

(1979) 02 MAD CK 0015
In the Madras High Court

Management of Binny Limited

APPELLANT

Vs

Additional Labour Court and Another

RESPONDENT

Date of Decision : 21-02-1979

Acts Referred:

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

Citation : (1979) 2 LLJ 280

Hon'ble Judges : Sathia Dev, J; Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—The writ petition is for certiorari to quash the award of the Labour Court made in I.D. 25 of 1976. The second

respondent/workman was charge-sheeted for the offence of theft of the following six articles, namely, surgical cotton, Boric Acid Powder,

Sulphanide Powder, surgical Dressing, Turpentine and Detol. The workman was charge-sheeted and on 9.1.1975 he was called upon to give his

explanation on or before 13th January, 1975. He did not furnish his explanation. By letter dated 16.1.75, he was directed to appear before the

petitioner for an enquiry on 21st January, 1975. On that day the 2nd respondent submitted his written explanation. At the request of the workmen,

the enquiry was held on 23rd January, 1975. In a properly conducted domestic enquiry it was found that the charge has been made out and the

workman was dismissed from service. This dismissal lead to industrial dispute and came to be referred for adjudication in G.O. Rt. No. 222,

Labour and Employment Department, dated 30th January, 1976, It was that, which came for adjudication as I.D. 25 of 1976.

2. It was contended by the workman that the domestic enquiry was biased, that

he was not given the assistance of a co-worker, that no

opportunity was given to offer his explanation regarding the proposed punishment, that the evidence of the witnesses was not properly considered

and that, therefore, the order of dismissal is unjust and illegal. The Labour Court posed to issues for consideration, namely,

(1) Whether the non-employment of Thiru V. Elumalai is justified and if not to what relief he is entitled?

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

On the first issue in paragraph 15 the conclusion arrived at is as follows:

On a consideration of all the circumstances and evidence in this case, I am of the view that M.W.1 was right in coming to the conclusion that

W.W.1 committed theft of the articles mentioned in Ext. M.1 belonging to the company. The Works Manager, after taking into account the gravity

of the mis-conduct, the previous record of W.W.1 and all other circumstances dismissed W.W.1 from the services of the company.

3. On the second issue, namely, the quantum of punishment, exercising its discretion u/s 11A of the Industrial Disputes Act (hereinafter referred to

as Act) had ultimately passed an award setting aside the dismissal and ordering reinstatement of the workman in service without continuity of

service and without back wages. It has also directed that the workman would start his career afresh under the respondent/petitioner herein. It is to

quash this, the present Writ Petition has been preferred.

4. The finding relating to holding guilt of charge is not biased. Only as regards the second aspect, namely, falling within the domain of Section 11A

of the Act referring to the award of punishment, two arguments were raised before me. Firstly, the Labour Court has nowhere borne in mind, the

sacred principle of Section 11A of the Act which does not deal with the question where the dismissal is justified under the circumstances of the

case. On the contrary it proceeds as if the order of dismissal requires ""modification"". This approach has caused great prejudice to the

management/writ petitioner. Secondly, the theft of articles belonging to the company is serious misconduct on the part of the workman and the

Labour Court could have been aware of the loss of confidence having regard to the punishment of dismissal inflicted by the Management.

Therefore, instead of directing reinstatement, it could have ordered monetary compensation if the circumstances so warranted. No doubt, the

Labour has every discretion u/s 11A of the Act. But this is a case in which the discretion has been exercised in a perverse manner. There could not

be a dismissal for one or two years as the Labour report would assume so. For these reasons, that portion of the award is clearly unsustainable.

5. In support of this statement, the learned Counsel for the writ petitioner relies on (Management of Monghur Factory of I.T.C. Ltd., Bihar v. The

Presiding Officer Labour Court Patna (Bihar) and Ors. AIR 1978 S.C. 1423, and states that it is open to this Court to exercise powers under

Article 226 and award monetary compensation in lieu of reinstatement since that has been done by the Supreme Court itself.

6. The learned Counsel for the respondents in meeting this statement argues that the power of the Labour Court to interfere with the quantum of

punishment u/s 11A of the Act has been succinctly laid down in Workmen of Firestone Tyre & Rubber Company v. The Management and Ors.

1973 II L.L.J. 278. What is to be considered in this case is the substance of what is contained in the concluding paragraph of the award are not

merely to be governed by the language employed therein which alone, according to him has given rise to many arguments. The substance,

according to the learned Counsel is the workman had put in 11 years of service without any blemish and having regard to that the singular order of

dismissal was unjustified and, therefore, he is reinstated without continuity of service and without back wages which will fall within four corners of

Section 11A of the Act. It is not possible to content that such punishment cannot be awarded by the Management. That may not ever be the test.

The dismissal of the management is interfered with by directing reinstatement of the workman on such conditions and terms as the Labour Court

deemed fit. This Court, exercising jurisdiction under Article 226 cannot set aside unless it finds that judicial discretion u/s 11A of the Act has been

improperly exercised. That is not the case here. The above decision AIR 1978 S.C. 1428 will be of no avail to the petitioner because under the

peculiar facts and circumstances of that case* the Supreme Court, in order to render justice ordered award of monetary compensation That

cannot be relevant to this present case.

7. Having regard to the above arguments, it is but necessary for us to extract the two paragraphs 16 and 17 of the award in question which runs as

follows:

Now we have to consider whether the order of dismissal requires any modification. It was represented that the worker is married, he has got 3

children and that the members of his family are solely dependent on the income earned by the worker for their maintenance. It was pointed out, in

any event, the order of dismissal is too severe and requires a modification. It is seen that the petitioner had put in a service of about 11 years,

having joined the respondent as a compounder on 26.4.1965. It is not the case of the respondent that the worker was found guilty of a similar

misconduct on earlier occasion during his period of service. As represented, an opportunity should be given to the worker to refresh himself and

turn a new leaf. Interest of justice will be satisfied if the order of dismissal is not set aside and an order of reinstatement is passed subject to suitable

terms and conditions.

In the result, an award is passed to the following effect. The order of dismissal is set aside. The worker V.C. Elumalai will be reinstated in service

without continuity of service and without back wages. He will start his career afresh under the respondent as a new entrant. In future the worker

must conduct himself properly and in case of his being found guilty of any subsequent act of misconduct, he would be deprived of the relief of

reinstatement. No costs.

In the above paragraphs, in dealing with the quantum of punishment no doubt the Labour Court has started addressing the question whether the

order of dismissal requires any "modification". This, in our view is only a wrong use of improper language without effecting substantially the rights of

the parties. Section 11A 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. That is what the Labour Court has found, in this case, in our considered view. We say so

because, it clearly states in paragraph 16 itself "that the petitioner had put in a service of about 11 years, having joined the respondent as a

compounder on 26.4.1965". It is not the case of the respondent that the worker was found guilty of a similar misconduct on any 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 u/s 11A of the Act. As regards that power of interference Section 11A states that it may be open to the Labour Court

to set aside the order discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit. So, the

Labour Court in its award at paragraph 17 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 Section 11A of the Act, The power of interference u/s 11A of the Act is laid down by

their Lordship of the Supreme Court in Workmen of Firestone Tyre and Rubber Co. v. The Management and Ors. 1972 I L.L.J. 278, which is as

follows:

We have already expressed our view regarding the interpretation of Section 11A. We have held that the previous law, according to the decisions

of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct

except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed

by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in the cases where the Tribunal finds such

misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognized by this Court

mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law,

as laid down by this Court over a period years, had recognized certain rights in an employer. We have pointed out that this position has now been

changed by Section 11-A.

8. The interference in this case is in accordance with the judgment of the Supreme Court cited above. Therefore, having regard to this, we are

unable to accept the arguments that the monetary compensation in this case would have met the ends of justice. Certainly, it is not for us exercising

this jurisdiction, to interfere with the discretion exercised by the Labour Court u/s 11A of the Act. Thus, we come to the conclusion that such

discretion has been exercised not in a perverted manner. The decision referred in

I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour

Court, Patna (Bihar) and Others, cannot be of much assistance to the petitioner as held above. In every case of dismissal, there will be loss of

confidence. But those are all factors which are taken into consideration by the Labour Court and we cannot interfere with the exercising of that

discretion. More so, in cases like this, in our view the discretion has been exercised properly. In the result, the Writ Petition fails and is hereby

dismissed. No costs.