
(2002) 07 MAD CK 0033
In the Madras High Court
Case No : Writ Petition No. 543 of 1995

Arumugam S.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A

Citation : (2003) 1 LLJ 392

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : K.M. Ramesh and S. Ayyathurai, for the Appellant; R. Parthiban, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—Petitioner was a workman who was charged with misconduct having slapped a co-worker while on the night shift

on December 25, 1989. He was dismissed after an enquiry had been held. The dismissal was on February 3, 1990.

2. The matter having been taken to the Labour Court u/s 2-A of the Industrial Disputes Act, the Labour Court found that the enquiry had not been

conducted in accordance with the principles of natural justice, and it permitted the management to adduce evidence before it in support of the

charges. Three witnesses were examined. The first witness for the management was the victim of the petitioner, one of the other witnesses M. W.2

was a co-worker, and the third was also a co-worker.

3. At Para. 9 of this award, the Labour Court referred to their evidence. It is useful to set out the same:

M. W. 1 Kannan has stated about the action of the petitioner in using indecent

words against him and slapping on his right cheek. M.W. 2

Balasubramaniam working as a doffer has clearly stated about the incident. M.W. 3 Vaiyapuri working as supervisor has stated that he was

standing near the maistry when M.W.1 complaining to the maistry about the action of the petitioner. The counsel for the petitioner argues that the

three management witnesses were all arranged by the management to utter falsehood against the petitioner. Though the petitioner is said to be an

important person in CITU Union, no documents were produced to prove it. When he was questioned whether the management has taken action

against other CITU Union workers, there was no answer. It has not been stated that there was previous enmity between him and M. W. 1. He has

stated that he did not see M.W.1 on the date of the alleged occurrence and that it is totally false. The fact that M.W 1 worked on that day is clear

from the evidence of the M.W. 1 and other management witnesses. If M.W. 1 had not worked on that day, the petitioner could have summoned

the relevant documents which he has not done and, therefore, the claim of the petitioner is false. There are no strong reasons to reject the evidence

of M.W.1 and M.W.2.

4. It was submitted by the learned counsel for the Workman that M.W. 1 alone is an eye witness, and the others are not, and that M.W. 1's

evidence should have been disbelieved. There is no substance in this submission. M. W. 1 is the man who was slapped and he has spoken to the

incident. The other two have spoken to the complaint made by him against the workman. The Labour Court has found that there was no previous

enmity and that the management had not taken any vindictive action against any of the workmen on the sole ground that they belong to the union to

which the petitioner belonged.

5. Counsel then submitted that the punishment is disproportionate, as the Labour Court has upheld the dismissal and has awarded only a monetary

compensation of Rs. 5,000. Counsel in this context referred to the decision of the Supreme Court in the case of Palghat BPL and PSP Thozhilali

Union Vs. BPL India Ltd. and Another, and submitted that slapping the co-worker though a misconduct, would not warrant dismissal as a

punishment. The factual backdrop in which that decision was rendered has been set out by the Court at page 337 of LLJ therein. It is inter alia

stated:

6. In view of the surging circumstances, viz., the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on the settlement during the conciliation proceedings, though initially agreed to, was raised later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 per cent of the back-wages up to the date of the award....

The facts in this case are altogether different. There was no excuse at all for the misconduct of the workman here. The provocation for the slapping was the misconduct which he himself had committed in the course of his work and about which he was admonished. Such misconduct on the part of the workman leading to assault of the co-worker is subversive of industrial discipline, and it is not an act which can be condoned.

6. The Labour Court has awarded a sum of Rs. 5,000 towards compensation. The misconduct being sufficiently grave, the dismissal should have been upheld, and the question of compensation certainly was not required to be considered at all. However, as the award of sum of Rs. 5,000 has not been challenged by the employer, the workman is entitled to that sum. The plea made for the workman that the sum should be enhanced does not merit acceptance, as the award of any further sum would only be to reward a misconduct instead of discouraging the commission of such misconduct by imposition of appropriate punishment. If the sum of Rs. 5,000 awarded by the Labour Court has not been paid so far, the same shall be paid with interest at the rate of 8 per cent from the date of award till the date of payment.

7. The writ petition is, therefore, dismissed.