

(2001) 09 MAD CK 0048
In the Madras High Court
Case No : W.A. No. 95 of 1997

Management of I.T. Diamond Chain Ltd. APPELLANT
Vs
Presiding Officer, II Additional Labour Court and Another RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 2 LLJ 1022

Hon'ble Judges : N.V. Balasubramanian, J;A. Packiaraj, J

Bench : Division Bench

Advocate : A.L. Somayaji and T.S. Gopalan, for the Appellant; S. Kumaraswamy and K.M. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

A. Packiakaj, J.—This appeal arises out of the orders passed in Writ Petition No. 859 of 1991, dated July 23, 1996, dismissing the writ petition.

2. The prayer in the writ petition is for quashing the award passed in I.P. No. 233 of 1984 dated May 22, 1990, and directing the reinstatement of

the second respondent Sri L.N. Swaminathan by name with consequential benefits, passed by the Labour Court.

3. The facts of the case as disclosed in the affidavit are as follows: Sri L. Swaminathan was an employee in the category of setter operator in the

bush forming Section of the petitioner-company. The work of a setter operator is to attend to the machine, feed the metal strips, start the machines

and remove the finished products. It appears that in the month of August-October 1982, there was a fall in the production and hence a notice

dated September 21, 1982, was issued by the works manager wherein it has

been stated that the workmen concerned still persisted in wilful and deliberate slowing down of production and were adopting go-slow tactics. But however, the workmen were continuing to go-slow despite the companies earlier notices, advising them to desist from go-slow tactics. This notice was however followed by another notice, dated September 24, 1982, in which also it was averred by the writ-petitioner-company that the production continued to be very much lower than the level of the production of the minimum quantity and that the workmen were continuing their go-slow process. As already advised if the workmen continue to adopt the go-slow tactic, the management will have no alternative but to take further disciplinary action against them.

4. In view of the same, the second respondent was issued with the chargememo, followed with the suspension order. After receiving the same the second respondent Sri L.N. Swaminathan gave an explanation denying the allegation therein and more particularly he has stated in clear and

unequivocal terms that he had no intention of slowing down the progress of his work and that he has been victimised by the management.

5. It is after this explanation an enquiry was conducted at the instance of the appellant-company. Three witnesses were examined on behalf of the management and two witnesses including the second respondent were examined on the side of the workmen. After the enquiry, the enquiry officer found the second respondent guilty of the charges levelled against him and based on the findings of the enquiry officer, the second respondent was dismissed from services by the dismissal order, dated July 14, 1983.

6. It is against the above said order, the second respondent approached the Labour Court which in view of Section 11-A of the Industrial Disputes Act reappraised the evidence on record, had set aside the order of the enquiry officer and held that the second respondent has not adopted the go-slow process wilfully, ultimately directing the management to reinstate him. It is against this order, the writ petition has been filed.

7. The learned Judge who heard the writ petition, after going through the affidavit of the petitioner as well as the respondent, dismissed the writ petition. The explanation given by the second respondent was that though he was appointed as a setter operator and there were two setter operators in his department, after a particular period of time the other setter

operator had been shifted and therefore, this necessitated him to perform the total work including the work of the other setter and hence there might have been deficiency in the output.

8. In addition to the above said contention, the second respondent has also raised that a person by name Rajamanickam who has been placed in the same footing and whose output had also been considerably reduced in the same period has been left out and no enquiry or show-cause notice was issued to him, which apparently reveals the vindictive attitude of the management as against this petitioner alone. The writ-petitioner would also contend that in the case of Rajamanickam who according to the second respondent has been left out has apparently was not above to keep up with the production because he was assigned the work of a heavy setter operator and therefore, Rajamanickam was not able to maintain the same production. But it is pertinent to note that the management has not let in any evidence to show the difference between a light setter and heavy setter and consequently there was no discrimination. However, the learned Judge after considering all these matters, refused to interfere with the orders of the Labour Court.

9. Now in this appeal, several contentions have been raised before this Court. The main being that the Labour Court ought not to have reserved the finding of the enquiry officer without adverting to the reasons given by the enquiry officer. Secondly, the Labour Court ought not to have interfered with the order of the enquiry officer who had given a valid reason for rejecting the plea of discrimination and it was not open for the Labour Court to ignore the said finding. Thirdly, the Labour Court had failed to see the nature of the operation of the setting work perpetrated to have been done by the second respondent and the setting work done by Rajamanickam.

10. Though these contentions have been raised, a reading of the order of the Labour Court would make it appear that the Labour Court in its jurisdiction contemplated u/s 11-A of the said Act has analysed the evidence and has given a clear finding in relation to the issues invoked. The contention that the findings has not been considered and sufficient reason has not been given to. counter the findings of the enquiry officer may not also appear to be tenable under the facts and circumstances of this case. What

has literally weighed with the Labour Court and rightly so is the fact that though the production by the second respondent has come down, it does not seem to have been done so wilfully.

11. At this stage it is pertinent to go into the aspect of the charge, the explanation offered and the finding of the Labour Court, the finding of the enquiry officer, vis-à-vis, the finding of the Labour Court. The notice, dated September 21, 1982, and the chagememo, dated November 4, 1982, clearly state that the workmen were still persistent in wilfully and deliberately slowing down of production. Therefore, the essential ingredients of the charge are not mere reduction in production alone, but is the wilfulness and the deliberation on the part of the second respondent with an avowed object to slow down the progress of production. Besides this a general allegation has been made when the notice was addressed to all the workmen, in the plural. It is this element that appears to be the gravamen of the charge. Therefore, it follows that the initial burden on the part of the management who makes the accusation has to establish the same in the enquiry if not at least they must have let in some evidence that would enable the workman to repudiate the same.

12. It is by way of reply, though cryptic, the second respondent has denied having committed any irregularity and has categorically stated that he has no intention whatsoever to slow down the production. So against these two notices and reply, we are confronted with the evidence of the witnesses examined by the management. It is pertinent to note at no place there is any averment whatsoever, worth the name that the second respondent herein slowed down the work wilfully and deliberately we may not even go to the extent of stating that in the circumstances of the case, the management should prove the wilful nature and the deliberation on the part of the workmen to slow down the work. But the basic requirement that is required to be the foundation of the charge has to be necessarily spelt out in the evidence. If any of the witnesses in their evidences had stated that the workman has deliberately and wilfully reduced the production, then one can reasonably understand that the onus may be shifted to the workmen to establish that his intention was never to slow down wilfully are deliberately.

13. In view of the above said contention, the learned counsel for the appellant

would rely on the decision of the Supreme Court reported in Orissa

Mining Corporation and another Vs. Ananda Chandra Prusty, : wherein it has been held that in a disciplinary or departmental enquiry, the question

of burden of proof depends upon the nature of the charge and the nature of explanation put forward by the delinquent officer. Then again in the

same decision, the position with respect to the burden of proof as clarified by the Supreme Court is that there is no such thing as an absolute

burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the

nature of the charge. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. Though this decision has

been relied on by the learned counsel for the appellant, we see that the further observation and finding in the same judgment is only to the

advantage of the second respondent when the Supreme Court has categorically stated that the burden is shifted to the delinquent officer, only

depending upon his explanation and nature of charges. In the present case, the affirm ant in the notice as well as the chargememo is to the effect

that the delinquent officer has deliberately and wilfully slowed down the process. As to how and what was his intention to slow down the process

or how the department was able to allege deliberation and wilful nature has not been spelt out in any of the notices, or in the chargememo.

However, the delinquent officer namely the second respondent herein has categorically denied that he has deliberately or wilfully slowed down the

process. It is after this evidence had been let in and we have no hesitation to hold that there is not an iota of evidence or, material or, allegation in

the evidence of any of the witnesses to indicate or has been spelt out that the delinquent officer slowed down wilfully and deliberately. So in our

view there is no evidence in relation to the allegation of deliberation and wilful nature on the part of the delinquent officer to slow down. The further

examination in cross is not at all necessitated. There is nothing for the delinquent officer to rebut or establish by way of rebuttal evidence.

14. At this juncture it is pertinent to note that the enquiry officer has not gone into this aspect at all and has nowhere discussed the materials in

respect of this averment and has not even given a finding as to whether the delinquent officer namely the second respondent deliberately and

wilfully slowed down the process. But as against this, the Labour Court has gone into this aspect and has given a categorical finding that the delinquent officer has reduced the production due to any deliberation or wilfulness on his part. On going through the order we find that this finding has been given on the basis of the lack of evidence in this case and therefore we are of the opinion that the Labour Court need not necessarily give a contrary finding to each and every finding given by the enquiry officer. The Labour Court has the power to reassess the evidence under the Industrial Disputes Act and it has every power to go into that aspect and see whether prima facie the allegations have been spelt out in evidence. When there is absolutely no evidence on this aspect, then all other matters need not be gone into by the Labour Court. Therefore, in view of the clear and specific finding we do not see that the order passed by the Labour Court is in anyway erroneous and the learned Judge in the impugned order has also given a clear finding that the mere reduction of production alone will not amount to go-slow process. In view of this specific finding by the Labour Court which has been confirmed and reiterated in the writ petition, we have no other alternative than to dismiss the appeal. Further in view of the above said finding which by itself would suffice to justify the order of the Labour Court, the other contentions raised by the appellant need not be gone into. Accordingly, the writ appeal is dismissed. No costs.