M.W. 1.

8. Continuing to argue, the learned counsel would further submit that on December 16, 1989, the enquiry officer submitted his enquiry report with the finding that the charges were proved, based on which a second show cause notice was issued to the second respondent on January 9, 1990, seeking explanation; that on January 22, 1990, he submitted his explanation; that the management not being satisfied, ultimately dismissed the second respondent from service on January 31, 1990; that aggrieved, the second respondent raised an industrial dispute in I.D. No. 400 of 1990 on the file of the first respondent, who passed this Award reinstating him with back wages holding that the charges were not proved. The learned counsel would further point out that the charges levelled against the second respondent were serious and hence the only punishment that could be awarded by the disciplinary authority was dismissal from service; that the Labour Court without proper consideration of the circumstances, has held that the charges were not proved; that the Management is entitled to adduce additional evidence even if the appreciation of evidence by the enquiry officer is held perverse.

9. Continuing to argue, the learned counsel would submit that the enquiry was fair and proper; but the finding rendered by the enquiry officer was held perverse, according to the Labour Court; that as per the Industrial Dispute Act, if the enquiry is defective or if there is no enquiry held, liberty to the management is to be given to adduce additional evidence in proof of the charge. In support of this legal proposition the learned counsel would cite a decision delivered in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, , wherein it is held:

"If the management wants to avail itself of the right, that it has in law, of adducing additional evidence, it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management."

The learned counsel would also submit that in the case of the petitioner, inspite of the enquiry having been held properly, the Labour Court held that the enquiry officer's report was not correct; that even then, the Management has right to adduce additional evidence and would cite a decision delivered in Dr. N.K Ramiah v. The Yadava Kalvi Nidhi, a registered society through its secretary and others, 1994 W.L.R 165, wherein it is held:

"The college committee in this case is not created by or under any statute, but is governed by certain statutory provisions for the proper administration of the committee and therefore, the present writ petition against a private college committee is not maintainable."

Remarking that the appreciation of evidence by the enquiry officer is perverse, the Labour Court has ordered reinstatement with back wages as found in concluding paragraphs of the Award of the Labour Court.

10. In reply, the learned counsel appearing on behalf of the second respondent would submit that the Labour Court having conducted a thorough enquiry, allowing the parties to examine the witnesses and to mark their documents literally and in appreciation of the evidence in a fair and proper manner has ultimately arrived at the valid conclusion to hold that the appreciation of evidence on the part of the enquiry officer was perverse and has ultimately held that the charges were not proved against the second respondent in the manner expected by law and would pass the award directing the reinstatement of the second respondent in service with full back wages. The learned counsel would further point out that the management was given full opportunity either to examine its witnesses or to mark the documents and in fact they exhausted their remedies before the Labour Court; that however, in order to protract the proceedings and in order to keep the second respondent under the orders of dismissal, for long the petitioner has sought for additional evidence to be adduced, which is a hoax; that there is absolutely no necessity for any opportunity to be given for the management in the name of adducing additional evidence and would conclude his arguments stating that right decision had been taken by the Labour Court that the charges were not proved, resulting in ordering reinstatement in service with back wages, for which the interference of this Court, as prayed on the part of the petitioner-Management is not at all called for.

11. A true assessment made into the proceedings of the impugned Award passed by the first respondent in I.D. No. 400 of 1990, dated May 18, 1992 would reveal that the first respondent Labour Court has conducted a thorough enquiry in which on either side no oral evidence was let in and even regarding the documentary evidence filed on the part of the 2nd respondent it is Nil. But on the contrary, the Management would mark 23 documents as Exs.M-1 to M-23. Ex.M-1 being the complaint lodged by the cashier with the management dated August 7, 1989, Ex.M-2 being the show cause notice issued to the second respondent dated August 16, 1989. Ex.M-3 being the explanation submitted by the second respondent dated August 18, 1989. EX.M-4 being yet another explanation dated September 5, 1989. Ex.M-5 being the notice of enquiry dated October 12, 1989. Ex.M-6 being the telegram issued by the second respondent to the Management. Ex.M-7 being the another notice of enquiry dated October 20, 1989. Ex.M-8 being the copy of the wages register for February, 1989. Ex.M-9 being the same wage register for July, 1989. Ex.M-10 being the standing orders of the management. Ex.M-11 being the note of enquiry proceeding. Ex. M-12 being the enquiry report dated December 16, 1989. Ex.M-13 being the second show cause notice dated January 9, 1990. Ex.M-14 being the explanation dated January 22, 1990 by the second respondent. Ex.M-15 being the dismissal order dated January 31, 1990. Exs.M- 16 to M-23 being the penalty registers of

the past delinquencies of the second respondent.

12. The Labour Court in consideration of the charge, the explanations offered on the part of the second respondent, the enquiry proceedings, the evidence recorded therein and the enquiry report itself and in further consideration of the exhibits filed by the Management before the Labour Court in Exs.M-1 to M-23 and having widely discussed the facts and circumstances in settling the whole of the charge in the context of the evidence, has ultimately arrived at the conclusion to hold the charges not proved and ordered reinstatement of the second respondent in service as per his Award dated May 18, 1992.

13. It is only against this Award passed by the Labour Court, the petitioner Management has come forward to file the writ petition in hand on grounds such as;

(i) that the first respondent has not permitted the petitioner Management to adduce additional evidence in support of the charge much against the views of the upper fora of law which have held that in the event of arriving at a conclusion to hold the enquiry report perverse and the guilt is not borne out by the evidence on record, the Labour Court should have afforded fresh opportunity to the Management to adduce additional evidence, conceding to the prayer of the petitioner;

(ii) that on merit, the first respondent erred in coming to the conclusion that the finding of the domestic enquiry officer was not borne out by materials on record;

(iii) that the Labour Court has wrongly held that on the earlier incident in February, 1989, there was no complaint in time and it could not be stated that the second respondent was guilty of alteration and concluded without considering the various circumstances leading to the non filing of the complaint in the month of February, 1989.

(iv) that the Labour Court has also erred in not referring to the fact that the second respondent has not cross examined M.W. 1 and inasmuch as there was no cross examination of M.W. 1, the Labour Court ought to have accepted the evidence of M.W. 1 and held the second respondent guilty of the charge;

With the above grounds, the petitioner-Management would pray to quash the Award of the Labour Court.

14. In consideration of the pleadings of parties to the extent that they are relevant for consideration and having regard to the materials placed on record and upon hearing the learned counsel for both and on a overall study of the whole affair, one has to, at the outset, focus attention on the charge as framed. The charge against the second respondent is that he tampered with the wages register concerned with the month of February, 1989 in a fraudulent manner, correcting the figures Rs. 110.50, the actual salary of the second respondent into Rs. 710.50 not only obtained wrongful gains to the extent of Rs. 600 for that month, but also pertaining to the month of July, 1989, the second respondent

again attempted to play the same game, but since M.W.2, the cashier was alert he was able to detect the same and lodge a complaint to the said effect with the Management, which having issued a show cause notice to the second respondent seeking explanation submitted on the part of the second respondent having not been accepted by the management besides placing the second respondent under suspension the management also ordered for a domestic enquiry to be held in which, on the part of the Management, the Manager and the Cashier have been examined as M.Ws. 1 and 2 and on the part of delinquent-employee, he chose to examine himself, and further allowing the parties to file their documents, ultimately the enquiry officer would arrive at the conclusion holding the charges proved against the second respondent and thereafter the disciplinary authority, the Management, on a second show cause notice issued seeking the explanation from the delinquent, and on submission of that explanation also, the Management having not been satisfied rejected the same and inflicted on the second respondent, the penalty of dismissal from service of the petitioner management as per its order made under Ex.M-15 dated January 31, 1990.

15. Aggrieved the second respondent has raised the industrial dispute before the first respondent before whom none of the parties examined any witness and no document has been marked on the part of the second respondent, but 23 documents having been marked on the part of the management as Exs.M-1 to M-23 placing reliance on such evidence and in further consideration of the enquiry findings and the punishment, the Labour Court has not only rejected the evidence of this key witness as unreliable, but also further remarking that no due opportunity was afforded for the second respondent either to cross examine the witness or supplying with such material particulars required on his part and hence would ultimately arrive at the conclusion not only to reject the charges as not proved, but also ordered setting aside the penalty imposed on the second respondent workman further ordering his reinstatement with continuity of service and back wages.

16. Regarding the oral evidence adduced on the part of the management, M.W. 1 the Manager has not adduced any direct evidence and his evidence is inconspicuous so far as the material part of the case is concerned. It is only the evidence of M.W.2, the cashier and the complainant in the case, by whose complaint the law was set on motion so as to find out the delinquency committed on the part of the second respondent and initiated the domestic enquiry against him. There is absolutely no evidence coming forth in proof of the second respondent having made entries into the original of Ex.M-8, Wages Register concerned with February 1989, nor any circumstantial evidence brought forth in proof of the second respondent having manipulated these vital documents which are in the custody of the time keeper.

17. The crux of the charge says that the second respondent surreptitiously entered the office of the time keeper and tampered with the register fraudulently altering the figures. If really, had he been caught red-handed at the time of

marking entries, it is the time keeper who is normally to effect entries into the said register should have preferred the complaint. Without knowing as to who altered the figures on suppositions and surmises, the cashier has preferred the complaint against the second respondent and hence the Labour Judge rejected the version of the cashier examined as M.W.2 to the effect that there was tampering in the wages register by the second respondent so far as the monthly salary concerned with February, 1989 was concerned. Further more, between the first incident and the second incident, there is a long gap of five months during which time, there was absolutely no hue or cry and only after the second manipulation said to have been done altogether for February, 1989 incident also, the complaint had been lodged by, M.W.2. Cashier which, according to the Labour Judge, besides being unbelievable evidence is also abegging in proof of these facts.

18. It is further artificial to note on the part of M.W.2 coming forward to say that in spite of having parted with Rs. 600 from out of his pocket for the difference that arose on account of tampering of the figures in the wages register in the necessary columns of the second respondent, but not preferring any complaint no informing of the incident to anyone, keeping mum for a second incident to occur and hence the manner in which the entire case is projected through evidence has not been relied upon by the Labour Court. Therefore, the Labour Court has every reason to arrive at the conclusion that neither on evidence nor in proof of the circumstances, the charge could be held proved and the manner in which the evidence is appreciated by the enquiry officer has been rightly held perverse by the Labour Court so as to arrive at the conclusion to hold the charges not proved in the domestic enquiry resulting in the direction issued to reinstate the second respondent with continuity of service and back wages.

19. The decision of the Labour Judge has been arrived at on appreciation of the evidence made available in the context of the facts and circumstances of the case and absolutely there does not creep in any infirmity or inconsistency nor does the order suffer from patent errors of law or perversity in approach not even for lack of opportunity before him resulting in violation of the principles of natural justice. The opportunity said to have been sought for on the part of the management and denied by the Court is only a hoax and even though the Apex Court has held that in the event of arriving at the decision to hold the appreciation of evidence perverse, the management could be given an opportunity to be heard, still it has cautioned that on account of this opportunity sought for on the part of the management, there should not be any more delay which will hamper speedy justice especially when it is concerned with the Labour Legislation. It is one of the cases in which the management in spite of having exhausted its due before the Labour Court only adopting a dilatory tactics has sought for additional evidence to be adduced which is nothing but a hoax. On account of this untenable aim the order of the Labour Court cannot under any circumstance be undermined or interfered with much less by this Court.

20. In all respects, the award passed by the Labour Court has every reason to sustain and there is absolutely no need or necessity nor any tangible reason assigned nor exists for this Court to interfere with the well considered and well merited impugned award passed by the Labour Court. The decision arrived at under the award by the Labour Court to reinstate the second respondent in service of the petitioner with full back wages and continuity of service is quite legal and could be sustained in all fours and no different conclusion could be arrived at in the circumstances of the case.

21. In result, the above writ petition fails and the same is dismissed. The award of the Labour Court made in I.D. No. 400 of 1990, dated May 18, 1992 is hereby confirmed. No costs.

22. Consequently, W.M.P.Nos. 21305 of 1992, 12262 and 12263 of 1993 are also dismissed.