

**(2001) 03 MAD CK 0022**  
**In the Madras High Court**  
**Case No : W.A. No. 640 of 1997**

Coimbatore and Periyar District Dravida Panchalai Thozilalar  
Munnetra Sangam

APPELLANT

Vs

Management of Pioneer Mills Ltd. and Another

RESPONDENT

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**Date of Decision :** 05-03-2001

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A

**Citation :** (2001) 2 LLJ 1296 : (2001) 2 MLJ 512

**Hon'ble Judges :** P. Shanmugam, J;A. Subbulakshmy, J

**Bench :** Division Bench

**Advocate :** N.G.R. Prasad, for Row and Reddy, for the Appellant; R. Krishnamoorthy, for T.S. Gopalan and Co., for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

P. Shanmugam, J.—The writ petitioner Union is the appellant herein. The writ petition was directed against the award of the Labour Court

upholding the order of dismissal of a workman. The learned single Judge dismissed the writ petition and confirmed the award of the Labour Court.

The writ appeal is against this judgment.

2. The facts of the case, briefly stated are as follows:

On October 16, 1979, the workman of the first respondent mill went on strike in reference to a bonus issue. On October 18, 1979, the workman

concerned in the writ petition namely R. Damodaran and eleven others were alleged to have assembled opposite to the residence of the Director

inside the mills premises and shouted slogans, indulged in criminal acts and acted in disorderly behaviour subversive of the discipline and damage to

work and to property belonging to the mill. It is alleged that on January 24,

1979, R. Damodaran and another workman- Kulandaiswamy threatened the other employees of the mill and caused damages. In reference to these two acts of alleged misconduct, two private domestic enquiries were held, besides, filing criminal cases under Sections 147, 341, 427 and 506(2) I.P.C. A show-cause notice dated October 10, 1979 was issued to R. Damodaran and ten others in reference to the incident that took place on October 18, 1979 and another show-cause notice dated December 4, 1979 was issued to R. Damodaran and Kulandaiswamy in reference to the incident relating to December 4, 1979. The allegation against the workman in the charge-sheet dated October 18, 1979 is that on October 18, 1979, at 11.00 a.m. R. Damodaran, along with other workman, assembled opposite to the residence of the Director inside the mills premises, that they shouted slogans and that they had smashed glass and tube lights by throwing stones and sticks, that they took away the rear wheel and stepney of scooter MTM. 2364 belonging to cashier Velusamy and threw it on the street and that thereafter, they damaged the scooter, that they lifted the scooter TN. 1976 belonging to the Manager Balachandran and threw it into the ditch near the compound. The charge-sheet dated December 4, 1979 alleged that R. Damodaran and another abused and threatened the workmen attending the electrical repair work of Pioneer House, that he would stab them in the stomach and used abusive language. Separate domestic enquiries were conducted and the Enquiry Officer, by different orders dated May 21, 1980 found them guilty of the charges levelled against them. By an order dated June 17, 1980, the first respondent, after considering both the reports, issued an order of dismissal against R. Damodaran. In the meanwhile, the Additional Judicial First Class Magistrate convicted the appellant and others for all the charges framed against them in Crime No. 505 of 1979. Different terms of imprisonment and amounts of fine were imposed. On appeal, the Sessions Judge, Coimbatore set aside the conviction and sentence passed by the trial Court and acquitted the accused of all the charges. The order of acquittal was confirmed in Criminal Appeal Nos. 517 and 518 of 1983 dated February 5, 1987. The Union filed a claim I.D. No. 120 of 1984 before the Labour Court, Coimbatore to hold that the order of dismissal is illegal. The Labour Court, after considering the claim petition

counter and after talking into account the order passed by the additional Judicial District & Sessions Judge, in Criminal Appeal Nos. 276 and 277

of 1983 dated February 22, 1983 passed an award dated January 20, 1987 dismissing the claim petition. The award was confirmed in the writ

petition and the present appeal is against this judgment.

3. Mr. N.G.R. Prasad, appearing on behalf of the Union raised the following points:

(1) The order of acquittal by the Criminal Court on the same set of facts and evidence is a judicial pronouncement and it would be unjust and unfair

to allow the findings rendered by the Criminal Court contrary to the finding recorded by the Labour Court to stand.

(2) There is a clear discrimination in imposing a major punishment on the concerned workman while awarding a lesser punishment to all other workmen.

(3) The Lower Court failed to properly consider and address itself to the provisions of Section 11-A of the Industrial Disputes Act, to award a lesser punishment.

(4) The unblemished past service record of R. Damodaran was failed to be taken by the Labour Court.

4. Mr. R. Krishnamoorthy, learned senior counsel appearing on behalf of the first respondent-Management submitted that the nature of charges

levelled against R. Damodaran in the criminal case and the charges framed against him in the domestic enquiry are basically different. According to

him, no discrimination was shown in the matter of awarding punishment, and the Enquiry Officer as well as the Labour Court correctly appreciated

the misconduct committed by Mr. Damodaran on (sic) very grave in nature when compared to others. He argued that the past record is not

relevant if the charges, which are grave in nature, are established and merely because the workman was a union leader, it will not amount to

victimisation. He further pleaded that from the facts and circumstances, the proved misconduct warrants the punishment of dismissal, both the

counsel referred to a number of decisions in support of their respective pleadings.

5. We have heard the counsel for both sides in extenso and considered the matter.

6. Acquittal in criminal case: The contention of the learned counsel for the appellant is that the judgment of acquittal in the criminal case is a judicial

pronouncement and therefore, the findings of the Labour Court should not be sustained. In support of this a reference is made to Capt. M. Paul

Anthony Vs. Bharat Gold Mines Ltd. and Another, : The Supreme Court in this case, while holding that simultaneous continuance with the criminal

proceedings and the departmental proceedings are permissible, but where the facts and evidence in both the proceedings were the same without

there being any iota of differences, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the

basis of approach and burden of proof could not be applicable. Their Lordships, in that case, laid down in paragraph 22 of the judgment as

follows at page 1100 of LLJ:

The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted

simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against

the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental

proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will

depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and materials collected against

him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be

given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on

account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee

is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

7. The objection of the learned counsel for the appellant is that though the proceedings continued in both the fora, once a judicial pronouncement is rendered, the findings of the departmental proceedings shall have to go, even though the judgment of the Criminal Court is later in point of time.

The Supreme Court, while holding so, took two vital aspects into account in that case. Firstly, the finding the departmental proceedings were *ex parte* and the Supreme Court was of the opinion that the appellant was punished in total violation of the principles of natural justice and that in a criminal case, on identical set of facts, it was found that there was no such recovery made from the residence of the appellant and the whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, the Supreme Court held that where the appellant is acquitted by a judicial pronouncement with a finding that the raid and recovery at the residence of the appellant was not proved, it would be unjust and unfair and rather oppressive to allow the findings recorded at the *ex parte* departmental proceedings to stand. Therefore, to hold that the judgment of acquittal rendered in a Criminal Court would automatically remove the findings of the departmental proceedings, the following conditions should be satisfied:

- (1) Both the proceedings should be on identical set of facts without there being an iota of difference;
- (2) The whole case of the prosecution should have been thrown out on findings of fact; and
- (3) The delinquent should have full opportunity to contest the matter.

8. We find from the judgment of the learned single Judge of this Court, in Criminal Appeal Nos. 517 and 518 of 1983 dated February 5, 1987, that after analysing the evidence the Sessions Court has found that the prosecution has not proved the case beyond reasonable doubt, and giving the benefit of doubt to the respondent, has chosen to acquit him. The powers of the Court of appeal against the acquittal are rather limited and even if two views on the orders are possible and the lower Court has chosen to take one view, it would not be open to a Court of appeal against an acquittal, to take a contrary view and therefore, found that the case is not a fit case to interfere, sitting in a Court of appeal, and to reverse the finding of acquittal.

9. The acts of misconduct alleged in the charge-sheet and which were the subject matter of the enquiry were in relation to striking of work and instigation of others to strike work without notice when there was a settlement and the conduct of disorderly behaviour during the period of procession in the premises of the factory and causing damages to the property. It was further alleged in the charge sheet dated December 4, 1979 that the workman concerned abused and threatened other employees. Whereas, the charges against the workmen before the Criminal Court were u/s 147 (rioting), Section 441 (wrongful restraint), Section 427 (mischief, causing damage) and Section 506(2) (punishment for intimidation). There were two sets of charges against the occurrence on two different dates. The acquittal by the Criminal Court was on the ground that the prosecution has not proved the case beyond all reasonable doubt. Apart from this, the appellant has not raised such a plea on the identical nature of evidence and finding so as to seek for stay of the departmental proceedings. The appellant had the full opportunity to contest the case in the departmental proceedings. There is no finding in the Criminal Court that no such occurrence took place at all as alleged. In the above circumstances, the ratio laid down in the Supreme Court in Paul Antony's case, (supra) referred to above will not apply to the facts and circumstances of this case.

10. Discrimination: The main submission of the learned counsel for the appellant is that with regard to the first charge-sheet dated October 18, 1979 and findings on that basis, 11 out of 9 workmen were taken back. In reference to the second charge-sheet dated December 4, 1979, wherein two workman namely R. Damodaran and kulandaiswamy were involved, Kulandaiswamy was let off with a minor punishment of suspension. The management having reinstated 9 workers involved in the first charge-sheet, the other except Damodaran having abandoned his claim and in reference to the second charge-sheet, the other worker having been given a lesser punishment, the management is not justified in dismissing R. Damodaran alone and therefore, it is a case of clear discrimination.

11. Learned counsel appearing on behalf of the management submitted that R. Damodaran had led the violent, illegal and unjust strike when there was already a settlement for bonus, and that he has not respected the settlement for bonus and that he has not respected the settlement signed by

the Union. On the contrary, he had violated it and indulged in violent activities and therefore, his position as union president makes the misconduct

committed by him more serious and he acted in a most irresponsible manner. It is further argued that as an employee of a power house, which is

one of the most essential service of the mills, the combined effect of the proved misconduct and dismissal is proper and justifiable. But, as rightly

pointed out by the counsel for the appellant, the charge against R. Damodaran was a combined charge against all other 10 workers in references to

the first charge, whereas, the charge-sheet dated December 4, 1979 was directed against R. Damodaran and Kulandaiswamy that they abused

and threatened the co-workmen. Based on the charges and the findings in reference to the first charge dated October 18, 1979, 9 workers were

let off and were reinstated. Whereas, in references to the second charge that on October 24, 1979 R. Damodaran, along with another person

Mani, was involved in all the misconducts alleged in reference to the charge-sheet dated October 18, 1979 in addition to the alleged instance on

October 24, 1979, i.e., damaging the scooter and threatening the co- workman. In so far as the second charge is concerned, namely abusing and

threatening of a co-employee, R. Damodaran and Kulandaiswamy alone were involved. In other words,

(i) Slogan-shouting in front of the Managing Director's house, causing damage to the properties, vehicles and threatening the staff of the mills were

the charges against all the ten workers including R. Damodaran.

(ii) Two of the workmen i.e., R. Damodaran and M. Kulandaiswamy were involved in threat and use of abusive language against the staff of the

mills on October 26, 1979.

12. The additional charge against R. Damodaran was that of abuse and threat to the co-employees. There is no allegation that R. Damodaran, as

the Union Leader, led the strike and indulged in violent and illegal acts. The charges were framed and directed against all the workers found in that

charge-sheet dated October 18, 1979 and two workmen as per charge-sheet dated December 4, 1979. Therefore, the contention on behalf of the

management that the conduct of R. Damodaran as Union President, is grave in nature when compared to others, is beyond the scope of the

allegations and the charge. In Workmen of India Cements Limited v. Labour

Court 1989 II LLJ 755 the learned single Judge of this Court held that when the charge against all the workmen are the same, the dismissal of some workmen only amounts to discrimination. The said view was confirmed by a Division Bench in *India Cements Ltd. v. Labour Court* 1989 (2) LLN 319 . The learned single Judge has distinguished this judgment on facts. In that case, the allegation was that 14 workmen were guilty of participating in the illegal strike, instigation of them to join the strike. Of these, five workmen alone were dismissed on the ground that they were guilty in addition to intimidating the other workers. This Court in that judgment, found that charges framed against all the 19 persons were the same and that there was no charge of intimidation against five workmen who were dismissed from service. One of the workers was also charged as having instigated others to join the strike which was considered an offence under the Rule 22(25) of the Standing Rules of the Government. But, there was no finding of intimidation against those five dismissed workmen. Thus, it was seen that the charge and findings were the same in all the 19 cases. It was further held that it is well settled that whether it is a case of criminal trial or domestic enquiry, parties are confined to charges framed and the Court or the Enquiry Officers, as the case may be, cannot travel outside the charges, admit evidence or give any finding in respect of any matters extraneous to that charge. The mere fact that witnesses have alleged intimidation against the dismissed five workmen is totally irrelevant and cannot be taken into consideration for the simple reason that the delinquent workman had not been called upon to give explanation, no charge having been filed in respect thereof. In this case also, we find as against R. Damodaran, the additional charge is that he has abused and threatened a co-worker. As far as the second charge is concerned, Kulandaiswamy who was also involved in the same allegation was given a lesser punishment. Srinivasan and Mounaswamy who are specifically involved in damaging the property and shouting slogans were let off with minor punishment. Therefore, considering the charge dated October 18, 1979, R. Damodaran is also liable to be treated in the same manner as other workers. So also in reference to the charge dated December 4, 1979 he had to be treated in the same manner as that of Kulandaiswamy. The dismissal order has taken into account the nature of

work of R. Damodaran in the power house, which is beyond the scope of the charge. The Labour Court, in reference to the point of discrimination, concluded as follows:

"A perusal of the charge memo Ex.M-10 with regard to the first incident shows that apart from the common charges levelled against all the workers, the petitioner and the workmen Mani had been further charged with act of violence of causing damage to two scooters. In the domestic enquiry, charges levelled against all the workers were found proved. Those who committed violence and those who merely participated in the strike cannot be treated alike ..... so, they stand on a different footing than the other worker. Further, the petitioner was involved in another incident and also in the domestic enquiry with regard to that instance also, he was found guilty of the misconduct alleged against him. He has been dismissed from service taking into consideration both the instances. So, the punishment cannot be said to be discriminatory."

The learned single Judge has held that Damodaran has committed two sets of offences while others have committed only one set of offence and therefore a severe punishment in reference to Damodaran is justifiable. We are unable to agree with the learned Judge and we are of the view that the failure to treat R. Damodaran in the same manner as nine other workers in references to the first incident and not showing the same treatment as to Kulandaiswamy in reference to the second instance amounts to discrimination. The judgment in *The Workmen of the Motor Industries Co. Ltd. Vs. The Management of the Motor Industries Co. Ltd. Bangalore*, is in relation to a case where when large number of workmen went on strike, specific charges were framed only against three of them and on findings against them they were dismissed. The Supreme Court upheld the award. But, in our case, 11 and 2 workers were found guilty by the Enquiry Officer in separate orders. However, the punishing authority issued dismissal order only against R. Damodaran and the others were given lesser punishment and reinstated.

13. Past Service Record: It is pointed out that R. Damodaran had a clean record of service and this should have been taken into account while awarding the punishment of dismissal. It is also argued that if the punishment of dismissal was imposed cumulatively for both the charge-sheets,

then the authorities should have considered that the first charge-sheeted nine workers were taken back and with regard to the second charge-

sheet, M. Kulandaiswamy was taken back after imposing a minor penalty, and therefore, it should have been considered whether a lesser

punishment on the appellant should not meet the ends of justice considering his past service record. A Division Bench of this Court in The

Management of Madras Fertilisers Ltd., Manali, Madras Vs. The Presiding Officer, Additional Labour Court, Madras, Kuppuswami (Died) and

M. Kannammal, has held that a range of discretion is vested with the management in the matter of imposition of punishment and for exercise of that

discretion, the management shall certainly take note of and consider the past record of service. A Division Bench of the Gujarat High Court in

Vasanti M. Shah Vs. All India Handloom Fabrics Marketing Co-op. Society Ltd., has held that the Labour Court ought to have considered

whether in the background of the circumstances that transpired, misconduct committed by the concerned workmen was so grave in the light of the

mass hysteria suffered by all workmen working in the handloom house as to justify extreme penalty of dismissal or termination being imposed on

these two employees. The Division Bench also, after considering that the petitioners therein have already suffered the agony of starvation and

unemployment for more than nine years, found no reason as to why order of reinstatement should not be passed in favour of the concerned

petitioners in exercise of powers u/s 11-A of the Act. However, their Lordships have ordered reinstatement with continuity of service, but without

back wages, since the petitioners were not totally blameless, even though they were on strike during the relevant time and were making a common

cause. It was held that the said economic set back would be sufficient corrective for those two workmen. A Division Bench of this Court in The

Management of the Catholic Syrian Bank Ltd. Vs. The Industrial Tribunal, Madras-104, and another, held that discretionary powers to interfere

with quantum of punishment can be exercised only when it is established that proved charges and penalty imposed are not proportionate to each

other after considering all aspects. Failure to consider the past conduct by itself is not sufficient to hold the order of dismissal as not warranted

where proved misconduct is grave. Employees cannot claim right to commit fraud during course of employment and they should maintain minimum

standard of integrity, and award of reinstatement and back wages to workmen who did not maintain the minimum standard of integrity would

amount to fraudulent and dishonest conduct and would be mocking at integrity and honesty of majority of workmen. Their Lordships also held that

the best that can be assumed is that the workmen had not suffered any penalty earlier and that by itself is not sufficient to hold that the order of

dismissal could not have been passed if that particular fact had been taken into account.

14. In *Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others*, the Supreme Court held that there is no doubt that though in a case of

proved misconduct, normally the imposition of penalty may be within the discretion of the management, there may be cases where punishment of

dismissal for the misconduct may be so unconscionable or so grossly out of proportion to the nature of offence that the Tribunal may be able to

draw an adverse inference merely from the punishment inflicted. In this case, we find that the Labour Court has taken into account the fact that the

petitioner led the illegal and unjust strike and indulged in violent activities causing extensive damage to properties and also threatened a worker who

was attending to repair works and therefore, the punishment cannot be said to be excessive and on the other hand, it is justified in the

circumstances of the case. The Labour Court failed to consider that all the workers except the two in reference to the first charge were taken back

into service. Therefore, the question of leading an illegal and unjust strike and indulging in violent activities causing extensive damage to the

properties cannot be attributed to R. Damodaran alone. The second charge is, as a matter of fact, directed against one of the co-workers that they

should not continue to work and not specifically directed against the management and therefore, in our view, there is a failure to apply Section 11-

A and instead, the consideration of the appellant as a union leader has weighed in the minds of the Labour Court to confirm the extreme penalty of

dismissal.

15. For the above reasons and in the circumstances, we find that the dismissal of R. Damodaran is not justifiable, we are therefore inclined to remit

the matter back to the Labour Court to consider the appropriate relief u/s 11-A of the Act. But, however, in the light of the fact that 21 years have

gone by from the date of the occurrence and that several proceedings, namely civil and criminal, have taken as much of time, taking away what little energy and sustenance the worker has got; and that the workman was left with only few months of service, it will not be proper to allow the matter again to go back for a second round of litigation to consider his appropriate relief and his gainful employment etc. At the same time, we are of the view that the conduct of R. Damodaran is also not absolutely without any blame and that he has overstepped his limits. Taking all these circumstances into consideration, we are of the view that the workman be awarded a reasonable compensation in lieu of appropriate relief. We fix the compensation at Rs. 2,50,000 (Rupees two lakhs fifty thousand only) in lump sum without any further claim, and feel that it would meet the ends of justice. Accordingly, we direct the first respondent to pay the said amount within a period of three months from the date of receipt of this judgment. This lump sum payment shall be spread over for the purposes of assessment under the Income Tax Act.

16. The appeal is allowed to the extent indicated. No costs.