

(2003) 07 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No. 10455 of 1996

Anthonisamy S.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 2 LLJ 154

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : V. Gangadharan, for the Appellant; S. Ravindran, for T.S. Gopalan and Co., for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for the issue of a writ of certiorari to call for the records connected with the award of the Labour Court, Pondicherry, in I.D. No. 17 of 1990, dated October 13, 1995, and to quash the said award.

2. The petitioner an employee under the second respondent seeks for the issue of certiorari, to call for the award of the Labour Court, Pondicherry, in I.D. No. 17 of 1990, dated October 13, 1995, and to quash the same.

3. The petitioner was charged for theft of four metres of white polyester cloth from the mills. After show-cause notice only an enquiry was conducted and in the enquiry, the petitioner was found guilty of the charge. Consequently, he was dismissed from service. The Labour Court also on the dispute raised by the petitioner confirmed the order of dismissal. Hence the above writ petition.

4. The learned counsel for the petitioner has raised three contentions for consideration:

(a) On the same charges, the criminal Court had acquitted him C.C.No. 307 of

1988, dated February 23, 1989. Therefore, he should have been found not guilty in terms of the judgment of the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, ;

(b) Subsistence allowance has not been paid to the petitioner during the period of enquiry;

(c) Section 11-A of the Industrial Disputes Act has not been taken into account by the Labour Court while trying to assess whether the punishment was in accordance with the gravity of the misconduct.

5. On the issue as to whether the departmental proceedings should follow the judgment of the criminal Court, learned counsel for the petitioner relied on the judgment in Capt. M. Paul Antony's (supra). The said judgment is not an authority for the proposition that in all the cases where delinquents are found not guilty before the criminal Court should be automatically found not guilty in the departmental proceedings also. On facts, the judgment of the Supreme Court found that the departmental enquiry was an ex parte departmental enquiry. Therefore their Lordships went into the facts of the case and found that there was no justification for the departmental authorities to have come to the contra conclusion. In fact in the very same judgment, reference has been made to an earlier judgment of the Supreme Court in Nelson Motis Vs. Union of India and another, and State of Rajasthan Vs. B.K. Meena and others, . In all those proceedings, the issue which was considered was the desirability of simultaneous proceedings by the department and the criminal Court. None of the above mentioned judgments lays down as a rule that acquittal by the criminal Court should automatically result in the departmental proceedings also being set aside. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner.

6. On the issue of subsistence allowance, in the claim petition itself, the issue has not been raised. What is claimed is only the difference between the subsistence allowance and full wages. Therefore, the said point also does not arise for consideration.

7. As regards the failure of the Labour Court in not having taken into account the issue u/s 11-A of the Industrial Disputes Act, it is true that even if the issue is not raised by the delinquent, it is the duty of the Labour Court to consider proportionality of the punishment. It cannot also be disputed that even otherwise this Court can go into the issue and find put whether the punishment is appropriate. In this case, the nature of the misconduct is serious namely theft of materials belonging to the mills/employer. It is a serious misconduct from the point of view of the employer. Therefore, it is not a case in which the extreme penalty of dismissal could be said to be disproportionate. I do not find any reason to interfere with the order of the Labour Court.

8. Hence, this writ petition is dismissed. No costs.