
(1999) 06 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 17702 of 1990

Management of Coimbatore District Consumers Co-operative
Wholesale Stores Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 14-06-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1999) 82 FLR 932 : (2000) 1 LLJ 405 : (1999) 3 MLJ 1 : (2000)
WritLR 224

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : P. Ibrahim Kalifulla, for the Appellant; V. Ramasubramaniam, for the
Respondent

Final Decision : Dismissed

Judgement

Karpagavinayagam, J.—The Management of Coimbatore District Consumers Co-operative Wholesale Stores Ltd., is the petitioner in this writ petition, seeking to issue a writ of ceruorari calling for the records of the Presiding Officer, Labour Court, Coimbatore, the first respondent herein and quash his award dated November 16, 1989 passed in I.D. No. 284 of 1985.

2. The facts leading to the filing of this writ petition could be summarised as follows:

The petitioner is a co-operative society owning the Chinthamani Co-operative Super Market. One G.V. Rangarajan, the second respondent herein was working as a Superintendent in the super market. He was also incharge of the purchase of the empty covers required for packing of commodities. The total requirement of such empty covers are determined by the section manned by the second respondent under whom two other Assistants by name R. Jaganathan and V.M. Natarajan were working. In the matter of placing order by the section which was under the control of the second respondent with different parties for the

purchase of 17 lakhs of covers for the year 1980-81, fictitious entries were made by the said two Assistants, thereby committed misappropriation of a sum of Rs. 1,06,104.33 of the Society's funds with the connivance of the second respondent. By following the required procedures, the charges were levelled against the delinquents. Ultimately, the enquiry officer submitted his report dated November 24, 1983 stating that the said Jaganathan and CM. Natarajan joined together and misappropriated the said sum by fraudulent means and that G. V. Rangarajan had been used by the said two persons for this fraudulent act and that he was not vigilant by making proper supervision and did not bestow his care expected from him for preventing such a huge loss to the society by the misappropriation committed by the other two Assistants. On December 18, 1984, based on the report of the Enquiry Officer, the petitioner dismissed the second respondent as well as the other two Assistants from service. On raising an industrial dispute by the second respondent, the first respondent took up the case on file in I.D. No. 284 of 1985. Though it was claimed by the second respondent that the enquiry was not conducted properly and the charges were not proved, the first respondent rejected those submissions. However, by holding that the enquiry was fair and proper and the findings of the Enquiry Officer were not perverse, the first respondent set aside the order of dismissal holding that it is unjustified, as it is only established that the second respondent was only negligent in discharging his duties by not properly supervising the work of his Assistants and modified the same by directing reinstatement of the second respondent with continuity of service and with 25 per cent backwages drawn by the second respondent at the time of his termination. Aggrieved over this award directing for the reinstatement by setting aside the punishment of dismissal by the first respondent, the Management of Coimbatore District Consumers Co-operative Wholesale Stores Ltd., has filed this writ petition.

3. Mr. Ibrahim Kalifulla, the learned counsel appearing for the petitioner, would vehemently contend that the first respondent, having held that the findings arrived at against the second respondent could not be said to be perverse, ought not to have interfered with the punishment by invoking his powers u/s 11A of the Industrial Disputes Act.

4. On the strength of the decision in Kanyakumari Automobiles (P) Ltd. Vs. P. Natarajan and Another, rendered by the Division Bench of this Court, it is contended by the learned counsel for the petitioner that to grant relief u/s 11A of the Act, there must be a finding that the dismissal is not be justified, unless the Labour Court gives such a finding. It has absolutely no power to grant relief contemplated u/s 11A of the Act, such as award of any lesser punishment, in lieu of the dismissal.

5. On behalf of the respondent, counter has been filed in which it is contended that the award imposing lesser punishment is justified in view of the facts and circumstances of the case.

6. I have carefully considered the contentions raised by rival parties.

7. Before delving into the merits of the issue, it is appropriate to refer Section 11A of the Industrial Disputes Act. Section 11A is as follows:

"Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course, of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal, and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

8. The reading of the above section and the perusal of the judgment reported in *Kanyakumari Automobiles (P) Ltd. v. P. Natarajan*, (supra), would make it clear that to grant relief u/s 11A, there must be a finding, that the discharge or dismissal, is not justified. Unless the Labour Court gives such a finding, it has absolutely no power to grant relief contemplated u/s 11A of the Act such as award of any lesser punishment in lieu of dismissal.

9. Thus, the finding regarding the non-justification of the dismissal is a condition precedent for granting lesser punishment as contemplated u/s 11A of the Act. Therefore, there cannot be any second opinion that unless there is a finding there cannot be any interference in the said punishment. In other words, if it is found that though the misconduct is proved, the punishment is not justified, then alone, the Labour Court would have jurisdiction to interfere with the said punishment by giving the other relief including the lesser punishment.

10. The main contention raised by the counsel for the petitioner is that in the impugned award, the Labour Court would hold in para 7 of the award that the order of dismissal cannot be held to be unjustified. According to the counsel, having said so, the Labour Court would not be justified in imposing a lesser punishment in giving reinstatement with 25 per cent back wages.

11. Even though at the first blush the submission would appear attractive, the close reading of the award would reveal that the submissions made by the counsel for the petitioner has no legal basis. The close reading of para 17 of the award would not show that the Labour Court held that the order of dismissal of the second respondent from service could not be held to be unjustified. In the said paragraph, the answer was given for issue No. 3. The issue No. 3 is as follows:

Vernacular matter omitted

12. The third issue relates to the question whether the dismissal given effect from the date of suspension is proper or not. While considering the question whether such an order could be given effect from the date of the order of suspension i.e., November 1, 1981 or could be given effect to from the date of

dismissal order i.e., December 18, 1984 and in reply to the said question, the Labour Court in para 17 would hold that it cannot be wrong to hold that the order could be given effect to from November 1, 1981, i.e., the date of suspension. Thus, it is no answer for the question whether the non-employment of the dismissed person is justified or not. Whereas in para 19, the Labour Court elaborately considered the said question and concluded that the case of the second respondent would stand on a different footing from that of the other two delinquents, who committed misappropriation. Though the second respondent was also a party during the course of enquiry that he was a party to the misappropriation ultimately, the Enquiry Officer concluded that he was not a direct party to the misappropriation, but he was only negligent as he did not take any care to prevent the other delinquents from causing huge loss to the society.

13. Moreover, in the said paragraph, the Labour Court took into consideration his past conduct, also, as he was working in the same society for about 22 years without any blemish in service. Therefore, it cannot be said that the Labour Court has given a finding in the award that the punishment of dismissal was justified one.

14. On the other hand, the entire reading of the award, in the light of the issues framed, from paras 8 to 19, would go to show that the Labour Court concluded with proper reasoning that the charge of negligence was proved against the second respondent, but, however he cannot be equated with two other Assistants, who have been dismissed from service and that a lesser punishment alone was justified. In that context, the relief was granted with 25 per cent of the back wages.

15. In the decisions of the Apex Court in *Colour Chem. Ltd. v. A.L. Alaspukar*, (1998) 1 LLJ 694 (SC) and *B.C. Chaturvedi Vs. Union of India and others*, it is held that the Labour Court, on the basis of the materials available on record could modify the punishment of dismissal into a lesser punishment, if it comes to the conclusion that the said punishment was grossly disproportionate to the charge held proved against the delinquent.

16. So, in the light of the above decisions, I am of the view that the impugned award is justified and does not suffer from illegality.

17. In the result, the writ petition is dismissed. No costs.