

(1967) 03 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 1378 of 1964

Management of Solar Works, Madras

APPELLANT

Vs

Workmen Employed in the Solar Works, Madras and Another

RESPONDENT

Date of Decision : 08-03-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 23, 33

Citation : AIR 1968 Mad 285 : (1967) 15 FLR 406 : (1968) 1 LLJ 765

Hon'ble Judges : Ramkrishnan, J

Bench : Single Bench

Judgement

1. Though arguments were advanced at great length and a considerable volume of authority was cited before me, the scope of this writ petition,

wherein relief of writ of certiorari under Art. 226 of the Constitution is sought, lies within a narrow compass which can be put down briefly.

(2) In 1960, a memorandum of settlement was entered into between the petitioner, the Management of a printing press by name ""The Solar

Works"" and the respondents, the workmen employed therein. This settlement purported to be a settlement of disputes relating to wages, bonus

and dearness allowance, and was to enure for a period of 3 years from 1-9-1960 to 1-9-1963, and it was expressly stated in Clause 7 of the

settlement that no fresh demands would be made by the workers gave a notice terminating the settlement on the ground that cost of living had

increased the their emoluments, including dearness allowance, should be raised suitably. Since the period for which the settlement was to be in

force had not expired, the management refused to comply with that demand. There was a strike notice given by the workers. The matter was

brought before the Labour Officer for conciliation on 19-6-1962. In the

meantime, the workers launched a stay in strike, which was followed by the declaration of a lockout by the management, who contended that the strike was illegal. The conciliation proceedings failed and the Labour

Officer made a report about such a failure on 10-8-1962. The Management thereafter dismissed, on 16-8-1962, 35 of the workers on the ground

that they had participated in an illegal strike, in contravention of S. O. 15(2). The issue of the dismissal of the workers was taken up by the

Government as an industrial dispute and was referred to the Labour Court for adjudication on the specific point whether the non-employment of

the 35 workers was justified, and if so, to what relief each of them would be entitled. The Labour Court of Madras, before whom this dispute

came for adjudication, after receiving the claims of the parties, raised three issues for determination:--

1. Whether a substantial section of the workers of this company have supported the cause of the dismissed workers?
2. Whether the non-employment of the 25 workers is justified and to what relief is each entitled?
3. To compute the relief, if any, awarded in terms of money, if it can be so computed.

The reference only to 25 workers became necessary because of a subsequent arrangement by which the management took back 10 of the dismissed workers to their service.

(3) Issue I need not detain us because it is no longer in controversy. The Labour Court found that the workers had engaged themselves in an illegal

strike in contravention of the standing order and that the strike was illegal because during the period when a valid settlement is in force, S. 23(c) of

the Industrial Disputes Act would be contravened if such a strike is resorted to.

(4) Two other points incidental to this finding were raised by the workers and were held in their favour by the Labour Court. The first point was

that the dismissal of the workers was ab initio void, since the Management had applied for post facto approval of the dismissal to the Conciliation

Officer under Sec. 33(2)(b) of the Act, but that officer, by his order dated 20-9-1962, on the application, had declined to give such approval. In

the view of the Labour Court, the failure to obtain the approval of the conciliation officer would invalidate the action of the management in

dismissing the workers, and such invalidity would continue even for the purpose of deciding an industrial dispute, when such a dispute has been raised for adjudication, relating to the validity of the same order of dismissal. The second point was that S. O. 16(d) made it necessary that in awarding punishment to a worker, due account should be taken of the gravity of the offence, its possible influence on the employee concerned and any other extenuating or aggravating circumstances that may exist. The Labour Court was of the view that the Management in dismissing the workers did not have regard to the requirements of this standing order and therefore the order of dismissal must be considered vitiated. As a result of its findings on these points, the Labour Court directed the reinstatement of the 25 workers in service with full back wages. That order is now challenged by the management in this writ petition.

(5) The learned counsel, Sri V.S. Ramakrishnan, appearing for the petitioner, urged that the view taken by the Labour Court on the two points mentioned last above, is erroneous in law, and that since the Labour Court had found that the strict was illegal and that the workers had been guilty of a serious contravention of the standing orders, it should have upheld the dismissal of the workers for serious misconduct.

(6) Regarding the first point about the invalidity of the dismissal because the necessary post facto approval had not been give by the Conciliation Officer on the application made to him by the Management under S. 33(2)(b) of the Act, it is submitted by the learned counsel that even if there is no such post facto approval by the Labour Court under Sec. 33, when the matter comes before the Labour Court by way of an industrial dispute and when that Court is called upon to adjudicate on the issue whether the dismissal of the worker or workers is proper or not, the Labour Court has got a duty to investigate and decide on the merits of the charge that led to the dismissal of the workers if necessary after taking evidence. The effect of the failure of the Management to obtain approval under Sec. 33 will be to give a right to the workers to apply to the Labour Court under S. 33-A and thereupon the Labour Court is required to deal with that application as if it were an industrial dispute pending before it and give an award upon the validity of the dismissal on the merits. That this is the correct position of law has been laid down in The Punjab National Bank Ltd.

Vs. Its Workmen, , where it has been held:--

In an enquiry under Sec. 33-A of the Industrial Disputes Act, the Employee would not succeed in obtaining an order of reinstatement merely by

proving contravention of Section 33 by the employer. After the contravention is proved, it would still be open to the employer to justify the

impugned dismissal on merits. This is a part of the dispute which the Tribunal has to consider, because the complaint made by the employer is

treated as an industrial dispute and all the relevant aspects fell to be considered under Sec. 33-A".

No doubt, the Labour Court followed for its view a decision of a Bench of this Court in the The Management of Mahalakshmi Textile Mills Vs.

The Presiding Officer, Labour Court and Others, . But that decision must be considered to be no longer good law, in view of the Supreme Court's

decision cited above. The Supreme Court's decision dealt with the scope of an enquiry under Sec. 33-A where the worker applies to the Labour

Court challenging his dismissal; as having been in contravention of Section 33. The Supreme Court decided that on such application the Labour

Court can go into the merits of the dismissal and treat the issue of the dismissal itself at large, and available for decision on the basis of the

evidence, Section 33-A directs that the Labour Court should deal with the application under that section as if it were an industrial dispute.

Therefore, it is legitimate to hold that the same principle will be applicable when the validity of the dismissal is brought before the Labour Court for

adjudication as an industrial dispute on a reference by the Government u/s 10(1) (c). There is also a later decision of the Supreme Court in

Management of Murgugan Mills Ltd. Vs. Industrial Tribunal Madras and Another, , where it was held as follows:--

As the High Court has rightly pointed out, the case is clearly covered by Section 33(2)(b) to which the proviso undoubtedly applies. As the

proviso was not complied with, the application u/s 33-A could be entertained by the Tribunal and the Tribunal did not entertain it and went into the

merits of the charge and came to the conclusion that the charge has not been proved. in these circumstances, the order passed by the Tribunal, and

upheld by the High Court, is substantially correct, in spite of the error of law committed by the Tribunal.

Learned counsel appearing for the workers arguing per contra referred to certain decisions, viz., Punjab National Bank Ltd. Vs. Employees of The Bank, , Workmen of Dahingepara Tea Estate v. Dahingepara Tea Estate, (1958) 2 LLJ 498 = AIR 1965 SC 1026; and Management of Murgugan Mills Ltd. Vs. Industrial Tribunal Madras and Another, . As I have already mentioned, the decision last cited is really authority for the position taken by the Management. It is no doubt a fact that in Punjab National Bank Ltd. Vs. Employees of The Bank, , there is a passing observation that a dismissal without obtaining permission as required by Section 33 would be illegal. But that decision and the second decision cited above do not deal with the effect of non-compliance with the provisions of Section 33, against the background of an industrial dispute and the scope of the enquiry by the Labour Court for adjudication in an industrial dispute in such circumstances, which it is brought before it u/s 33-A or u/s 10(1)(c). For that purpose, the authorities cited earlier provide the necessary guidance. The effect of those authorities is that the Labour Court is not fettered by the failure of the Labour Officer to give approval to the dismissal, whether it be prior approval u/s 33(1)(b) or post-approval u/s 33(2)(b) depending upon whether the dismissal was of a workman concerned in a dispute for misconduct connected with the dispute awaiting conciliation or the dismissal of a workman was for misconduct unconnected with such dispute. On the other hand, the Labour Court is found to take into account the merits of the rival contentions about the alleged misconduct and give a decision whether the misconduct is proved, and, therefore, the punishment is justified.

(7) In view of the above, it appears to me that in the present case, the Labour Court after giving the finding that the misconduct was proved, as the strike was illegal, should not have permitted the failure to obtain permission u/s 33 to weight as a material factor, for quashing the order of dismissal by its award.

(8) Learned counsel appearing for the respondents urges that the respondents are entitled to maintain the order of the Labour Court by attacking the finding of the Labour Court, that the misconduct was proved in this case. I am unable to agree with this contention. Even assuming for argument's sake that on the analogy of the rights open to the respondent in an

appeal under the CPC (to support the decree appealed against by attacking a finding against him), such a right is available to the respondent in a writ proceeding, the Labour Court in the present case has clearly given the finding that the matter of dearness allowance, which led to the unilateral termination of the settlement by the workers followed by the issue of notice of strike had already been concluded by the earlier agreement, and, therefore, the strike itself, for reopening the settlement, while that settlement was in force, contravenes Section 23(c) of the Industrial Disputes Act and was illegal. This finding is based on the evidence in the case, and the evidence clearly justifies that findings and cannot be reopened in this writ proceeding. S. O. 15(2) treats a strike in contravention of a settlement as a misconduct for which the penalty of dismissal might be awarded.

(9) On the second point that in fixing the quantum of punishment the Management failed to take into account the provisions S.O. 16(d), the Labour Court purports to follow the Bench decision of this Court in *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, . The facts in that case were that a workman overstayed his leave by nearly two months and was dismissed from service on that account by the Management. The Bench observed that in awarding the punishment in the circumstances of that case, the Management did not take into consideration a standing order analogous to the S.O. 16(d) in this case, which was in force in that particular industry and, therefore, the order awarding the punishment was quashed and the matter remitted to the management for fresh action after fresh notice and enquiry. As against this, the learned counsel for the petitioner has referred to a series of authorities which lay down that the jurisdiction of the Labour Court to interfere with the punishment awarded by the Management in a domestic enquiry is strictly limited. Thus, in *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, , it was held that interference with the punishment by the Tribunal will be called for where the punishment is so shockingly disproportionate that such punishment itself be viewed as victimisation or unfair labour practice. In *Bengal B. Coal Co. v. Ram Probesh Singh*, AIR 1964 SC 486, interference with the punishment by the Tribunal was considered to be justified where the punishment was found to be unconscionable or so grossly out of proportion to the nature of the offence that it

may itself be a ground for holding that the dismissal was an act of victimisation. Reference was made also to the decision of the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, , where it was observed that participation in an illegal strike is per se a serious misconduct. Srinivasan, J. in an unreported decision in W.P. NO. 166 of 1963 (Mad.), has this to say on an analogous situation:

Where a worker is guilty of a serious offence inviting dismissal, very little will turn upon the previous record of the worker. The fact that a person had a previous good record can hardly weigh with the Management when it finds that the worker by inciting an illegal strike was paralysing the working of the industry. If, in such an instance, the Management proceeded to dismiss the person, I am unable to see how the failure to take into account the previous record vitiates the final order. What the standing order merely says is that the Management shall take into account the gravity of the misconduct, the previous record, if any, of the workmen, and any other extenuating or aggravating circumstances. There may be cases where the gravity of the offence, standing by itself, would justify the dismissal, and no amount of previous and good conduct might affect the gravity of the misconduct. It would depend upon the facts of each case whether the order of dismissal is liable to be interfered with for such a reason as this"".

It appears to me that it is in the context of the aforesaid broad principles that one must view the observations in *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, . The facts in that case showed that the misconduct of the worker was comparatively trivial, viz., overstaying of leave, Prima facie, the punishment of dismissal for such a venial fault will be disproportionate, and this seems to have been the justification for the Court to hold that that was a proper case where the provision of the Standing Order relating to past conduct should have been taken into account, because if it had been taken into account, there was every likelihood of the punishment having been less severe. But, in the present case, prima facie, the misconduct, viz., the participation in an illegal strike, is a very serious one and there is no question of a milder punishment being inflicted if the Management had given weight to the standing order relating to past conduct. The misconduct

per se was sufficient to justify the dismissal because of its serious nature. Therefore, there is no scope at all for entertaining any apprehension that

the Management failed to give due weight to the provision of S.O. 16(d) regarding past good conduct of the workers in fixing the quantum of

punishment or that if it had done so, a different result would have followed. For the aforesaid reasons, I am of opinion that this is a case to which

the observations in *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, will not apply. On the

other hand, this is a case in which, in the absence of anything to show that the punishment was disproportionate or shockingly severe, but on the

other hand, was inflicted in the context of a serious violation of a standing order, there was no ground at all for the Labour Court to hold that in

awarding the punishment, a relevant provision in the standing order for fixing the quantum of punishment had been overlooked by the Management.

(10) For all these reasons, I allow the writ petition and quash the order of the Labour Court. The order of the management removing the workers

from service will stand restored. No order as to costs.

(11) Petition allowed.