
(1967) 11 MAD CK 0016
In the Madras High Court
Case No : Writ Appeal No. 175 of 1967

Management of Presidency Talkies	Vs	APPELLANT
N.S. Natarajan and Another		RESPONDENT

Date of Decision : 28-11-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 15, 33(2)

Citation : AIR 1969 Mad 121 : (1968) 17 FLR 251 : (1968) 2 LLJ 801

Hon'ble Judges : M. Anantanarayanan, C.J.; Natesan, J

Bench : Division Bench

Advocate : N.C. Raghavachari, for the Appellant; V. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, C.J.—In our view, the learned Judge (Venkatadri, J.), was perfectly justified in declining to issue a writ of certiorari

quashing the order of the Labour Court, which itself embodies the decision of the Labour Court not to permit the Management to dismiss the

employee for alleged misconduct u/s 33(2)(b), proviso, of the Industrial Disputes Act, 1947. At the outset a certain complicating feature might be

referred to. It appears that subsequent to the decision in this writ petition by Venkatadri, J., or , at any rate, subsequent to the order of the Labour

Court declining to grant the statutory permission u/s 33(2)(b) proviso, another dispute was raised on behalf of the employee, in the same situation

or context, because the employee had not been further employed by the Management. It would seem that this eventuated in a different reference to

the Labour Court, which again went into the merits, and held that the non-employment of the employee was opposed to industrial law. A second

writ petition was sought to be instituted by the Management with regard to this decision of the Labour Court, but, admittedly, it was not pressed

home, and it failed. Learned Counsel for the respondent (employee) raised an argument, more or less of a preliminary character, that since the

Labour Court had subsequently held that the threatened dismissal was improper, the writ appeal, itself would not lie. The argument is not tenable,

for the simple reason that the writ appeal is limited in scope to the refusal of Venkatadri, J., to issue a writ of certiorari quashing the order of the

Labour Court declining to grant permission u/s 33(2)(b) of the Act. The scope of the appeal is thus restricted, and the subsequent events which

might affect the employment or non-employment of the worker by the employer organisation are not relevant to the scope, nor do they affect it.

2. The short and simple point before us is whether the employer organisation, in exercise of disciplinary jurisdiction and on the findings of a

domestic tribunal, had any jurisdiction to proceed to dismiss this worker or employee "for misconduct not connected with the dispute" u/s 33(2)(b)

of the Act.

3. This question must be answered very decidedly in the negative. It is true that as the learned Counsel for the appellant has pointed out, Indian

Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , is authority for the view that an Industrial Tribunal, in the case of an alleged dismissal

for misconduct, does not act as a Court of appeal, and substitute its own judgment for that of the management. But that very decision is authority

for the view, equally, that there are certain grounds on which the Tribunal will have jurisdiction to decline to grant the statutory permission. For our

purpose, it is sufficient to state that those grounds, include "any basic error" or where, on the materials, "the finding is completely baseless".

4. In the present case, we have been taken in great detail through the record. The actual charge is a very simple one, namely, that on 14-7-1963,

while the respondent was on duty as the Chief Booking Clerk in the theatre, he did not issue tickets at the Ladies counter for the Matinee show. It

appears that three representatives of the picture owners, namely, Messrs M.G.R. Pictures were then inside the booking counter, and, certainly one

of them asked the respondent to proceed inside the counter and to Issue the tickets. The respondent declined to do this, and, in his view, he had

good reasons for the refusal to engage himself in that duty at that juncture. There were already two clerks, who generally functioned under the respondent who were issuing tickets at the ladies counter, and the respondent claims that he was standing outside, looking to the regulation of the crowd. He states that the booking office was already crowded by the presence of the two clerks and the representatives, and that there was some confusion. He feared that, if duties were hurriedly performed in that confusion, shortages of cash might occur, as they very often tended to occur, when tickets were sold hastily, and in the context of even slight disorder. Further, he claims that he was then having loose bowel movements and in indifferent health, and so for the time being he preferred not to engage himself in selling tickets at the Ladies Counter, and he so informed one of the representatives of the picture owners. This person seems to have made some complaint later to the manager, on which action in disciplinary proceedings followed.

5. This, as far as we are able to gather, is the sum and substance of the record. The very words in Tamil which are ascribed to the employee, show that lie made a decision on the spot not to follow the suggestion of the representative that he should sell tickets at the Ladies counter, because he feared that the office was crowded, and that shortages of cash might occur. There is an explicit reference to this apprehension on the part of the employee. These are the facts, and the only facts that have been established. On these facts, can we conceivably sustain the finding that there has been "misconduct" on the part of the employee, in the sense that there is some material, however slight, in support of that charge?

6. Now "misconduct" is a specific word, with a specific connotation. The learned Counsel for the employer organisation himself concedes that it cannot be mere inefficiency or slackness. It is something far more positive, and certainly, deliberate disobedience of any order of a superior authority will be one species of misconduct. But the point here, as stressed by Venkatadri, J., is that there was no misconduct of any kind on the part of the employee, even if the management took the view that he was not as diligent in the performance of his duties at that time, as he might have been. The Representative of the picture owners was not a person in authority over this employee in any sense. He was merely a third party

who, no doubt, had an interest in seeing that the tickets were not sold in the black market, or issued freely without collection of the fee. It may be

that the representative made this suggestion, in good faith, because he was interested in seeing that there was the maximum sale of tickets at the

Ladies counter. But equally, this employee might have made his own judgment of the situation, and felt that if he engaged himself in that duty in

those circumstances, shortages of cash might occur, which will lead to future embarrassment and loss to the management. Even if the judgment was

not a correct one, this is not misconduct in any specific sense, or by any stretch of imagination.

7. We have perused certain Standing Orders, which appear to have been prescribed by Managements generally, though it does not appear that

this particular Management has adopted this form of Standing Orders. The several species of misconduct are enumerated in these Standing

Orders, and all of them amount to positive acts of wilful disobedience or positive acts of malfeasance, injury to property, insubordination etc. It is

true that the Management, in this case, probably felt that the representative of the Picture owners had to be humoured, for the simple reason that

the Management had to depend upon the good opinion or favour of the Picture owners, for supply of further pictures. Had the Management taken

some action against the employee, short of an averment of misconduct, within the meaning of the Act, and warned him or censured him,

conceivably there would be no room for interference. But, where the Management takes the responsibility to level a charge of "misconduct" which

is the charge of some positive act, or of conduct which would be quite incompatible with the express and implied norms, of the relationship of the

employee to the employer in such an organisation, there must be material in support of such a serious charge. Where, there is no material whatever

of that kind, this Court must necessarily interfere, on both the grounds which have been recognised in the Supreme Court decision earlier referred

to, namely, "basic error" and the fact that "the finding is completely baseless or perverse.

8. Accordingly, the writ appeal has necessarily to fail and is dismissed. We may add that this is a case in which with considerable plausibility, it

could even be argued that there has been victimisation of the employee, the material in support of the charge being so flimsy as to be almost non-

existent. In the interests of good employer and employee relations, it would appear to be highly desirable, that action of such rigour, upon materials which may amount, at the highest to proof of mere temporary in efficiency be avoided in future. The parties will bear their own costs.