

(1980) 08 MAD CK 0008
In the Madras High Court
Case No : Writ Petition 881 of 1980

Madura Coats Limited

APPELLANT

Vs

Labour Court, Madurai and Another

RESPONDENT

Date of Decision : 27-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 11A

Citation : (1981) 1 LLJ 57

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

1. The writ petition is filed for issue of a writ of certiorari to quash the award passed by the first respondent in I.D. No. 11 of 1978 dated 7th

September, 1979.

2. The short facts are as follows : The second respondent/workman raised an industrial dispute about the termination of his services on the

following allegations. He was working in the Weaving Department of the writ petitioner for the past thirteen years and was an active member of the

Textile Workers Union (C.I.T.U.). A charge memo dated 24th February, 1976, was issued to him, to which he submitted his explanation on 4th

March, 1976. An enquiry was conducted and the enquiry officer found him guilty of the charges. As per order dated 12th March, 1976. He was

dismissed from service. The enquiry conducted against him was not fair and proper. Principles of natural justice had not been followed. This was a

clear case of victimisation. Hence, it must be declared that the order of dismissal was illegal and that he must be reinstated. This dispute was

referred to the labour court, Madurai, for adjudication under S. 10(1)(c) of the

Industrial Disputes Act, XIV of 1947, hereinafter referred to as the act as per G.O. Rt, No. 139, Labour and Employment Department dated 19th January, 1978.

3. The management contended before the Labour Court that the workman was employed in the mill as above beam gaiter and he was required to prove that he was an active member of the union. The workman was on duty on 18th February, 1976. He was informed on that day in person and by usual practice of display in the notice board that his presence was necessary for working on 22nd February, 1976, and that he might avail himself of a substituted holiday on 19th February, 1976, On that day, viz., 19th February, 1976, the workman came and squatted inside the loom shed and offered dharna, when he had no lawful authority to enter the premises on duty. It was an act of utmost defiance ignoring the definite instructions of his superiors. Three days later, he failed to report for duty though he had knowledge in advance of need of his presence in connection with work. Other workers obeyed the call of the management on 19th February, 1976. The act of the workman in squatting inside the loom shed and challenging the authority of the management is an act which deserves to be dealt with seriously. There was no flaw in the conduct of the enquiry. The punishment of dismissal was not out of proportion to the charges levelled.

4. On these allegations and counter allegations, the labour Court/first respondent framed two issues for consideration, viz.,

(1) Whether the non employment of Thiru N. Adhimoolam is justified ? If not, to what relief he would be entitled ?

(2) To compute the relief, if any, awarded in terms of money, if it could be so computed ?

5. Ultimately, the labour court rendered a finding that the workman was guilty of the charges levelled against him. However, by exercising its discretion under S. 11A of the Act, it came to the conclusion that the punishment of dismissal was out of proportion to the charges levelled and it ordered reinstatement without back wages, which according to it, will meet the ends of justice. Since it was of the view that the loss of back wages is a sufficient punishment for the worker and by this the worker would have learnt the lesson that such acts of misconduct do not pay, the Labour

Court ordered reinstatement without back wages. It is under these circumstances, the present writ petition has been preferred.

6. Mr. M. R. Narayanswami, learned counsel for the petitioner urges the following points for consideration : This is a case in which the discretion

under S. 11A of the Act has been improperly exercised by the Labour Court. The scope of S. 11A of the Act came up for consideration in The

Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . Before exercise of that discretion under S.

11A of the Act, cogent reasons will have to be given as laid down in Management of Binny Limited Vs. Additional Labour Court and Another,

and in Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Another, .

There are three types of misconduct, viz., misconduct of a technical nature, misconduct causing loss to the management and misconduct involving

breach of discipline. In the instance case, it is clearly one falling under the last type and, therefore, where the management has chosen to award the

punishment of dismissal after considerable deliberation, merely because under S. 11A of the Act, there is an enabling power, that cannot be

interfered with straightway. In support of this submission reliance is placed on Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes

Mazdoor Sabha and Others, , Supreme Court.

8. The reasons given by the labour Court that because the other workers tendered apology and they have been let off and that there was an

unequal treatment for the workman is again wrong because the other workers admitted the guilt and tendered apology. Therefore, no question of

unequal treatment would ever arise. The decisions in Workman of Tanning and Finishing Unit, Vinnamanagalam v. Management, Tanning and

Finishing Unit and another, (55) F.J.R. 170 and The Workmen of the Motor Industries Co. Ltd. Vs. The Management of the Motor Industries Co.

Ltd. Bangalore, at 681, are pressed into service in support of this submission.

9. The fact that the workman was employed for a long period of thirteen years is neither here nor there because the prior conduct need not be

taken into consideration if the present misconduct alleged is bad and serious in nature. In this case, the misconduct was of a deliberate defiance of

the instructions of the management and in fact, the workman was a leader, who hoarded others to defy the orders of the management. For all these

reasons, according to the learned counsel for the management, the exercise of the discretion under S. 11A of the Act is totally unwarranted. In

reply to this, the learned counsel for the workman would urge that the misconduct here is only of a day's absence. It is not such a serious offence.

As a matter of fact, the Supreme Court was of the view, as seen from *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, , that the only

available holiday to a workman in Sunday and even in such a case when the workman was dismissed, the reinstatement was ordered and wages

granted. Characterising this case as a grave misconduct is not correct as seen from the decisions in *Hind Construction and Engineering Co. Ltd.*

Vs. Their Workmen, at Page 464 and *Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Another*, .

10. As to the other workers, merely because they tendered apology, they cannot be treated on a better footing than the workman. In any event,

when the Labour Court has considered that the denial of back wages for this act of misconduct would constitute sufficient punishment, this Court

exercising write jurisdiction under Art. 226 cannot interfere with such a finding.

11. The only question that requires to be decided is whether the workman's defiance of the instructions of the management could be considered to

be a serious misconduct. I can straightway say, I am not persuaded to hold that it is a serious misconduct as would warrant the extreme

punishment of dismissal from service. My reasons are hereunder. After the introduction of S. 11A of the Act, it is well open to the Labour Court to

interfere in cases where it considers that the punishment is out of proportion to the charge levelled. In the instant case, call it either a day's absence

or defiance of the instructions of the management, I do not think either of them would be such a serious misconduct as to deserve the punishment

of dismissal. It is true, that even a single act of indiscipline or misconduct would be enough or would entail the serious punishment. But, there

cannot be any axiomatic rule in this regard. The scope of S. 11A of the Act came up for consideration in *The Workmen of Firestone Tyre and*

Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . It is true, cogent reasons will have to be given for interfering with the quantum

of punishment. In *Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Another*, at page 429, it was observed as follows :

As has been pointed out by the Supreme Court in *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, is the expression

"misconduct" covers a large area of human conduct, a distinction should be made between technical misconduct which leaves no trial of indiscipline

and misconduct resulting in damage of employer's property and serious misconduct such as acts of violence against the management or other

employees or riotous or disorderly behaviors to grave in discipline. Therefore, it is not possible to treat all cases of misconduct alike. The nature

and the quantum of punishment have, therefore, to depend on the nature of the charges.

12. As to what is the scope of this Court to interfere is gatherable from the recent pronouncement of the Supreme Court in *Gujarat Steel Tubes*

Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . That was a case against the award of the Arbitrator. The question that

arose was whether under Art. 226 of the Constitution, the High Court could interfere. In paragraph 144 at page 172, it was observed as follows :

In the second chapter of our sum up the first thing we decide is that 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,

under Art. 226, can, if facts compel, do. 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 as identification of the charge against each., the part of each the punishment for

each after adverting to the Gravamen of his misconduct meriting dismissal.

13. Tested in the light of this, I cannot hold that the discretion has been improperly exercised in this case. In the domestic enquiry, the workman did

not take a defiant attitude as seen from his reply to the questions. Therefore, now to say, that because he defied the clear instructions of the

management and thereby left a trial of indiscipline, would be something which cannot be countenanced. Again, in reply to the second show cause

notice, the workman denied the charges though he does not specifically say that punishment was not warranted. Even otherwise, the very purpose

of enacting S. 11A of the Act is to confer a jurisdiction on the Labour Court or the Tribunal, as the case may be, and such a discretion could be

exercised judiciously depending upon the seriousness of the charges and the circumstances of the case. I should hold, it has been so done, in the

instant case. As a matter of fact, the Supreme Court in the case already referred to in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel

Tubes Mazdoor Sabha and Others, , in paragraph 68 at page 153 has observed as follows :

May be, a dismissed servant may well be disentitled to some, at least, of the financial benefits which his counterpart who is simply discharged may

draw, But that is not a conclusive test. Otherwise, the master may "cashier" his servant and camouflage it by offering full retrial benefits. Dismissal

is not discharge plus a price. The substance of the action is the litmus test. In the present case, the penal code, "tied in tooth and claw" shows up

once we probe; and the non-committal frame of the formal order is a disguise. For a poor workman loss of his job is a heavy penalty when

inflicted for alleged misconduct, for he is so hungry that, in Gandhiji expressive words, he sees good himself in a loaf of bread.

14. If this be the correct position of law, I should rather think that the deprivation of back wages for this so-called defiant attitude would meet the

ends of justice and the approach of the Labour Court is perfectly in order, and no interference is called for.

15. The writ petition is dismissed. However, there will be no order as to costs.