

(2000) 01 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 9005 and 9006 of 1992

Madura Coats Ltd.

APPELLANT

Vs

D. Mathan Kumar and Others

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2000) 85 FLR 933 : (2000) 2 LLJ 313

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : A.R. Ramanathan, for Ramasubramaniam and Associates, for the Appellant; S. Vidyanathan, for Row and Reddy, for the Respondent

Final Decision : Allowed

Judgement

Y. Venkatachalam, J.—In these writ petitions since the subject-matter involved and also the petitioners and second respondent are

common, both these writ petitions were taken up together and are disposed of by this common order with the consent of the parties concerned.

2. Writ Petition No. 9005 of 1992 has been filed by the petitioner invoking Article 226 of the Constitution of India, seeking for a writ of certiorari

to call for the records connected with I.D. No. 71 of 1989 on the file of the Additional Labour Court, Madurai, and to quash the award, dated

March 9, 1992 and W.P. No. 9006 of 1992 has been filed seeking for a writ of certiorari to call for the records connected with I.D. No. 282 of

1989 on the file of the Additional Labour Court, Madurai, and to quash the award, dated March 6, 1992.

3. In support of the writ petitions the petitioner herein has filed separate affidavits wherein they have narrated all the facts and circumstances that

forced them to file the present writ petitions and requested this Court to allow the writ petitions. Per contra, in the counter-affidavits filed by the first respondents, they have rebutted all the material allegations levelled against them one after the other and ultimately they have requested this Court to dismiss the writ petitions for want of merits.

4. Heard the arguments advanced by the learned counsel appearing for the respective parties. I have perused the contents of the affidavit and the counter-affidavits together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

5. In the above facts and circumstances of these cases, the only point that arises for consideration herein is, as to whether there are any valid grounds to allow these writ petitions or not.

6. The brief facts of the case of petitioner as seen from the affidavits are as follows: Writ Petition No. 9005 of 1992 has been filed to quash the award, dated March 9, 1992, made in I.D. No. 71 of 1989 as a result of which the second respondent has interfered with punishment in a case of theft and has directed reinstatement of the workman with 75 per cent back-wages. The first respondent in the writ petition was employed as a substitute in Finishing Department and chargesheet dated October 8, 1987, was issued to him wherein it was alleged that on October 2, 1987 at about 12.00 noon he was stealthily taking out from the mill premises certain articles belonging to the company and in the process he was caught.

The articles were:

- (i) Four Scissors
- (ii) Cotton banding
- (iii) A new cardboard box

In the explanation of the workman, dated January 13, 1987, an admission was made that indeed these articles were found as alleged but he claimed that these articles had wrongly been placed there by other workmen. A domestic enquiry was held in the matter and the enquiry officer found the employee guilty and since theft was involved the management by its letter, dated March 7, 1988, dismissed the workman from services

and this gave rise to I.D. No. 71 of 1989. The Labour Court in the concluding portion of the award found that the charges of theft were made out and proceeded to interfere with punishment. Aggrieved by the impugned award and having no other alternative remedy the petitioner is constrained to approach this Court, W.P. No. 9006 of 1992 was filed to quash the award of the second respondent made in I.D. No. 282 of 1989, dated March 6, 1992, as a result of which the second respondent after finding the workman guilty of serious misconduct has interfered with the punishment on the sole ground that the past record of the employee is clean, without any reference to the nature of the misconduct committed by the workman which he was duty bound to do. In the said case the workman was employed as Junior Electrician in the Electrical Department of the mill's. It was alleged against him that on February 12, 1988 he was directed by his superior to rectify the electrical defects in the three hoists. Each of the hoist has more than one door lock switch. What is important is that if the door lock switches are not in place, the doors of the hoists (lifts) will not get locked to, would remain open and if in this condition any of the workmen had operated the lift, disastrous consequences would have followed as can be imagined when there is a defect in any passenger or luggage lift. In case of any mechanical defects it was not the duty of the workman in the present case to attend to the defect in the lift and there is no business whatsoever for him to remove the door lock switches. If at all they require attention, it could be attended to only by the mechanical shop fitter. Further more, if at all a door lock switch is removed there should be a warning sign board in the lift and outside it stating that the lift is defective. On February 12, 1988, the first respondent workman was instructed to carry out the electrical defects in all the three lifts. The first respondent very negligently while attending to the electrical defects, removed the door lock switches on all three lifts himself instead of getting the assistance of the mechanical shop fitter and without putting any board as referred to above regarding the lifts not being in operation, went away. What was worst is that, when this was noticed and the respondent was asked to refix the door lock switches he refused to carry out such work. The workman was issued a chargesheet, dated February 2, 1988, and an enquiry was held in the matter. According to the petitioners the gravamen of the charge was that by removing quite unauthorisedly the door lock

switches from all three lifts and leaving them in the engineering mechanical shop without any warning boards in the lifts or outside them, the workman thereby caused an unsafe condition for fellow workmen which inter alia, constituted grave negligence and dereliction of duties and that his refusal to obey the order of superior to refix the door lock switches constitutes disobedience. The enquiry officer found the employee guilty of charges and observed that but for the situation being noticed in time, there could have been an accident as the lifts had no hazard warning and were also defective and were without door locks. Further according to the petitioner the enquiry reveals that when the employee was asked to refix the door locks, he refused to do so saying that he had work at home. Thus the 12 door locks in question, that is four per lift, were refixed by the other workmen. That apart the workman had gone to the house of another Junior Engineer by name Bhakthavatchalan and questioned him as to why he gave a complaint and pointed out that nothing can be done and he may be suspended if at all for one week. Ultimately new bolts were obtained from the general stores and shaped according to requirements and the locks were fixed. It is also their case that the enquiry also reveals that if the door locks were removed, there was a possibility that the doors of the lifts would slide open with very little effort and could even cause fatal accidents. Therefore, it is contended by the petitioner that after careful consideration of the enquiry report and in view of the seriousness of the negligence included in by the workman and after considering his refusal to carry out instructions the management issued the employee a second show-cause notice, dated July 15, 1988, to which the workman submitted his explanation, dated July 21, 1988 and August 20, 1988. Thereafter the employee was dismissed from services by an order, dated September 5, 1988, which gave rise to the industrial dispute and the impugned award has been passed as a result of which the reinstatement of the workman without back-wages has been ordered after a finding being rendered that the misconduct was true. Hence the writ petition."

7. Challenging the impugned awards in this case, it is contended by the petitioner that the impugned awards suffer from errors apparent on the face of the records and hence liable to be quashed, that in both the cases the employees were found guilty of the offence/misconduct and that in both

the cases while interfering with the penalty the Labour Court failed to exercise discretion in accordance with Section 11-A and the various

judgments of this Court. So far as the first case (Writ Petition No. 9005 of 1997), it is contended by the petitioner that the Labour Court has failed

to realise that in a case of theft the value of the articles would hardly be relevant because it is the act of theft itself which is punishable and that

punishment does not depend upon the extent of theft of the articles involved in the theft. It is also contended by them that thus in the present case

since the Labour Court ignored the act of theft itself but seemed to think that theft could be condoned, if the articles involved were insignificant,

there has been a miscarriage of justice and arbitrariness in the final award. It is also their case that the Labour Court has failed to take note of

relevant consideration viz., effect on discipline in general if an act of theft is condoned and also it is their categorical contention that the Labour

Court has failed to exercise discretion judicially and judiciously as he has failed to advert to the question of necessity or desirability to interfere with

the punishment nor has he given a specific finding as to whether it would be expedient to reinstate a workman who has committed theft.

8. In the other case it is contended by the petitioner that the Labour Court was duty bound to take into considerations the nature of the misconduct

and other relevant considerations such as interests of the industry and the effect on discipline before reinstatement is ordered and that the Labour

Court seems to be of the erroneous view that if the past record was clean then reinstatement could be ordered without even considering the nature

of the misconduct. In the said case according to the petitioner, the Labour Court completely failed to note the significance of removal of door locks

of lifts in a textile mill used to carry workmen as well as goods and also that the Labour Court failed to realise that there were defects in the lifts

anyway which were to be attended to by the workman and instead of doing that he had removed door locks and that too without bothering to

place hazard warning boards or notices.

9. Per contra, in the counter-affidavits filed by the employees, justifying the awards passed in their favour they contend that the employee in Writ

Petition No. 9005 of 1992 had undertaken to provide colour serial light set with decorative boards for celebration of Saraswathi Pooja on

October 1, 1987 in the company premises as he had done in previous two or three years, that the company itself supplies colour paper foil for purposes of decoration, that the decoration is done by all workers helping one another, that the festoons of colour papers are tied using waste (i.e., used) cotton binding (i.e., small rope used for binding packages) for which permission is granted by the concerned staff of the company, that to cut the colour papers and the strings small scissors (used for cutting threads) 4 in number were used with the permission of the concerned supervisory staff, that he had taken two outside boys as assistants to help him to carry the serial light set and decorative boards and to help him in the decorative work, that after the decoration work, he attended to his shift work at the mill after which he left for home leaving his assistant boys to wait till the funtions are over and to collect the serial light sets and decorative boards, and that the boys informed him that his serial light sets and decorative boards have been detained by the company watchman, that when he went and asked the watchman, he was simply asked to come in the morning and meet the Security Officer and to take delivery of the materials, and that in the morning it was found that his serial light set and decorative boards had put in an empty carton box belonging to the company and was tied with a small used cotton binding (cotton rope) weighing about 20 grams and on opening the box it was found that it contained apart from his serial light sets and decorative boards 4 small scissors belonging to the company which were used during decorative work. It is his case that apparently his assistant boys had by mistake put them in the box thinking that it belonged to him. It is also his case that the old card board box in which he had carried the materials had torn, his assistant boys had bona fide used an empty carton box which was lying hearty and tied it up with the old cotton rope which was used for decoration. Inter alia it is also contended by the employee that the Labour Court had rightly exercised its jurisdiction and had taken into relevant consideration while invoking Section 11-A of the Industrial Disputes Act, 1947, in so far as reducing the punishment from extreme penalty of dismissal and that therefore, in any case, there has been neither a miscarriage of justice nor arbitrariness in the final award.

10. In the other writ petition it is contended by the employee therein that on February 12, 1988 at around 7.15 A.M. he was asked to set right the

electrical faults in gate locks of hoists Nos. 1, 3 and 4 by Electrician Bakthavatsalam, the Junior Engineer, that he was assigned to carry out that work by a mechanical shop job order, dated February 11, 1988, and since there was a mechanical fault in hoists he removed the door lock switches and took that to mechanical shop to set it right, that whenever a mechanical fault in the hoists is found by the electrician, the procedure is the electrician himself will remove it and hand it over to the mechanical department, and that when the same is repaired by the mechanical department, it will be installed both by the fitter of the mechanical department and the electrician in electrical department. It is also contended by the employee that the fact that he removed the door lock was known to Bakthavatsalam, Junior Engineer on February 12, 1988 itself who has not prevented him from doing the same and also that he removed the hoist gate locks and only after inserting all the electrical wire carried the hoist locks to the mechanical shop for repairing the same. It is also contended by him that whenever the Hoist lock is removed a wedge wood piece will be fixed in the grabber box of Hoists so that the door will not be automatically operated by a Hoist man. Inter alia, it is also contended by the workman that the Labour Court only after clearly examining the enquiry proceedings interfered with the punishment imposed by the management and while exercising the powers vested u/s 11-A of the Industrial Disputes Act, 1947, reduced the punishment of dismissal into reinstatement however without back wages. It is also his case that the Labour Court has rightly held that for the misconduct of this nature, the punishment of dismissal is not warranted and after having considered the unblemished record of 12 years of service ordered that the punishment of dismissal is disproportionate to the nature of misconduct and rightly ordered for reinstatement but error in not granting back wages.

11. Having seen the entire material available on record and from the facts and circumstances of the cases and also from the claims and counter claims made by the rival parties, the following facts are admitted in these two cases. In W.P. No. 9005 of 1992, the employee concerned was chargesheeted for stealthily taking out from the mill premises certain articles belonging to the company and in the process he was caught and in the explanation of the workman, dated January 13, 1987, an admission was made that indeed these articles were found as alleged but he claimed that

these articles had wrongly been placed there by other workmen. A domestic enquiry was held in the matter and the enquiry officer found the

employee guilty and since theft was involved, the management by its letter, dated March 7, 1988, dismissed the workman from services and this

gave rise to I.D. No. 71 of 1989 and the Labour Court eventually in the concluding portion of the award, found that the charges of theft were

made out and proceeded to interfere with the punishment and aggrieved by the impugned award, Writ Petition No. 9005 of 1992, has been filed.

12. In Writ Petition No. 9006 of 1992 the employee was a Junior Electrician in the Electrical Department of the mills and the charge was that by

removing quite unauthorisedly the door lock switches from all three lifts and leaving them in the Engineering Mechanical Shop without any warning

boards in the lifts or outside them, the workman thereby caused unsafe conditions for fellow workmen which inter alia constituted grave negligence

and dereliction of duties and his refusal to obey the orders of superior to refix the door lock switches constituted disobedience. The enquiry officer

found the employee guilty of the charges and observed that but for the situation being noticed, in time, there could have been an accident (sic) as

the 1 lifts had no hazard warning and were also defective and were without door locks. The enquiry also reveals that when the employee was

asked to refix the door locks he refused to do so saying that he had work at home. After careful consideration of the enquiry report and in view of

the seriousness of the negligence indulged in by the workman and after considering his refusal to carry out the instructions the management issued

the employee a second show-cause notice, dated July 15, 1988, to which the workman submitted his explanation, dated July 21 and August 20,

1988, and eventually the first respondent was dismissed from services by an order dated September 5, 1988 which gave rise to the industrial

dispute and as the impugned award has been passed as a result of which the reinstatement of the workman without back wages has been ordered

after a finding being rendered that the misconduct was true. Hence the Writ Petition No. 9006 of 1992 has been filed.

13. In both these cases, a perusal of the records goes to show that the Labour Court in both the cases satisfied that the enquiry conducted by the

management against the employees in question is in accordance with law and following the principles of natural justice. They have only observed

that the punishment awarded was excessive and that they interfered only with regard to the punishment awarded to the employees concerned. The question herein is whether such decision of the Labour Court with regard to the punishment is warranted in the facts and circumstances of these cases or they have to be quashed as prayed for by the petitioner management. It is no doubt true that in Writ Petition No. 9005 of 1992, it has been observed in the concluding portion of the award that theft has been committed. That being so it is hotly contested by the petitioner herein that while interfering with the penalty, the Labour Court failed to exercise discretion in accordance with Section 11-A and the various judgments of this Court and also that he failed to realise that in a case of theft the value of the articles would hardly be relevant because it is the act of theft itself that is punishable and that punishment does not depend upon the extent of the articles involved in the theft. Further it is rightly contended by the petitioner herein that in Writ Petition No. 9005 of 1992, the Labour Court ignored the act of theft itself but seemed to think that theft could be condoned if the articles involved were insignificant, there has been miscarriage of justice and arbitrariness in the final award. That apart it is also their strong case that at any rate, since eventually the Labour Court interferes with penalty and denies the workman 25 per cent back wages, it can safely be presumed that in reality the Labour Court found the workman guilty of theft. Further it is the strong contention of the petitioner herein that in a textile mill, employing 2200 workmen policing the property of the management is a very difficult proposition, that too in a place like Tuticorin and that reinstatement of workman who has indulged in theft is bound to send wrong signals to other workmen and will make discipline already a fragile commodity and difficult to maintain completely beyond control. In the above facts and circumstances of this case, I see every force in the above contentions of the petitioner. Because it is significant to note that once such a finding is rendered wherein the offence is punishable under Indian Penal Code, it would be against the interests of other workmen and industrial development, and if adequate punishments are not imposed when offences under Indian Penal Code are established and committing theft had been considered as a penal offence in the interest of society to maintain law and order in the country and to strike out standards, when they occur in industries would be detrimental to the interest of the nation, if

a different approach is made mainly because he is a workman under the Industrial Disputes Act. In this regard, the learned counsel appearing for

the petitioner relied on a decision reported in T. Seeralan Vs. The Presiding Officer II Additional Labour Court and Others, wherein it has been

held as follows at P. 86:

4. Once a finding is rendered that the employee is guilty of the misconduct of theft which is an offence punishable under the Indian Penal Code, it

would be against the interest of other workmen and industrial development if adequate punishments are not imposed.

In the same decision it has also been held thus:-

plea for reinstatement is an untenable one and the punishment imposed is on the concessional side.

That being so, the above decision squarely applies to the facts of the case in Writ Petition No. 9005 of 1992 and support the case of the petitioner

therein.

14. Now coming to the case of Writ-Petition No. 9006 of 1992, it is the strong contention of the petitioner that even after the detection of the

misconduct committed by the workman, the workman had refused to refix the door lock switches in spite of the order of the superior and that such

disobedience on the part of the workman in spite of being in the knowledge as to what would happen if the door lock switches are not fixed and

the consequences arising thereof, cannot at all be viewed in a lenient manner. It is significant to note that the workman's disobedience coupled with

his earlier misconduct in unauthorisedly removing the door lock switches would go to show how far the workman had been negligent and derelict in

his duties. Therefore, it is rightly contended by the petitioner that if the petitioner-management had to retain such a person to its service, it would

only be open to all as to who the discipline, the most primary factor that is needed in any industry would be affected. That apart it is also significant

to note that the presence of such workman in the industry will certainly do no good at all, both to the welfare of the industry as well as the welfare

of the workers and all these ought to have been in the mind of the Labour Court while evaluating the gravity of the misconduct. Therefore, it is

strongly contended by the petitioner herein that in the present case there has been a miscarriage of justice and the importance of a lift in a textile mill

has been lost sight of while considering the extent of negligence and also that unfortunately the Labour Court has brought about grave miscarriage of justice in the matter by directing reinstatement of a workman whose negligence would have been disastrous to his fellow workmen and could have brought about great loss to the mill. Further in this case it is significant to note that the misconduct committed by the workman was not a simple one which could have resulted in damage to the petitioner-company. That apart it is also rightly contended by the petitioner that the seriousness of the misconduct and the consequences arising therefrom, have not at all been discussed by the Labour Court and on the other hand has taken off on a tangent and proceeded on the assumption as though the misconduct was something that could be pardoned. It is also the categoric contention of the petitioner that the misconduct if it had not been detected would have resulted in a situation where the Directors of the company would have been held liable for criminal prosecution for failure to comply with safety regulation. Therefore, it is rightly contended by the petitioner that all these ought to have been in the mind of the Labour Court while evaluating the gravity of the misconduct and the failure in application of mind to all these aspects has only resulted in an award which is in effect nullity. In the above facts and circumstances of the case and also in view of the decisions above relied on I see every force in the above contentions raised by the petitioner herein.

15. That apart in support of the writ petitions, the petitioner herein also relied on the following decisions:

(1) Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, wherein it

has been held as follows, at P. 274:

14..... Section 11-A which confers powers to substitute lesser punishment in lieu of order of discharge or dismissal is not an arbitrary power given

to the Tribunal or Labour Court and such power has to be exercised only when it is satisfied that the punishment imposed by the management is

highly disproportionate to the degree of guilt of the workman concerned and the Tribunal or Labour Court has to give the reasons for its decision

which are subject to judicial review by the High Court and the Supreme Court.....

Since in this case it is very clear that the punishment imposed by the Labour

Court is highly disproportionate to the Labour Court is highly disproportionate to the degree of guilt of the workman concerned and the Labour Court has not given suitable reasons for its decision. Under such circumstances, the award of the Labour Court impugned in these writ petitions are subject to the judicial review by this Court. Therefore, the above said ratio of law laid down in the above decision squarely applies to the facts of these cases.

16. Yet another decision relied on by the petitioner is the one reported in Engine Valves Ltd. Vs. Labour Court, Madras and another, wherein it

has been held, in at Pp. 378-379:

11. In awarding punishment under Standing Order 15(c) of the company, the Manager shall take into account the gravity of the misconduct, the

previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist and also that the factual reference in

the order to the consideration having been made of the previous record, constitutes sufficient compliance with the requirements of the Standing

Order in question and the grievance made about the non-consideration of the past record of service before the Labour Court as well as the learned

single Judge and which found their acceptance is wholly unjustified and unwarranted, and that the order of punishment could not be said to have

been vitiated on this account.

17. On behalf of the employees also the decision reported in The Management of Tiruppur Cotton Spinning and Weaving Mills Vs. The Presiding

Officer, Labour Court and Others, wherein it was found that after the introduction to Section 11-A of the Industrial Disputes Act, the Labour

Court or Tribunal functions like an appellate authority and it is entitled to appreciate the evidence and come to a different conclusion, if necessary.

But in view of the decision reported in Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore

Association and Others, the above decision is not helpful to the employees herein.

18. Therefore, for all the aforesaid reasons and in the facts and circumstances of these cases and also in view of my above discussions with regard

to the various aspects of these cases and also in the light of the various decisions discussed above, I am of the clear view that the petitioners herein

have clearly made out a case in their favour that there has been a miscarriage of

justice and arbitrariness in the impugned awards and that the impugned awards suffer from errors apparent on the face of the records and that therefore they have to be quashed as prayed for. Thus both the writ petitions succeed and they have to be allowed as prayed for.

19. In the result, both the writ petitions are allowed as prayed for. No costs. Consequently the awards impugned in these writ petitions are hereby quashed in so far as reliefs to the workmen concerned are made therein.