

(1966) 03 MAD CK 0040
In the Madras High Court

Management of Syamala Studios

APPELLANT

Vs

S.S. Kannu Devar and Another

RESPONDENT

Date of Decision : 15-03-1966

Acts Referred:

Citation : (1966) 79 LW 329 : (1966) 2 MLJ 167

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, AIR 1976 SC 2062 : (1976) 2 LLJ 259 : (1976) 4 SCC 606 : (1976) SCR 635 Supp : (1976) 1 SLJ 521

P.S. Kailasam, J.—The petition is filed by the Management of Syamala Studios, Arcot Road, Madras, for a writ of certiorari for quashing the order of the Presiding Officer, Labour Court, Madras, in Complaint No. 15 of 1963 in I.D. No. 33 of 1963. The respondent was in the employment of the petitioner as a watchman. He was getting as his wage sum of Rs. 40 per month. There was an industrial dispute referred to the Labour Court regarding the wages, dearness allowances, etc., on 19th July, 1963. When the dispute was pending, on 12th October, 1963, the petitioner refused employment to the respondent. The petitioner did not obtain the approval u/s 33 of the Industrial Disputes Act. On behalf of the Management, it was contended that the respondent was working as a temporary gardener from 22nd January, 1963 on a monthly salary of Rs. 40 and as his services were not required after 31st August, 1963, accounts were settled with him and the respondent stopped away from work.

2. The Labour Court, after elaborately considering the merits of the plea put forward by the petitioner that the respondent voluntarily stopped away after giving a receipt for the arrears of pay, came to the conclusion that the respondent did not stop away from work of his own accord, but that his services were terminated on 31st August, 1963. The Labour Court found that as the services of the respondent were terminated during the pendency of the industrial

dispute without the approval or permission of the Labour Court u/s 33(2)(b) of the Act, the respondent was liable to be reinstated. In this writ petition, it is contended that no prior sanction is required u/s 33-A for retrenchment of any worker pending any conciliation proceeding, as retrenchment does not amount to alteration of service.

3. Section 33 of the Act provides that pending conciliation proceedings, the condition of service of a worker should not be altered and no workman punished for any misconduct connected with the dispute without the express permission in writing of the authority before whom the proceeding is pending. u/s 33, Clause (2), during the pendency of such a proceeding, the employer is permitted to alter the conditions of service relating to matters not connected with the dispute and to punish a person for misconduct not connected with the dispute by discharge or by dismissal, provided that the employer applied to the authority, before whom the dispute was proceeding, for approval of his action.

4. Learned Counsel for the petitioner submitted that on facts, the finding of the Labour Court is perverse. I am unable to accept this contention, for the Labour Court has given very cogent and acceptable reasons for its finding.

5. On a question of law, the learned Counsel submitted that even though the termination is held to be illegal, the employer is not bound to follow the procedure u/s 33(2), as the wrongful dismissal is not for any misconduct. The stand taken by the learned Counsel is that even if the dismissal is deliberate and without any reasons, as the employer did not take action under Sub-section (b), Section 33-A is not applicable, and whatever other remedies the workman may have, this petition is not maintainable. Section 33-A says that an aggrieved employee is entitled to approach the Labour Court whenever the employer contravenes the provisions of Section 33 and the Labour Court is empowered to adjudicate upon the complaint as if it were a dispute referred to or pending before it. But this contention cannot be pressed in view of the decision of the Supreme Court holding that the workman is entitled to take advantage of Section 33-A in the circumstances referred to above. The contention that was "advanced before the Supreme Court in *Management of Murgugan Mills Ltd. Vs. Industrial Tribunal Madras and Another*, was that the termination was not for misconduct and was meted out as a punishment and therefore Section 33(2)(b) did not apply and it was not necessary to obtain the approval of the Tribunal. Dealing with this contention, the Supreme Court observed that the plea of the employer would amount to a claim of hire and fire" as he pleased. The Supreme Court, approving the view expressed in *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, held that in a case like the one which the Supreme Court was considering, the requirement of bona fide was essential and if the termination of the service was a colourable exercise of the power or was as a result of victimisation or unfair labour practice, the Industrial Tribunal would have the jurisdiction to intervene and set aside such termination. The learned Counsel for the petitioner submitted that these observations will have to be read in the

context of the facts of the case and are applicable only where the worker is dismissed for misconduct,: This contention cannot be accepted, for the question that was set forth for determination by the Supreme Court Included termination which was not for misconduct or as punishment. It is unnecessary to refer to other cases in view of the clear pronouncement of the Supreme Court.

6. It was contended that the respondent was not a worker whose dispute was under references in the proceedings before the Labour Court. This plea cannot be supported on the facts of the case, for the decision in the proceedings would have certainly affected the worker.

7. There are no grounds for differing from the conclusion arrived at by the Labour Court. This Writ Petition is dismissed. No order as to costs.

8. It is stated that the petitioner has filed an additional affidavit stating that "the Management has since closed down. That fact will not make any difference in the decision of this petition.