
(1997) 01 MAD CK 0081

In the Madras High Court

Case No : W.A. No. 1053 of 1996 and W.P. No. 14252 of 1995

Dharmapuri District Co-operative Sugar Mills

APPELLANT

Vs

The Presiding Officer, Labour Court, Vellore and another

RESPONDENT

Date of Decision : 10-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 11A, 11A, 17B

Citation : (1997) 2 LLJ 833

Hon'ble Judges : K.A. Swami, J;J. Kanakaraj, J

Bench : Division Bench

Advocate : Sanjal Mohan, for the Appellant; R. Nagarajan, Govt. Pleader, Sanjal Mohan, K.P. Sivasubramaniam and N.G.R. Prasad, for the Respondent

Judgement

Kanakaraj, J. 1. The Writ Appeal arises out of an order of the learned single Judge, dated October 9, 1996 made in W. M. P. No. 1 1044 of 1996 in an Application u/s 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), pending disposal of Writ Petition No. 14252 of 1995. The said order was assv as a common order in W.M.P. Nos. 22979 f 11 1995 and 11043 and 11044 of 1996. All the Writ Miscellaneous Petitions arose out of the said main Writ Petition No. 14252 of 1995 seeking to set aside the award passed in 1. D. No. 152 of 1992, dated January 19, 1995. To avoid multiplicity of proceedings, we have, with the consent of parties, taken up the said writ petition No. 14252 of 1995 itself for final disposal. We will therefore refer to the parties by their rank and status in the said writ petition No. 14232 of 2 1995.

2. The petitioner is a Co-operative Sugar Mill. The second respondent was employed as a Cane Assistant. A charge sheet, dated June 9, 2 1986 was issued against him, framing three charges to which we will make a reference a little later. After receiving the explanation, an Enquiry Officer was appointed and based on the finding of the Enquiry Officer, the petitioner 3 had terminated the services of the second re- spondent with effect from November 13, 1986. An Industrial Dispute was raised as 1. D. No. 152 of 1992 and an award was passed

on January 19, 1995, holding that the charges had been proved against the petitioner and that the order of punishment was disproportionate to the proved charges and therefore the Labour Court directed that the second respondent shall be reinstated without backwages and that he shall be treated as a fresh recruit in the same post. The petitioner was aggrieved by the said award relating to the imposition of punishment. According to the second respondent, the order of the Labour Court was perfectly legal and not liable to be interfered with in proceedings under Article 226 of the Constitution of India.

3. The award itself comprises of two parts. The first relating to the validity of the enquiry held by the petitioner and the second part relating to the evidence adduced before the Labour Court and the findings thereon. The Labour Court came to the conclusion that the domestic enquiry was vitiated, inasmuch as no opportunity was given to the second respondent to understand the charges levelled against him and accordingly set aside the Enquiry Report, Ex. M 17. On the management offering to lead evidence, to prove the charges, the Labour Court examined six witnesses for the management and 0 marked as many as 21 exhibits on the side of the Management. The second respondent workman examined himself as a witness, but did not file any document. The first charge against the second respondent was that he was negligent in the performance of his duties. Specific instances were detailed under the said charge. In particular, the second respondent had failed to register the cane in the land of one Munuswamy so much so, when Munuswamy wanted a cutting order, the second respondent had asked the cane in the land of the daughter of Munuswamy, which is totally against the rules and directions. 10 He also failed to register the sugarcane grown in the land of one Nachlappan. The second charge relates to the second respondent, collecting a sum of Rs.2551- from one Munuswamy as membership fee, but not having remitted the same in time. This is said to amount to temporary misappropriation. The third charge relates to the demanding of bribe of Rs. 1001- from one Balasundaram and Rs.2001- from one P. K. Natesan. We will now advert to the categorical findings of the Labour Court on the above charges which will form the basis for imposing the punishment. The findings of the Labour Court have to be kept in mind, while examining the plethora of decisions cited by the Management as well as the worker. Each case will depend upon the particular facts, and circumstances of the case and it would be improper to apply the ratio of any decision without remembering the nature of charges in each case. 3, We will now quote the accurate finding of the Labour Court on each of the three charges. On the first charge, the Labour Court says :

"..... So it becomes apparent that with a view to get bribe, the petitioner has delayed giving cutting order to him and has demanded a bribe of Rs. 1001- from him. 1 find absolutely no reason to reject the evidence of this witness and hold that this charge is proved."

On the second charge, the Labour Court's finding is as follows :

"... The evidence of Munuswamy has not shattered any material particulars. So it is proved that the petitioner has temporarily misappropriated this amount for his own use ..."

On the third charge, the Labour Court's finding is as follows :

"..... No doubt he was not able to get the demands fulfilled because they have complained to the superior officer. These charges of demand of bribes, neglect of duty have been proved"

4. On the question of punishment, the Labour Court has taken note of the fact that the second respondent remained unemployed from 1986 till the date of passing of the award (January 19, 1995). Observes the Labour Court as follows :

".... The petitioner must be given a chance to improve his performance and turn a new leaf. The petitioner has been in wilderness since 1986 till today i.e. for a period of about nine years. The denial of back wages for this period will be enough punishment"

5. Mr. Sanjai Mohan, learned counsel appearing for the petitioner says that the Management is not running a borstal school to rehabilitate the erring workers and give them a chance for correcting themselves. It could be so, if the charges are minor in nature and not in those cases, where it will involve the interest and reputation of the institution. According to him, Section 11A of the Act does not permit interference with the punishment, once it is found that the employee had indulged in misappropriation, dishonesty and the act of demanding bribe. In support of his argument, several Judgments have been cited and we propose to refer to the relevant cases alone. In *Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Another*, a Division Bench of this Court observed thus at p 431 :

".. Similarly, the number of years of service also cannot be relevant in the matter of imposition of punishment for proved misconduct. If a worker has put in a longer service, he cannot be taken to be licensed to commit misconduct"

In *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, of the Supreme Court the following passage is apposite :

"..... and the Tribunal does not Act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (a) where there is want of good faith (b) when there is victimisation or unfair labour practice; (c) when the management has been guilty of the basic error or violation (of the principles of natural justice; and (d) when on the materials before the Court the finding is completely baseless or perverse. It cannot, therefore, be said that the Industrial Tribunal or the Labour Court will function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry"

The Supreme Court proceeded to say :

"... The power u/s 11A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management u/s 11-A of the Act only when it is satisfied that the punishment imposed is highly disproportionate to the degree of guilt of the workman concerned"

The Kerala High Court by Judgment, dated January 20, 1989 reported in *Cochin Shipyard Ltd. v. Labour Court* 1991 78 FIR 502 had this to say :

"In the light of the above, the writ petition is allowed. Ex.PS is quashed. It is declared that the employee is guilty of serious misconduct, and having regard to the nature of the misconduct, and the status and position of the delinquent, the punishment awarded by the management is proper and fully justified. The Labour Court had no jurisdiction.. or justification in interfering with the managerial action in these circumstances"

Govindasamy, J. In the decision reported in *4ir Lanka Ltd., v. J. W. Natham & Anr.* 1991 .50 ILj 291 held that loss of confidence in office Helper would justify the management in dispensing with services.

There is an interesting Court of India reported in *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another*, . The following observations indicate the mind of the Supreme Court, having regard to the recent developments :

"In recent times, there is an increasing evidence of this, perhaps, well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the frame work of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Excessive judicial mood of mistaken and in faced compassion at the expense of SP the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability"

The Judgment in *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, relates to a punishment imposed on a Municipal Clerk. The observations of the Supreme Court, though relating to a Municipal servant cannot be ignored while dealing with any other employee. Observed the Supreme Court as follows:

"In a case of such nature-indeed, in cases involving corruption - there cannot be any punishment more than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or = it is the act of misappropriation that is relevant"

Mr. Sanjai Mohan also referred to a recent Judgment of the Division Bench of this

Court, in *B. Govindarajulu v. The Mgt. of K. P. V. Shaik Mohamed Rowther & Co. (P) Ltd & Another* 1996 11 LLJ 593 wherein the following observations are found at p 596:

"Therefore, the only course that should have been adopted by the Tribunal after recording these findings was to reject the claim of the workman and not to proceed any further by directing the management to reinstate the alcoholic workman, as found by the Tribunal, to be rehabilitated and thereby rewarding him for his improper behaviour and,, misconduct with full back wages for a period of more than ten years..."

6. An analysis of the above Judgment clearly gives the impression that the Court should not 2(entertain a misplaced sympathy towards a workman and should not prejudice the issue from the angle of rehabilitation. The question of rehabilitation and reformation could arise in a case of minor delinquency or misconduct. 21 Where the charges are grave in nature, can the Labour Court exercising power u/s 11-A of the Act impose on a management a workman whose presence is likely to affect the morale and discipline of the entire factory? 3, Should the management be embarrassed by the reinstatement of such a workman by denying the managerial function to which a management is entitled to, having regard to the facts and circumstances of the case? In our opinion, the acceptance of such a proposition would only lead to interfering with the managerial functions to the extent of destroying the discipline and control in the entire factory. We are clearly of the opinion that Section 11A of the Act is not intended to embarrass the management to such extent. Section 11A of the Act is introduced to obviate the difficulty felt by the Labour Courts, Tribunals, etc., in modifying the Judgments of discharge or dismissal on flimsy grounds solely,,, with a view to render justice to the parties. The Labour Courts and Tribunals cannot mechanically use the words "the punishment being disproportionate" to the charges. As observed by the Supreme Court of India unless the Labour Court finds the punishment to be highly disproportionate to the charges, the Labour Court should not interfere. One other aspect of 1 the case may also be noticed before dealing with the Judgments cited by Mr. N. G. R. Prasad. On the facts of this case, the Labour Court had set aside the domestic enquiry and proceeded to take evidence. On the evidence the Labour Court has rendered certain findings, to which we have already made a reference. Having to find the second respondent guilty of the charges, while exercising the function of imposing a punishment, the Labour Court is in fact in the position of management and the sentiments expressed by the management, when they terminated the services of the second respondent have to be kept in mind and we do not think that different principles will apply to the Labour Court while determining the punishment to be awarded to the guilty worker.

7. Turning out to the Judgments cited by Mr. N. G. R. Prasad, the earliest Judgment is reported in *Management of Binny Limited Vs. Additional Labour Court and Another*, . On facts, that case was very close to the facts of the

present case. The Division Bench of this Court upheld the views expressed by the Labour Court u/s 11-A of the Act. In a case relating to the theft of certain articles, the Labour Court directed reinstatement without back wages and also directed that the worker shall start his career as a new recruit. It must be remembered that theft was the only charge in the said case and the reasoning of the Labour Court was found to be reasonable and not perverse in character. In other words, if on the facts and circumstances of the case, the reasoning of the Labour Court is found to be perverse,, this Court should interfere under Article 226 of the Constitution of India. In the decision in *Rama Kant Misra v. State of UP* 1982 11 LLj 472 the Supreme Court of India has explained the reason for the introduction of Section 11-A of the Act and found that the alleged misconduct was only related to the use of indiscreet or abusive language. Observed the Supreme Court as follows at p 476 :

"When it is said that language discloses a 0 threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language ma" show lack of culture but merely the use of such language on one occasion unconnected with any subsequent ositive action and not preceded by any Blameworthy conduct cannot permit an extreme penalty of dismissal from service"

That Section 11-A of the Act was introduced to curb the attitude of Labour Courts to affirm orders of dismissal on flimsy grounds is precisely what we referred to earlier. We do not propose to refer to the Judgment of the Gujarat High Court in *R. M. Parmar v. Gujarat Electricity Board* 1983 1 LLj 261 because, it merely refers to the general principles and"as we have already observed the facts of each case have to be looked into before coming to a conclusion. In *Management of Hindustan Machine Tools Ltd., Bangalore Vs. Mohd. Usman and Another*, the Supreme Court observed that in the absence of any important legal principle, the finding of the Labour Court u/s 11A of the Act should not be interfered with by the High Court, exercising jurisdiction under Article 226 of the Constitution of India. We must remember the fact that when an important legal principle is involved, the High Court should interfere with the findings of the Labour,. Court. Similarly, in *J. S. Rathor v. Shri Baidyanath Ayurved Bhavan Ltd.* 1984 11 LLJ 10 the Supreme Court observed that the High Court should interfere only within the well accepted limitation and cannot substitute its own,, view for the view of the Tribunal. It has to be" remembered that in the said case the worker was sought to be dismissed from service purely on the ground of loss of confidence. In *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, the Supreme Court held that" the use of abusive language is not a serious one and even if proved, would not result in the dismissal of the worlunan. The Supreme Court held that such a punishment for such a charge could be shockingly disproportionate. In *Cork" Industries, Madras v. I.Addl. Labour Court & Ors.* 1992 I LLJ 384 *Govindasamy, J.* found that disorderly behaviour outside the remises of the factory could not be a ground for dismissing the employee.

8. A careful analysis of the Judgments cited by Mr. N. G. R. Prasad only suggests that in cases of minor misconduct like the use of abusive language or acts amounting to loss of confidence, in the management the respective managements should not resort to the punishment of dismissal. One can easily see the line of thinking of the Supreme Court of India in relation to the minor and major misconducts. It is time to remind ourselves about the three charges held proved by the Labour Court itself. The first charge relates to negligence in the performance of duties, causing considerable embarrassment to the management. This charge by itself may amount only to loss of confidence, but the second charge relates to dishonesty and temporary misappropriation. It was sought to be argued that temporary misappropriation cannot be equated to theft. It may be so. But the intention of the worker and his general attitude are clearly visible from the proof of the said charge. The third charge relates to the demand of bribe of Rs. 1001- from one Balasundaram and Rs.2001- from P. K. Natesan. This in our view, is a very serious charge and could undermine the very reputation of the management. We are of the opinion that when the Court is faced with three charges, all of which have been proved by evidence adduced before the Labour Court itself, it would be improper to have any misplaced sympathy in favour of the worker. The question of rehabilitation would only result in the destruction of discipline and morale (sic) in the entire factory. Section 11-A of the Act was not certainly intended to cause such an embarrassment to the management. In other words, we are of the opinion that the views expressed by the labour Court in its concluding portion, in relation to the punishment, can never be sustained as views which a reasonable person can take. In other words, the views of the Labour Court, which we have already extracted in our Judgment can only be characterised as "perverse". Various Judgments of the Supreme Court cited above do give power to the High Court to interfere with the impugned award of the Labour Court. In this view of the matter, while upholding the findings of the Labour Court on the charges, we set aside the order of the Labour Court in so far as the punishment portion is concerned..

9. The award of the Labour Court. dated January 19, 1995 shall stand quashed. and the second respondent shall stand dismissed from service with effect from November 13, 1986. In other words, the non-employment of the second respondent is held to be justified.

However, we make it clear that the sum of Rs. 10,000/- (Rupees ten thousand only) paid in pursuance of the orders of Court dated November 12, 1996 during the pendency of the Writ Appeal shall not be repayable.

10. The Writ Petition is allowed in the above terms. The Writ Appeal is disposed of accordingly. However, there will be no order as to costs.