

(1969) 07 MAD CK 0007
In the Madras High Court

M. Kumarswami Mudaliar, Proprietor, Sri Balavinayagar Motor Service APPELLANT

Vs

N. Ponnuswami and Another RESPONDENT

Date of Decision : 23-07-1969

Acts Referred:

Citation : (1970) 83 LW 270 : (1970) 2 MLJ 95

Hon'ble Judges : A. Alagiriswami, J

Bench : Division Bench

Judgement

A. Alagiriswami, J.—The first respondent was a driver in the petitioner's motor service. In pursuance of a domestic enquiry held by the

petitioner, he was discharged from service. On 24th August, 1965, the Government referred for adjudication to the Labour Court, a dispute

between the union to which the first respondent belonged and the petitioner. The order of discharge passed by the petitioner against the first

respondent was sent by post on 24th August, and received by him on the 27th. The petitioner's contention before the Labour Court that he sent

the, order by post on the 21st was not accepted by the Labour Court, and the matter will have to precede on the basis that the order of discharge

of the first respondent was passed while an industrial dispute was pending before the Labour Court and this is the view which the Labour Court

has taken.

2. The Labour Court, however, has proceeded on the basis that because the discharge of the first respondent was during the pendency of an

industrial dispute before the Labour Court, the order of discharge is automatically bad and liable to be set aside. This view clearly is not correct. In

The Punjab National Bank Ltd. Vs. Its Workmen, , the Supreme Court observed at page 172 as follows:

It was urged before this Court that in holding an enquiry u/s 33-A the Tribunal's duty was only to find out whether there had been a contravention

of Section 33, and if it found that there was such a contravention to make a declaration to that effect. The argument was that no further question

can or should be considered in such an enquiry. This contention was, however, rejected.

3. Their Lordships went on further to observed:

There can be no doubt that if under a complaint filed u/s 33-A the tribunal has to deal not only with the question of contravention but also with the

merits of the order of dismissal, the position cannot be any different when a reference is made to the Tribunal like the present u/s 10. What is true

about the scope of enquiry u/s 33-A is a fortiori true in the case of an enquiry u/s 10; what is referred to the Tribunal u/s 10 is the industrial

dispute between the bank and its employees. The alleged contravention by the Bank of Section 33 is no doubt one of the points which the Tribunal

has to decide; but the decision on this question does not conclude the enquiry. The Tribunal would have also to consider whether the impugned

orders of dismissal are otherwise justified; and whether, in the light, of the relevant circumstances of the case an order of reinstatement should or

should not be passed. It is only after all these aspects have been considered by the Tribunal that it can adequately deal with the industrial dispute

referred to it and make an appropriate award.

4. In a later decision Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another, , the Supreme Court held:

In an enquiry u/s 33-A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by

the employer. After such contravention is proved it would still be open to justify the impugned dismissal on the merits. That is a part of the dispute

which the Tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects

of the said dispute fall to be considered u/s 33-A. Therefore, when a Tribunal is considering a complaint u/s 33-A and it has finally to decide

whether an employee should be reinstated or not, it is not open to the Tribunal to

order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal.

5. In this case, therefore, the Labour Court is not justified in ordering reinstatement merely on the ground that contravention of Section 33 has been proved. It should have gone on further to find whether the dismissal was justified or not. This the Labour Court has failed to do.

6. The Labour Court has added another reason why it considered that the order of the petitioner discharging the first respondent from service is

illegal and it is that the Order of dismissal has been given retrospective effect from the 15th August, 1965. This view again is wrong. This Court has

held that a Government servant can be dismissed retrospectively from the date on which he had been placed under suspension--Vide

Jeevaratnam's case Unreported decision in A.S. No. 237 of 1958, judgment, dated 23rd October, 1960, as also the Supreme Court's judgment

in R. Jeevaratnam Vs. The State of Madras, . Even in the case of industrial disputes, the Supreme Court in the decision of The Management of

Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, , has held as follows:

Further the ordinary law of master and servant as to suspension can be and should be held to have been modified in view of the fundamental

change introduced by Section 33 in that law and a term should be implied by industrial tribunals in the contract of employment that if the master has

held a proper enquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission

required u/s 33 he has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation

on him to pay wages and no obligation on the servant to work. In dealing with this point the basic and decisive consideration introduced by Section

33 must be borne in mind. The undisputed common law right of the master to dismiss his servant for a proper cause has been subjected by Section

33 to a ban; and that in fairness must mean that, pending the removal of the said statutory ban, the master can, after holding an enquiry temporarily

terminate the relationship of master and servant by suspending his employee pending proceedings u/s 33. It follows therefore that if the Tribunal

grants permission, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of

suspension. If, on the other hand, the permission is refused, the suspension would be wrong and the workman would be entitled to all his wages

from the date of suspension.

7. Now, the principle of this decision taken along with the principle of the decisions already noted would apply and it should be held that where

an employee who was removed from service files an application u/s 33-A, if he ultimately succeeds, he would be entitled to get his wages from the

date he was placed under suspension, but, if he fails, he will not get wages from the date of suspension, and there is no objection to the employee

being dismissed with effect from the date on which he was placed under suspension. Such an order is only subject to the result of the application

filed u/s 33-A. Therefore, this reasoning of the Labour Court is also not correct.

8. The writ petition is allowed. No costs.