

(1975) 11 MAD CK 0042
In the Madras High Court

Madurai-Devakottai Transport Private Limited

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 17-11-1975

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1976) 2 LLJ 257

Hon'ble Judges : K. Veeraswamy, C.J;Natarajan, J

Bench : Division Bench

Judgement

1. The petitioner is engaged in motor transport business and in the course of the said business the 2nd respondent was employed as a time-keeper-cum-stand agent, his place of duty being Central Bus Stand, Madurai. On 16th October, 1972, one Pappammal, a girl aged about 20 preferred a complaint to the management that the 2nd respondent indecently assaulted her by pulling her hands with prurient intention. A report was also received from Mr. Guruswamy, another employee who was also employed as a time-keeper along with the 2nd respondent about the said incident. On the basis of the complaint of the said Pappammal and also of the co-employee Guruswamy, a show-cause notice was issued to the 2nd respondent on 21st October, 1972, charging him with drunkenness and indecent assault upon a girl. The 2nd respondent submitted his explanation.

2. Thereafter a domestic enquiry followed. An advocate was appointed as the enquiry officer and he conducted the enquiry on 29th January, 1973, 14th February, 1973 and 24th February, 1973. Four witnesses were examined on the side of the management. The 2nd respondent examined himself and another witness in support of his defence. The enquiry officer, after a consideration of the evidence, found that the 2nd respondent was guilty of the charges framed against him. After getting the report from the enquiry officer, the management came to the conclusion that the 2nd respondent should be dismissed from service, and ordered the dismissal by its order dated 6th March, 1973.

3. The 2nd respondent, thereafter raised an industrial dispute, and the dispute was referred to the Labour Court and taken on file as Industrial Dispute No. 66 of 1974. Before the Labour Court, the 2nd respondent mainly contended that the domestic enquiry was not fair and proper and that he was not given an effective opportunity to put forth his defence. The petitioner-management in turn contended that the domestic enquiry was fair and proper and that effective and reasonable opportunity was given to the 2nd respondent to put forward his defence. In support of their case the management filed the entire records of the domestic enquiry beginning with the complaint preferred by Pappammal and culminating with the order of termination issued by the petitioner. At the stage of enquiry it appears that the counsel for the management requested the Labour Court to decide the question as to whether the domestic enquiry is fair and proper, as a preliminary issue on the ground that if it is found that the domestic enquiry is fair and proper, no further question would arise, and that the Labour Court would have no jurisdiction to proceed with the matter any further. It is said that arguments were advanced on this point by the counsel for the petitioner as well as the representative of the union who appeared on behalf of the 2nd respondent and that the Labour Court thereafter reserved orders on that point. However, the Labour Court by its memo, dated 20th February, 1975, posted the case for hearing on 11th March, 1975, and directed the parties to lead additional evidence, if any. The said memo, issued by the first respondent has been challenged in this writ petition.

4. The petitioner's case is that unless the Labour Court renders a finding that the domestic enquiry is not fair and proper, it has no jurisdiction to call upon the parties to adduce fresh evidence and that, therefore, this Court should issue a mandamus directing the 1st respondent to render a preliminary finding on the said question. According to the learned counsel for the petitioner, the 1st respondent will have jurisdiction to go into the evidence to find out whether the 2nd respondent is guilty of the charges framed against him, only if he finds that the domestic enquiry is not fair and proper and that if it is found that the domestic enquiry has been conducted fairly and properly the 1st respondent has no further jurisdiction to question the finding given by the management as a result of the domestic enquiry.

5. The learned Counsel refers to the decision reported in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, , in support of his stand that only when the domestic enquiry is found to have been vitiated, the Labour Court will have jurisdiction to embark on an enquiry as to whether the charges against the employee are duly proved on the materials on record. The following passage in the said judgment is relied on:

The Tribunal derives jurisdiction to deal with the merits of the dispute only if it has held that the domestic enquiry has not been held properly.

The position set out by the Supreme Court in the above decision was as it existed before the introduction of Section 11A in the Industrial Disputes Act. The

power of the Labour Court or the Tribunal after the introduction of Section 11A by Central Act 45 of 1971 has been considered by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , wherein it has been held at page 340:

The Legislature in Section 11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the Legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the proviso. The proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the "materials on record" before it. What those materials comprise of have been mentioned earlier.

The learned Counsel for the petitioner would, however, contend that Section 11A is mainly intended to confer on the Labour Court a power to interfere with the punishment imposed by the management, and it does not confer a power on the Labour Court to go behind the finding given by the management as a result of the domestic enquiry found by the Labour Court to be fair and proper. This contention of the learned Counsel is no longer tenable in view of the said decision of the Supreme Court in (1973) 43 F.J.R. 315, from which the above extract is given. It is clear from that decision that even if the domestic enquiry is held to be fair and proper, still the Labour Court can go into the question as to whether the finding given by the management is established by the materials adduced by the parties. In view of the said decision the direction of the Labour Court to adduce evidence, if any, in relation to the dispute cannot be said to be vitiated for any reason. Even if a preliminary finding is given by the Labour Court that the domestic enquiry was fair and proper, still the Labour Court could go into the question as to whether the finding given by the management could be sustained on the materials. Therefore, the Labour Court is fully justified in calling for such evidence as the parties may adduce in relation to the dispute.

6. The writ petition, therefore, fails and is dismissed.