

(1982) 03 MAD CK 0016
In the Madras High Court
Case No : Writ Appeal No. 84 of 1977

Kanyakumari Automobiles (P) Ltd.

APPELLANT

Vs

P. Natarajan and Another

RESPONDENT

Date of Decision : 18-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10A, 11

Citation : (1983) ILR (Mad) 213 : (1983) 1 LLJ 323 : (1984) 97 LW 697 :
(1982) 2 MLJ 303

Hon'ble Judges : V. Ratnam, J;P.R. Gokulakrishnan, J

Bench : Division Bench

Judgement

Gokulakrishnan, J.—This writ appeal is against the order passed by Mohan J. in W.P. No. 7574 of 1975, wherein Kanyakumari

Automobiles (P) Ltd., Nagarcoil, who is the appellant herein, questioned the order passed by the Labour Court in I.D. 109 of 1974. In I.D. No.

109 of 1974, an award was passed by the principal Labour Court, Madurai in respect of the industrial dispute between the workman, P.

Natarajan and the management of Kanyakumari Automobiles (P) Ltd., who is the appellant herein. It is unnecessary for us to go into the

allegations made by the management against the workman. Suffice it to say that the Labour Court, after considering the evidence on record, came

to the conclusion that the management has established misconduct and disobedience by workman and that the management has also established

that the workman is liable to be punished with dismissal of service. In spite of the said finding, the Labour Court, treating the removal of the

workman from service as one of retrenchment, granted a sum of Rs. 1450/-, as the retrenchment compensation in lieu of reinstatement. It is against

the award, Writ Petition No. 7584 of 1975 was filed.

2. The learned Judge of this Court after observing that the Labour Court had found as a fact that the case should be considered as one of

retrenchment instead of removal from service, that this part of the award clearly comes within the scope of S. 11-A of the Industrial Disputes Act,

that the award of Rs. 1450/- will meet the ends of justice and that as such the Labour Court's finding is correct, dismissed the writ petition. It is

against this order the present appeal has been filed by Kanyakumari Automobiles (P) Ltd., Nagarcoil.

3. Miss Sridevi, learned counsel appearing for the appellant, brought to our notice the provisions of S. 11-A of the Industrial Disputes Act,

hereinafter referred to as the Act, and submitted that in the absence of a finding that the dismissal or discharge is not justified, the Labour Court has

no jurisdiction to grant retrenchment compensation treating the same as retrenchment. Mr. Chandran, learned counsel appearing for the workman

brought to our notice various decisions of the Court which we will consider presently and submitted that the writ Court usually will not interfere

with award passed by the Labour Court. No doubt he started his argument by stating that the award of compensation treating the dismissal as

retrenchment is possible even without a finding that the dismissal or discharge is not justified. Later, the learned counsel submitted that it is open to

the Labour Court to consider the quantum of punishment and treat the dismissal or discharge as retrenchment and award compensation for the

same. According to the learned counsel, the Labour Court in effect found that the dismissal or discharge is not justified and that is why an award

has been given treating the same as retrenchment. S. 11-A of the Act reads as follows :

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National

Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be,

is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct

reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of

any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require;

Provided, that, in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the

materials on record and shall not take any fresh evidence in relation to the matter.

In order to elaborate the section and also to fortify his contention, placed before this court, Mr. Chandran, the learned counsel appearing for the

workman, cited the decision in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . In this case, the

Supreme Court had occasion to consider as to whether an arbitrator appointed under S. 10A of the Act will have power to exercise the authority

given under S. 11-A of the Act. Finding that it has, the Supreme Court dealing with the powers under Art. 226 of the Constitution of India

observed at p. 172 : Para 144)

Art. 226 however, restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis

from a victim of injustice; and more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a

remand. What the Tribunal may, in its discretion do, the High Court too, can, under Art. 226 if facts compel it to do so. Secondly, we hold that the

award suffers from a fundamental flaw that it equates an illegal and unjustified strike with brazen misconduct by every workman without so much an

identification of the charge against each, the part of each, the punishment for each, after adverting to the gravamen of his misconduct meriting

dismissal. Passive participation in strike which is both illegal and unjustified does not ipso facto invite dismissal or punitive discharge.

Thus from the above said Supreme Court decision it is clear that even though the Supreme Court found that there is misconduct it will not invite the

punitive punishment of dismissal or discharge. Further, the Supreme Court has held that the powers of the High Court under Art. 226 of the

Constitution are wide enough for rectifying any defect or injustice done. In another decision cited by the learned counsel which is reported in

Management of Binny Limited Vs. Additional Labour Court and Another, a Division Bench of this Court has categorically held that S. 11-A of the

Act enables interference of the Labour Court only if the Labour Court comes to the conclusion that the dismissal or discharge is not justified with effective substance. This is what the Labour Court has found in this case. It (Labour Court) clearly states in paragraph 16 of the award that "the petitioner has put in a service of about 11 years, having joined the respondent as a compounder on 26th April, 1965. It is not the case of the respondent that the worker was guilty of a similar misconduct on earlier occasion during his period of service. This important factor is weighed very much by the Labour Court, and in our view, it is well justified on this singular circumstance to interfere under S. 11-A of the Act. The award in paragraph 17 has directed reinstatement of the workman on condition that he will lose the continuity of service and back wages. Therefore, it squarely falls within the four corners of S. 11-A of the Act. It is seen from the above said decision that the Labour Court under S. 11-A can interfere in granting certain reliefs only if it found that the dismissal or discharge is not justified. In yet another case, cited by the learned counsel which is reported in Sri Ganeshar Aluminium Factory C/o. Jeewanlal (1929) Limited Vs. Industrial Tribunal, Madras and Another, , a Bench of this Court observed :

Under S. 11-A, the Tribunal had the liberty to consider not only whether the finding of misconduct, as recorded by the management, is correct but also to differ from such a finding if a proper case is made out. If ultimately, the Tribunal comes to the conclusion that the misconduct is proved, all the same it could interfere with the punishment if the punishment was considered to be not justified even on the finding of misconduct. There could, therefore, be no doubt that even in a case where the Tribunal agrees with management that the misconduct is proved, it may award a lesser punishment if it is of the opinion that the proved misconduct does not merit punishment by way of discharge or dismissal.

The above decisions referred to clearly establish the principle that to grant relief under S. 11-A there must be a finding that the discharge or dismissal is not justified. Unless the Labour Court gives such a finding, it has absolutely no power to grant any other relief contemplated under S. 11-A of the Act such as award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require or any other

relief. Thus the finding regarding the non-justification of discharge or dismissal is condition precedent for granting the other reliefs condition

precedent for granting the other reliefs contemplated under S. 11-A. As far as the facts of the present case are concerned, there is a clear finding

by the Labour Court that the misconduct is proved and that the punishment of dismissal from service for such a misconduct is also justified. This

finding of the Labour Court has not been disputed by the workman. It is the management that has filed the writ petition as regards the grant of

compensation to the tune of Rs. 1450/-.

4. Regarding the fact of the case, it is stated by the management that on 25th January, 1973, at about 9 p.m. the workman was asked to repair the

electric horn in the car MDK 2391, by the Supervisor of the respondent management. As the workman refused to do the same it was reported to

the Managing Director and the Managing Director himself directly asked the workman to do so. Even after the orders of the Managing Director

the workman refused to repair the electric horn saying that whatever work he may do, the management will not be satisfied and, therefore, he will

not repair the electric horn. Thereafter the work of the entire establishment was suspended and an enquiry was held immediately. The evidence of

all the workers proved the misconduct of the workman and thereafter an apology of the workman was demanded in person. The workman refused

to do the work and also refused to apologise. The workman also refused to receive the order tendered in person demanding an apology. The

management has further stated that he also threatened that he will come back and create nuisance in the workshop. Therefore, according to the

management he was suspended from service with effect from 27th January, 1973, and he was informed of the finding as well as the demand for

apology which he refused till that date. He did not turn up for work as requested by the management in its several letters and hence he was

removed from service with effect from 10th February, 1973. In respect of this allegation the Labour Court also went into the evidence let in before

it was observed -

Though as I said before, the domestic enquiry under Ex.M. 4 cannot be said to have been conducted in accordance with law, yet, the

management has now established misconduct and disobedience alleged against

the petitioner and, therefore, he is liable to be punished with dismissal of service.

Thus, it is clear from the fact of this case that the workman has been properly dismissed from service and the Labour Court has found categorically

that dismissal from service is justified. From the facts of the case, it is clear that the Labour Court, in the absence of a finding to the effect that the

discharge or dismissal was not justified, has no power to award a compensation as it has done in this case, treating it as a case of retrenchment. As

the order is clearly in violation of S. 11-A of the Act, the management has rightly questioned the power of the Labour Court in giving such an

award in spite of the fact that the Labour Court has come to the conclusion that the dismissal was justified.

5. In these circumstances, the writ appeal is allowed with the result the retrenchment compensation awarded by the Labour Court is quashed.

There will be no order as to costs.

6. It is stated by the learned counsel appearing for the appellant that the appellant has deposited the retrenchment compensation awarded by the

Labour Court into the Labour Court. The appellant is entitled to withdraw the same.