

(1981) 09 MAD CK 0075
In the Madras High Court
Case No : Writ Petition 4422 of 1978

A.T. Sivasankaran

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 16-09-1981

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1984) ILR (Mad) 93

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : V. Raghupati, for the Appellant; A. Sivaji for Govt. Pleader and Mr. Robert Chelieiya, for the Respondent

Judgement

Nainar Sundaram, J.—Disciplinary proceedings were taken against the petitioner by the third respondent on charges of misconduct. The said proceedings culminated in an order of dismissal of the petitioner from service. The departmental appeal also did not prove fruitful. The petitioner raised an industrial dispute with regard to his non-employment. Apart from urging other factors which, according to the petitioner, would vitiate the disciplinary proceedings and the ultimate order of dismissal, the petitioner also urged that the punishment is heavy and excessive. There was conciliation and the conciliation ended in failure. The first respondent considered the question of referring the dispute for adjudication and by the impugned order, dated 28th March 1977, declined to do so. The impugned order reads as follows-- The Government have examined the conciliation report of the Labour Officer II, Madras first and read above in regard to an industrial dispute raised by Thiru A.T. Sivasankaran against the Management of Pallavan Transport Corporation Ltd. Madras (sic) over the issue of his non-employment and they are the following orders:

It is clear that the services of the workman had been terminated on proved charges. Hence the Government consider that there is no case to end the issue in dispute for adjudication.

Mr. V. Raghupathi, learned counsel for the petitioner, submits that though the order of the first respondent is an administrative one, yet the refusal order of the first respondent is open to judicial review on settled grounds and one of them is failure to take into account relevant considerations and another is, the Government misdirected, itself in law in wholly omitting to take into account relevant considerations. The learned counsel urges that the petitioner has raised the specific plea with regard to the quantum of punishment. In short, the grievance of the petitioner is not only with reference to the other factors, which, according to him, vitiated the disciplinary proceedings, but also on the aspect that the punishment imposed is disproportionate to the alleged misconduct. After the introduction of S. 11-A into the Industrial Disputes Act, 1947, the question of punishment is also a relevant factor and unless there is an indication that the Government did consider this aspect also while it declined to refer the matter for adjudication, it is not possible to uphold the order of refusal. That would amount to failure to take into account relevant considerations and the Government misdirecting itself in law in wholly omitting to take into account relevant considerations.

2. A similar view has been taken by Padmanabhan, J. in *Ramaswamy v. Govt. of Tamil Nadu* 1979-2-M.L.J. 380. This compels me to interfere in writ proceedings and accordingly, the writ petition is allowed and the impugned order of the first respondent dated 28th March, 1977 is quashed and the matter will stand remitted back to the first respondent for it to consider the same afresh in accordance with the law and in the light of the above observations. There will be no order as to costs in this writ petition.