

(2012) 02 MAD CK 0114
In the Madras High Court
Case No : Writ Petition No's. 33884

J. Ilango, S. Senthil Kumar and S. Yuvaraj	APPELLANT
Vs	
The Labour Court Cuddalore and The Management Tagros Chemicals India Limited A4/1, SIPCOT Industrial Complex Pachayankuppam Cuddalore 5	RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2012) 02 MAD CK 0114

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Balan Haridas for Mr. S. Prabhu in W.P. No. 33884 and 33885 of 2007 and Mr. S. Chandrasekharan in W.P. 36542 of 2007, for the Appellant; J. Sathyavathi for Mr. Meenakshi Sundaram For 2nd Respondent in W.P. Nos. 33884 and 33885 of 2007 for 1st respondent in W.P. 36542 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. These three Writ Petitions were filed by the three different workmen working in the respondent management. In all the three Writ Petitions, the challenge is to the individual awards passed by the Labour Court, Cuddalore in I.D. No. 85 of 2002, I.D.No. 84 of 2002 and I.D.No. 83 of 2002 respectively. In all the three awards, the Labour Court had declined to grant any relief to the three petitioners and dismissed the individual Industrial Disputes raised by them.
2. The first two Writ Petitions were admitted on 26.10.2007 and the third Writ Petition was admitted on 7.12.2007. Though the three Writ

Petitions arose out of three different Industrial Disputes, but the cause of action in respect of the three Industrial Disputes related to an incident, in

which the petitioners were alleged to have grievously assaulted one Krishnadoss, another employee of the same Company.

3. The overt act attributed to the writ petitioner in W.P.36542 of 2007 was that he had used the wooden log to hit the victim Krishnadoss while

the other two petitioners, i.e., M/s.J.Elango and S.Senthil Kumar were holding his hands when the attack was made. The assault of the said

Krishnadoss resulted in his being admitted to a hospital for 10 days for getting treated. Immediately after the assault, the place of occurrence was

inspected by a Security Officer, who gave a report to the management. Based upon the complaint given by one P.Karupiah, an Electrician, who

also belong to the same trade union as that of V.Krishnadoss about the incident dated 4.4.2001 as well as another report received from the

Assistant General Manager, charge memos were framed against the three petitioners and explanations were called for from them.

4. Individual explanation of Yuvaraj to the charge memo was that to meet a Welder Elangovan asking for his help to open a Gate Valve in his

section. At that time, the said Krishnadoss was searching for something. When he turned suddenly, he slipped on a material kept there and got his

head hurt against a working table's (Welding Table) corner. As he got injured, the petitioner Yuvaraj helped the said Krishnadoss and got him

admitted to the hospital. Therefore the charge levelled against him was not proved.

5. Similarly, the petitioner Senthil Kumar in his explanation dated 20.4.2001 stated that he did not come to the Section on the said day and he was

working in the Effluent Treatment Plant and he never went to the workshop section. He came to know about the incident only when the Security

Officer Krishna Gopal informed him and he continued to work in the same place. The explanation of Elango, the petitioner in another Writ Petition

was that of same as that of Yuvaraj, the 3rd Writ Petitioner.

6. Not satisfied with the explanation offered by the workmen, departmental enquiries were conducted. The incident, which took place on 4.4.2001

also got a wider publicity in the Newspaper "Malai Malar" dated 5.4.2001. It carried a news that clashes took place between two trade unions in

which five workers were injured. Based upon the complaint, the petitioners were also placed under suspension.

7. Subsequently, in the enquiry conducted by one Babu, the management examined the witnesses, V.Krishnadoss, Welder, Maintenance

Department, G.R.Bojan, Senior Maintenance Manager, S.P.Krishnagopal, Assistant Manager, Maintenance and ETP section, P.Somasundaram,

Security Supervisor, E.Shanmugam, Security Guard, N.Baladandayutham, Plant Chemist and C.Ravichandran, Electrical Supervisor. They also

preferred 13 documents.

8. Based upon the enquiry, the enquiry officer found that the charges levelled against all the workers were proved and they have committed

misconduct as set out in the charge memo. On the basis of the enquiry report, a second show cause notice was issued to the workmen, asking

them to offer their explanation as to why they should not be dismissed from service. The petitioners sent individual representation. The stand of the

workmen at that stage was that the management was pre-determined to take action against the workers, whereas it was they, who were assaulted

by the other group but no action was taken against the persons, who had assaulted the petitioners.

9. The management after examining the entire records including the explanation offered found that all the workers were guilty of various

misconducts. By an order dated 24.11.2001, they were dismissed from service. They were also given the arrears of amounts payable to them.

10. It was thereafter the workmen raised industrial disputes before the Government Labour Officer, Cuddalore. The Conciliation Officer after

sending notices to the management and as he could not bring about any mediation gave his failure reports dated 17.5.2002. On the strength of the

failure reports, each one of the petitioner filed his claim statement before the Labour Court. The Labour Court assigned different Industrial Dispute

numbers i.e., I.D.Nos.85, 84 and 84 of 2002 respectively and issued notices to the management. The management filed counter statements

contending that no relief should be given to the workmen.

11. In the claim statements filed before the Labour Court, the stand of the workmen was that they belong to another trade union. After the

disciplinary actions were taken against them, extreme punishments were given

to them. The management did not take proper action against the members of the trade union affiliated to CITU. It had conducted an eye wash of an enquiry against them. The four workers, who were removed were all office bearers of the trade union having alliance to Pattali Makkal Katchi. Three workers, who belonged to the their trade union also underwent treatment. While granting punishment, the management imposed extreme punishments on the petitioners. Whereas the members of the CITU union were let off with minor punishments. The enquiry against them was conducted by an Advocate, who was ever obliging to the management. The enquiries were not conducted in accordance with the principles of natural justice.

12. However, before the Labour Court, each of the industrial dispute was separately tried and the documents were marked in each of the industrial disputes. While in the case of the workers, the first information report showing the complaint given against the rival trade union workers was marked as Ex.W.1. On the side of the management, the entire enquiry proceedings were marked as Ex.M.1 to M.29. Before the Labour Court, the workmen made an endorsement that they are not attacking the procedure adopted in the enquiry and are confining themselves to attack the findings recorded by the enquiry officer as well as the quantum of punishment inflicted on them.

13. The Labour Court after going through the enquiry reports and the evidence recorded in the enquiries found that the charges levelled against the workmen were proved. For the proved charge, the court was not inclined to exercise its discretion u/s 11-A of the Industrial Disputes Act since the charges themselves were very serious and did not warrant any interference. It was in that view of the matter, the three Industrial Disputes were dismissed by separate awards dated 29.5.2007. Challenging these awards, the Writ Petitions came to be filed as noted above.

14. Heard the arguments of Mr. S. Chandrasekharan, learned counsel for the petitioner in W.P.36542 of 2007, Mr. Balan Haridas for Mr. S.Prabhu, learned counsel appearing for the petitioners in W.P.Nos.33884 and 33884 of 2007 and Ms.J.Sathyavathi for M/s.Meenkashi Sundaram and Dwarankath, learned counsel appearing for the management.

15. Since the documents made available before the Labour Court were not

enclosed in the typed set, this Court directed the Registry to summon the original records from the Labour Court. Accordingly the original records were summoned and perused by this Court.

16. A perusal of the enquiry proceedings showed that the three workmen have taken inconsistent stand at every stage of the enquiry. While initially the explanation offered was one of alibi or that they were not present at the place of assault. Subsequently, they offered slightly a different explanation. Their stand was that there was an inter union rivalry, which had resulted in a group clash and the management was to the other union with kid gloves, whereas the members of their trade union were dealt with harshly by the management. Therefore, there was discrimination in the matter of penalty and it was an unfair labour practice.

17. This Court went into the entire evidence and found that the complainant right from the day of his complaint till he was examined in the enquiry and even during cross-examination, stuck to his original version and it could not be impeached by the petitioners. Even the cross-examination of said witness by the petitioners, was very perfunctory. The other witnesses of the management were not cross-examined to disprove the theory that no such incident had taken place.

18. The contention that the said Krishnadoss got injured by himself was disproved by the report of the Security Officer, who was examined and who also went to the spot immediately after the incident and found that there were no blood stains found on the working table and there were blood stains on the floor just two feet away from the table. It is clear, the original evidence of the workmen that no such person was assaulted including Krishnadoss falls to the ground.

19. On the other hand, it is the evidence of the complainant that he was hit with a wooden log by S.Yuvaraj while the other two petitioners, M/s.Elango and Senthil Kumar were holding his hands. He was also injured by an attack with iron rod by one Balan, (who is not before this Court). From the cross-examination of these witnesses, the petitioners could not have elicited beyond putting a suggestion that no such incident took place. Therefore, the Labour Court in the impugned award while referring to the cross-examination had clearly stated that the evidence recorded in the enquiry clearly showed even a suggestion that a false complaint

was given against them due to trade union rivalry was not put to.

20. Mr. Balan Haridas, learned counsel for the petitioner appearing for the two workers contended that the workers are unfamiliar with the art of

cross-examination. Leaving aside technical aspects of not putting a proper suggestion, in the present case, they had advanced a counter complaint

theory, they did not lead any evidence to prove that there could have been a possible rival theory on the incident and that the benefit of doubt shall

be given to the workmen. For the counter complaint theory except marking an FIR given by them, no attempt was made to lead defence. The

enquiry officer has correctly found that apart from the written explanation, the workers have not come forward to give oral evidence and no

defence witnesses were examined. If the workmen's contention that they were also victims of assault, then they should prove the same by

producing materials to the satisfaction of the enquiry officer or in the alternative to the satisfaction of the Labour Court. It had not been done in this

case. They have also given up the attack on the enquiries and confined themselves with the arguments on the findings of the enquiry officer. The

Labour Court after perusing the materials came to the conclusion that the charges were proved and it cannot be interfered with lightly.

21. The only question that is left to decide is for the proved charge whether the punishment of dismissals were warranted. In this context, the

learned counsel for the management placed reliance upon the judgment of the Supreme Court in *Obettee Pvt. Ltd. Vs. Mohd. Shafiq Khan*, to

contend that all persons who are involved do not stand on the same footing and the same yardstick cannot be adopted. Even in some cases, if

apologies are accepted, that will not automatically result in the other workers being let off with the apologies. Such a stand was upheld by the

Supreme Court in the judgment referred to above.

22. The Labour Court after accepting the legal precedents cited and after going through the materials clearly recorded that if these workers are

reinstated, it will not demoralize the other workers but the extent of assaulting co-worker which resulted in grievous hurt thereby the victim was

hospitalised for more than 10 days, cannot be taken slightly and any kind of apology will take them away from the purview of imposing penalty.

Even if such discretion is exercised, it will be only a wrong institution for the

other wrong doers in the establishment.

23. However, before this Court, Mr. Balan Haridas, learned counsel appearing for the two petitions referred to the judgment of the Division Bench

of this Court in Coimbatore Periyar District Dravida Panchalai Thozhilalar Munettra Sangam (rep.by its Secretary) v. Management of Pioneer Mills

Ltd. and Another reported in 2001 (3) LLN 269 for contending that in the case of the workmen, who were dismissed from service for leading

strike and causing damage, when the other workers were let off with a minor penalty or warning, the management cannot impose different

yardstick to dismiss the other workers for the same very misconduct. Under such circumstances, u/s 11-A of the Industrial Disputes Act, the court

can interfere with the penalty, even for the proved misconduct.

24. It is not clear as to how the said judgment will have any relevance to the case on hand. It is not a case of the workers on the whole involved in

an incident and after being dealt with similar punishments but subsequently some workers were let off and the other workers pleaded

discrimination. In this case, the specific complaint of the complainant Krishnadass was that he was assaulted by three workers who were not in the

same Department at the relevant time. The fact that these workers were not working in the same Section on 4.4.2001 and they barged into to the

other section, is not denied even before this Court.

25. Secondly, the incident had taken place as spoken to by the witnesses examined in the enquiry. During the enquiry, the cross-examination made

did not impeach the testimonies given by the witnesses examined by the management. Under the circumstances, no fault can be found on the

Awards passed by the Labour Court. The question of discrimination in such matters will not arise as the workers themselves did not lead any

counter evidence to prove the alternate theory of a "group clash" so as to establish there was discrimination in the matter of punishment between

two set of workers. They cannot contend themselves with marking only Ex.W.1 (FIR) and not speak about the actual incidents and also did not

examine themselves on the defence story put up by them.

26. Under the said circumstances, this Court sitting under Article 226 of the Constitution is not inclined to interfere with the finding rendered by the

Labour Court. No case is made out. Hence, all the writ petitions will stand

dismissed. However, there will be no order as to costs.