

(1968) 12 KL CK 0002
In the High Court Of Kerala

Joseph Franklin

APPELLANT

Vs

Madura Company (Private) Ltd. and Another

RESPONDENT

Date of Decision : 04-12-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1970) 1 LLJ 116

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—By this writ petition the petitioner seeks to quash the order Ex P, 3 and the award Ex. P. 4 passed by the labour court, Quilon, allowing the application put in by respondent 1 company (hereinafter referred to as the management) u/s 33(2)(b) of the Industrial Disputes Act, 1947, seeking its approval for the dismissal of the petitioner from the service of respondent 1 with effect from 29 July 1963, and dismissing the complaint put in by the petitioner u/s 33A challenging the action taken against him by the management.

2. The petitioner was employed as a clerk in the coir yarn factory of respondent 1 at Palluruthy. Two separate charges of misconduct were levelled against him in respect of which two separate enquiries were conducted by the management. The petitioner was found guilty of both the charges which formed the subject matter of the two enquiries and on the basis of the said conclusion of guilt he was dismissed from service with effect from 29 July 1963. In view, however, of the pendency of an industrial dispute, namely, Industrial Dispute No. 11 of 1963, the management applied to the labour court for approval u/s 33(2)(b) of the Act. The petitioner also simultaneously presented a complaint before the Court u/s 33A alleging that the action taken against him by the management constituted a violation of Section 33 of the Act.

3. Exhibit P, 3 is the order passed by the labour court on the application put in by the management u/s 33(2)(b) and Ex. P. 4 is its award on the complaint preferred by the petitioner u/s 33A of the Act. In Ex. P. 3, the labour court has

come to the conclusion, on a consideration of the materials placed before it including the oral evidence of the enquiry officers and the law officer of the management who are examined as witnesses on the side of the management and that of the petitioner who gave evidence in support of his own case, that in respect of both the charges framed against the petitioner proper enquiries had been conducted by the management giving due opportunity to the petitioner to make out his defence, that the conclusion arrived at by the management in respect of the two charges was certainly a possible conclusion and that there was nothing to show that the action taken by the management was mala fide or constituted victimization or unfair labour practice. On the basis of these findings, the labour court allowed the management's prayer for grant of approval under the proviso to Section 33(2)(b) of the Act. Consequently, on the complaint put in by the petitioner u/s 33A the labour court held that there had not been any contravention of Section 33 of the Act and that therefore the petitioner was not entitled to any relief on the complaint put in by him.

4. Counsel for the petitioner strenuously urged that the labour court had acted illegally in granting approval to the action taken by the management in dismissing the petitioner without; recording any specific finding that the management had made out a prima facie case against the petitioner on the charges of misconduct levelled against him. Reliance was placed by counsel on the observations of the Supreme Court in *Martin Burn Ltd. Vs. R.N. Banerjee*, where their lordships, while explaining the nature and scope of the enquiry before the Labour Appellate Tribunal u/s 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, have pointed out; that for lifting the ban imposed on the employer in the matter of altering conditions of employment to the prejudice of the workman or his discharge or punishment, whether by dismissal or otherwise, during the pendency of the proceedings referred to in the section, a prima facie case has to be made out by the employer. It is further stated by their lordships that the only jurisdiction which the tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimization. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Supreme Court had occasion to consider the scope of the enquiry to be conducted by the tribunal u/s 33 of the Industrial Disputes Act, 1947. Their lordships held:

Where an application is made by the employer for the requisite permission u/s 33, the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive

severity.

From the above decision it is no doubt clear that before according its approval to the action taken by the management by way of dismissal, etc., the tribunal has to be satisfied that a prima facie case is made out against the employee concerned. However, as has been pointed out in *Martin Burn Ltd. Vs. R.N. Banerjee*, at 255:

... A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own Judgment for the judgment in question. It has only got to consider whether the view taken in a possible view on the evidence on the record

A reference to the order passed by the labour court shows that it approached the question from the correct angle bearing in mind the aforesaid principle laid down by the Supreme Court. In fact, the tribunal has recorded a categorical finding that the finding of guilt recorded against the petitioner by the management was a possible conclusion on the evidence available on record. All that the law requires is that the tribunal should arrive at such satisfaction before it proceeds to accord its approval to the action taken by the management.

5. No other contention has been urged before me on behalf of the petitioner. The original petition, therefore, falls and is dismissed. In the circumstances, I do not make any order as to costs.