

**(1960) 11 MAD CK 0040**  
**In the Madras High Court**

Coimbatore Murugan Mills Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

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**Date of Decision :** 08-11-1960

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 10, 33, 33A

**Citation :** (1960) 11 MAD CK 0040

**Hon'ble Judges :** Rajamannar, C.J;Venkatadri, J

**Bench :** Division Bench

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**Judgement**

Rajamannar, C.J.—We find ourselves in agreement with the reasoning and the conclusion of the learned Judge. The first point which was pressed upon us by Sri Raja Ayyar, learned Counsel for the management, the appellant, was that the case did not fall within the scope of Section 33(2) of the Industrial Disputes Act. The learned Judge has held that the facts of the case clearly showed that it does fall within Section 33(2)(b) of the Act. Reliance was placed by learned Counsel for the appellant on standing Order 17(a) under which the management has got the right to terminate the services of an employee on giving fourteen days" notice. But it should not be overlooked that the management is bound to record in writing the reasons for Such termination. If the reasons so recorded would amount to misconduct, then the fact that the termination purported to be by the issue of notice under Article 17(a) would not make the termination any the lees for misconduct. To hold otherwise would lead to this extraordinary position: The management might terminate the services of an employee by the issue of a notice under Article 17(a). They may record in writing reasons which would unmistakably amount to gross misconduct. Surely it cannot be contended that merely because the termination was under Article 17(a), it was not for misconduct. Standing Order 17(a) inter alia provides also for the communication of the reasons to the discharged employees. If, for instance, in any case there has been also such a communication, the result would be that there has been an order of dismissal for misconduct. The fact that in the case before us there is no

such communication to the employee because he did not ask for the reasons, would not make any material difference to the legal position. We agree with Sri Ramachandra Ayyir, J. that the recorded reasons of the management clearly amount to misconduct. The employee was accused of deliberately going slow and failing to discharge his duties diligently. Deliberate indifference to work would certainly, in our opinion, be misconduct. There has been, therefore, a contravention of Section 33(2) of the Industrial Disputes Act.

2. The Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, , has laid down that after a contravention of Section 33 of the Industrial Disputes Act has been proved, it would still be open to the employer to justify the impugned dismissal on the merits. This follows from the fact that the tribunal will have to consider all the relevant aspects of the dispute, which relates to the validity of the dismissal. Their lordships of the Supreme Court also held in that case that before an employer can dismiss his employee, he has to hold, a, proper enquiry into the alleged misconduct of the employee and If the employer had not made any enquiry before dismissing the concerned employee, "he could not possibly contend before the Industrial tribunal adjudicating the dispute relating to the Justification of such dismissal, that he has bona fide exercised its managerial functions and authority in passing the order of dismissal. It followed that if no enquiry had, in fact, been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and on the evidence adduced before it, the tribunal will have to decide for itself whether the alleged misconduct is proved. This is exactly what the tribunal held on the merits that the charge against the employee had not been made out and the learned Judge very properly held that he could not interfere with that finding of fact.

3. Strong reliance was placed by Sri Rajah Ayyar on a decision of the Supreme Court in *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, . It is sufficient to say that that case arose out of a petition under Article 226 of the Constitution filed by a dismissed workman against the order of dismissal. There was no reference of an industrial dispute u/s 10 of the Industrial Disputes Act. There was no complaint u/s 33A of that Act and there was no contravention of Section 33 of that Act. In our opinion, that decision does not have any application to the facts of the present case.

4. The appeal is, therefore, dismissed.