

(2000) 12 MAD CK 0034
In the Madras High Court
Case No : W.A. No. 719 of 1993

Divakaran, P.R.

APPELLANT

Vs

Presiding Officer, Principal Labour Court and Another

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A

Citation : (2001) 2 LLJ 6

Hon'ble Judges : V.S. Sirpurkar, J; M. Chockalingam, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for Row and Reddy, for the Appellant; E. Elumalai, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This writ appeal challenges the order of the learned single Judge of this Court dated February 5, 1993, dismissing the

writ petition No. 3557/1984 filed by the appellant herein for a writ of certiorari to quash the award made by the first respondent in I.D. No.241 of

1982.

2. The appellant who was working as a watch regulator in the second respondent-Management was served with the charge memo stating that he

was guilty of misconduct. In the domestic enquiry he was found guilty. On the basis of the findings of the Enquiry Officer, the appellant was

dismissed from service on November 2, 1981. Following his application u/s 2-A of the Industrial Disputes Act, the matter was referred to the

Labour Court for adjudication, of the issue relating to his non-employment. The same was taken on file by the Labour Court in I.D. No. 241 of

1982 wherein a claim statement and counter statement were filed by the

respective parties. The Labour Court, after considering the evidence both oral and documentary, held that the non-employment of the appellant was justified, and he was not entitled to the relief. Challenging the correctness of the Award of the Labour Court, the appellant filed a writ petition in W.P. 3557/1984. The learned single Judge after hearing the rival submissions and on careful scrutiny of the available materials, upheld the Award of the Labour Court. Aggrieved over the order of the learned single Judge, the appellant/employee has resorted to this appeal.

3. The case of the second respondent/management is that on June 30, 1981 at about 11.15 AM one Mr. Khaja Mohideen came to the watch room section and asked for the appellant, that Mr. Solomon, Manager of the Section asked Chatrapathi to call the appellant from his room; that the appellant came out and talked to Mr. Khaja Mohideen and then went inside the section, that on seeing Khaja Mohideen sitting, Solomon asked him what for he was waiting, that then only the said Khaja Mohideen informed. Solomon that he gave a watch to the appellant for repair and adjustment, that Solomon asked why he gave the watch to the worker/appellant instead of giving it to him, that Khaja Mohideen replied that on two earlier occasions he had given the watch to the appellant for repairs; that Solomon immediately sent for the appellant, who came out with the watch of Mr. Khaja Mohideen, which was completely dismantled and that when the appellant was questioned by Solomon as to his conduct, the appellant had no reply.

4. Arguing for the appellant, the learned counsel Mr. N.G.R. Prasad inter alia would submit that the charge memo dated June 30, 1981 served on the appellant contained false allegations; that even as per the case of the management, it was Mr. Solomon, the manager of the Section sent for the appellant, who was in his room; that the appellant met Mr. Khaja Mohideen in the presence of Mr. Solomon; that the appellant took the watch-Seiko Chronograph, of Mr. Solomon for repair; that in the circumstances, it cannot be stated that it was without knowledge or permission of the said Manager; that the findings of the Enquiry Officer were biased and perverse and contrary to the principles of natural justice; that the management on the basis of such findings has arbitrarily dismissed the appellant from service; that there is no material to show that the

petitioner/appellant received any consideration monetary or otherwise from Mr. Khaja Mohideen and hence there was nothing to hold that there was misconduct muchless serious misconduct on the part of the appellant; that it is very important to note that Mr. Khaja Mohideen was permitted to converse with the appellant under the guidance of Mr. Solomon; that the fact that Khaja Mohideen was permitted to talk with the appellant in that room would clearly indicate that Khaja Mohideen came as a customer of the second respondent/ management and the appellant did the repair work only in his capacity as an employee of the second respondent, as directed by the said Solomon to do so, and hence the management should not be permitted to allege any land of misconduct on the part of the appellant; that the whole disciplinary proceedings were only intended to victimise the appellant; that the learned single Judge has dismissed the writ petition without proper appreciation of both factual and legal position; that the learned single Judge has not considered that the findings of the Enquiry Officer that the appellant was guilty of misconduct was perverse and was not passed on any evidence; that the appellant had not violated any Standing Order and hence the domestic enquiry and the consequent termination of the appellant was illegal and liable to be set aside; that it was brought to the notice of the learned single Judge that extreme punishment of dismissal from service has been awarded to the appellant, which would be disproportionate to the misconduct proved against him; that the unblemished past records of the appellant was not taken into account while the extreme penalty was imposed on the appellant, that the learned single Judge should have set aside the Award of the Labour Court, in view of the fact that the Enquiry Officer refused to mark a copy of the letter dated September 26, 1981 from Mr. Khaja Mohideen on the ground that it was an unsigned copy that it is pertinent to note that the original letter was sent by Khaja Mohideen to the management and the management did not produce the original, and in that case the management should have examined Mr. Khaja Mohideen or atleast produced the original letter before the Court, but has failed to do so, that the learned single Judge should have held that the management was not justified in relying upon the past records without giving an opportunity to the appellant to rebut the same and thus the dismissal stood vitiated on that count also; that it is pertinent to note that the watch of Khaja Mohideen was being

repaired in the premises itself as per the directions given by the Manager; that in the absence of any evidence that it was done for any

consideration, it cannot be held that there was any misconduct and hence for the reasons stated above, the order of the learned single Judge has to

be set aside and the writ petition be allowed.

5. Countering the above contentions of the appellant's side, the learned Counsel Mr. M. Elumalai, appearing for the second

espondent/Management with vigour and vehemence would contend that the appellant who was a watch regulator without any permission or

knowledge of the Section. Manager has repaired the watch of Khaja Mohideen; that in the domestic enquiry, the management putforth sufficient

and acceptable evidence to prove the charges; that since the charge of misconduct proved, was grave and serious, the extreme penalty of

termination from service was awarded; that when the matter was referred to the Labour Court, all the contentions now raised by the appellant

were raised and after full-fledged enquiry and on appreciation of evidence putforth, the Labour Court found that the non-employment of the

appellant was proper and valid, that the learned single Judge, after analysing the materials available, has come to the correct conclusion, upholding

the Award passed by the Labour Court, that on the crucial date viz. June 30, 1981 the appellant was not in watch repairing section, but has

received the Seiko Chronograph watch from Khaja Mohideen and repaired the same without the knowledge or permission of the Manager Mr.

Solomon, which transaction would certainly amount to fraud or dishonesty in connection with the company's business, that the Enquiry Officer was

perfectly correct in refusing to mark a copy of the letter dated September 26, 1981 alleged to have been given by Khaja Mohideen, since it was

neither original nor signed; that as per the Standing Order of the management, the act alleged against the appellant in the charge memo stating that it

was serious misconduct, fraud or dishonesty in connection with the business of the Company or property, would certainly come within the scope of

Clause (d) of the Standing Order 17 and thus it was a clear case of misconduct and considering the facts and circumstances and in view of the

serious misconduct, the order of extreme punishment of termination of the appellant from service was valid and proper and hence the appeal has

got to be dismissed.

6. After careful scrutiny of the available materials and consideration of the rival submissions, we are of the clear opinion that none of the contentions of the appellant's side merit acceptance.

7. Concedingly the appellant herein though he was in the watch repairing section long before, was a watch regulator on the crucial date viz, June

30, 1981. It is not in controversy that watch repairing section and watch regulating section were entirely different. On June 30, 1981 the appellant

was working under Mr. Solomon, who was the head of the Section. At about 11.15 AM one Mr. Khaja Mohideen came to the watch room

section in search of the appellant. He informed Mr. Solomon that he wanted to meet the appellant. Mr. Solomon, sent a word to the appellant

through a clerk by name Mr. Chatrapathy. The appellant came out of his room and was found conversing with Mr. Khaja Mohideen and went

inside. But the said Khaja Mohideen was waiting for sometime. When he was questioned by Mr. Solomon, he has replied that he was waiting to

get his watch from the appellant, to whom it was handed over for repairing. Had the watch of Khaja Mohideen been handed over to the appellant

in the presence of or with the knowledge of Solomon, there was no need for Solomon to ask the said Khaja Mohideen why he was waiting. Again

Mr. Solomon sent a word to the appellant and the appellant came out with the watch of Mr. Khaja Mohideen in a dismantled condition.

Immediately, Mr. Solomon asked the appellant how he could repair the watch of a person without his permission or knowledge, for which the appellant had no answer.

8. All the above would clearly be indicative of the fact that the appellant without the knowledge or permission of the Manager Mr. Solomon has

taken the watch of Khaja Mohideen for repair and commenced repairing. During his conversation with Khaja Mohideen, Mr. Solomon came to

know that it was not the first occasion, but on two previous occasions also the appellant received the watch of Mr. Khaja Mohideen for repair. At

this juncture it has got to be stated that the appellant who was a Watch Regulator on the crucial date and who has nothing to do with the watch

repairing section clandestinely received the watch of a third party without the knowledge and permission of the Manager Solomon, took the same

to his room and commenced repairing work, using the tools belonging to the Management.

9. Under the aforesaid circumstances, the appellant, an employee of the management whose main business was sales and service of watches, has received a watch of a third party for being repaired without the permission or knowledge of the management. The said conduct of the appellant, no doubt, would amount to serious misconduct and dishonesty in connection with the company's business. Added further, it has affected the reputation and image of the company apart from causing revenue loss to the company. In the facts of the available materials, the contention of the appellant that the appellant took the watch in the presence of and with the knowledge of Mr. Solomon cannot be accepted.

10. It would be very futile to contend that the appellant undertook to repair the watch of Khaja Mohideen without getting any consideration. The appellant has used the company's name, premises and also the tools for the repair of the watch of a third party. The Court is able to see force in the contention put forth by the learned counsel for the second respondent/management that the appellant should have accepted to repair the watch of a third party on the assurance or on the understanding of receiving lesser charges for the repair. It is pertinent to note that the appellant received the watch of Khaja Mohideen on two earlier occasions also for the purpose of repairing.

11. The learned single Judge has taken stock of all the facts and circumstances, the evidence both oral and documentary adduced before the Enquiry Officer and Labour Court and found that the appellant was afforded sufficient and reasonable opportunity to defend himself (sic); that as per the Standing Order 17(d), the conduct of the appellant was dishonesty in connection with the company's business, and that the Enquiry Officer was perfectly correct in refusing to mark a copy of the letter alleged to have been given by Khaja Mohideen, since it was neither original nor signed by him.

12. Relying on the decision of the Apex Court reported in Remington Rand of India Ltd. Vs. Tahir Ali Saifi and Another, and the other decision of the Division Bench of this Court reported in The Management of Madras Fertilisers Ltd., Manali, Madras Vs. The Presiding Officer, Additional

Labour Court, Madras, Kuppuswami (Died) and M. Kannammal, the learned counsel appearing for the appellant would strenuously argue that

even assuming that the act complained of by the management is proved, it would amount only to disobedience and it would not certainly amount to

misconduct or misconduct of grave nature and hence the infliction of extreme punishment of dismissal from service was so excessive and

disproportionate to the gravity of the alleged act.

13. Stoutly objecting to the above argument advanced by the appellant's side, the learned counsel arguing for the second respondent/management

would submit that both the decisions relied on by the appellant's side have no application to the present facts of the case, that the learned single

Judge had occasion to consider these decisions and has correctly found that they are not applicable to the instant case; that the punishment of

termination of service considering the gravity of the proved misconduct was neither excessive nor disproportionate and hence the order of

termination of service has got to be held as valid and proper.

14. The Court is unable to either appreciate or accept the contentions put forth by the appellant's side. The decision cited by the appellant's side

reported in Madras Fertilisers case (supra) was relied on by the appellant before the learned single Judge. The learned single Judge has clearly

pointed out that the said decision is not applicable to the facts of the present case since the past record of service of the employee had weighed

with the Management on the question of imposition of the extreme penalty in that case, which was not the position in the present case. Thus in view

of the factual and legal position, the said decision could not be applied to the present case.

15. In so far as the second decision cited by the appellant's side and reported in Remington's case (supra) is concerned it has also no application

to the present facts of the case. In the said case relied on by the appellant's side an employee employed in the Management dealing in sale and

repair of typewriters, was charged that he sold one second hand typewriter and thus he was engaging in the business of selling typewriters and was

also charged for grave and serious misconduct for engaging himself in work similar in nature to that of the company and had transacted the business

in the name of his brother with the machine belonging to him. The Supreme

Court has pointed out that the workman admitted his guilt only in the sense that he admitted having sold a second hand Godrej typewriter and the solitary transaction did not and would not amount to carrying on business of selling of typewriters. But in the instant case, the appellant without the knowledge and permission of the management has received a watch of Khaja Mohideen and repaired the same, using the tools of and within the premises of the management. There is nothing to show in the reported case, that the sale of the second hand typewriter by the delinquent therein was within the premises of the management. The proved transaction which had taken place outside the premises of the management was one of the mitigating circumstances for that case. But in the instant case, the facts are different.

16. Though the charge was in respect of a minor misconduct, it would require a severe and stern action, in order to prevent the other employees of the management from committing such acts of misconduct. The learned single Judge has also pointed out that M9 would indicate that on an earlier occasion, an enquiry was conducted against him for a charge of misconduct, and that the said charge was proved against him and suspended for a period of four days. Considering all the above, we are of the firm view that the punishment of termination of service imposed on the appellant cannot in any way be termed as excessive or disproportionate to the gravity of the proved misconduct. We find no error or illegality in the order of the learned single Judge, so as to call for any interference.

17. In the result, the appeal would fail and the same is dismissed, but without any orders as to the costs.