

(2011) 06 MAD CK 0531

In the Madras High Court

Case No : Writ Petition (MD) No. 9832 of 2005

Management, Ramanathapuram District Co-operative
Spinning Mills

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A), 11A, 2(A)(2)

Citation : (2011) 06 MAD CK 0531

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : T. Ravichandren, for the Appellant; S.M. Mohan Gandhi for Mr. M. Subramanian, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The first respondent/Labour Court passed an award, dated 26.02.2004 in I.D. No. 361 of 1993 directing the writ petitioner to reinstate the second respondent with continuity of service and 50% of back wages. The writ petitioner has sought to challenge the aforesaid award. The facts leading to the filing of the writ petition are as follows:-

(a) The petitioner is a spinning mill. The second respondent was a worker in the petitioner mill and he was working as a Mixing Tender. The writ petitioner issued a charge memo, dated 11.11.1992 alleging that on 6.11.1992 at 9 a.m. when the Assistant Factory Manager, S.K. Santhanam instructed him to clear the waste in the underground Cellar along with 7 others, he disobeyed the order stating that 12 workers used to be provided for such work and less workers were provided for cleaning the waste. It was also alleged that the second respondent abused, threatened and attempted to assault the Assistant Factory Manager. As he refused to carry out the work of his superior, it was marked in the time card as RW meaning that he refused to work. When the security guard directed him to go out of the Mill as instructed by the Assistant Factory Manager, the petitioner

told the security guard that he would see the Assistant Factory Manager when he came out of the Mill. It was alleged that the petitioner committed misconduct under Clauses 18(1), 18(20), 18(30) and 18(12) of the certified standing orders of the petitioner establishment.

(b) The second respondent was placed under suspension by order, dated 6.11.1992. The second respondent submitted his explanation denying the charges. He explained that whenever removal of waste in the underground cellar took place, 12 workmen were provided. When the Assistant Factory Manager, directed to remove the waste from the underground cellar with 7 workmen, he requested him to provide 12 workmen as it was the practice. The Assistant Factory Manager was angry, when he pointed out the practice. Then, the Assistant Factory Manager left towards time office. Thereafter, the time card was taken away and he was directed to go out of the mill. When he pleaded that he could be permitted to stay till the Factory Manager came, it was not agreed. Hence he went out. He also stated that after the Assistant Factory Manager came to the mill, he changed all the practices. He attended the work of carrying out the bales from godown and placed in the mixing room. But, the Assistant Factory Manager changed his work arbitrarily and he objected for the same. He requested to furnish the complaint based on which charge memo was issued.

(c) Not satisfied with the explanation, an enquiry was conducted. In the enquiry, two witnesses were examined on the side of the writ petitioner. They were S.K. Santhanam, the Assistant Factory Manager and the godown clerk S. Sampath Kumar. Eleven documents were marked on the side of the writ petitioner. The second respondent workman got himself examined as a witness. The Enquiry Officer gave his finding that the second respondent refused to carry out the work and involved in arguments with the Assistant Factory Manager and also threatened and attempted to assault the Assistant Factory Manager. Based on the aforesaid findings, the second respondent was dismissed from service by an order, dated 15.05.1993. The second respondent took up the industrial dispute regarding the non-employment before the conciliation officer. The conciliation ended in failure. Thereafter, he approached the first respondent/Labour Court u/s 2(A)(2) of the Industrial Disputes Act. It was taken on file as I.D. No. 361 of 1993.

(d) The writ petitioner filed the counter statement refuting the allegations made in the claim statement. Both sides did not let in any evidence before the Labour Court. Documents W1 to W14 were marked on the side of the second respondent/workman and Ex. M1 to M7 were marked on the side of the writ petitioner. After hearing both sides, the Labour Court passed the impugned award, dated 26.2.2004 in I.D. No. 361 of 1993 directing the writ petitioner to reinstate the second respondent with continuity of service and 50% of back wages. The Labour Court held that without giving particulars of the adverse past record to the workman, relying on adverse past record, would vitiate the punishment order. The Labour Court also held that the records would show that it was trivial

charges, for which dismissal from service is too harsh. The Labour Court also held that dismissal of workman for the mere threatening without anything more is a shockingly disproportionate punishment. The Labour Court relied on the judgment of the Honourable Apex Court and this Court for the aforesaid propositions. Exercising its power u/s 11(A) of the Act, the Labour Court modified the punishment of dismissal and ordered reinstatement with continuity of service and 50% back wages. The said award is now put to challenge in the present writ petition.

2. The learned Counsel for the petitioner has submitted that the Labour Court has exceeded its jurisdiction by ordering reinstatement with a portion of back wages when the workman committed grave misconduct. According to the learned Counsel for the petitioner, since the fairness of the enquiry was not seriously disputed and when the Labour Court held that the enquiry was fair, the Labour Court ought to have upheld the dismissal.

3. The learned Counsel for the petitioner submitted that since the workman refused to do the work, threatened and attempted to assault the superior, the Labour Court ought not to have interfered with the punishment.

4. On the other hand, the learned Counsel appearing for the second respondent would submit that this Court would not normally interfere with the award of the Labour Court unless it is perverse. He submitted that the dismissal order relies on certain adverse past records for imposing the punishment of dismissal and before relying on adverse past records, the second respondent was not heard. Under similar circumstances, this Court in the decision reported in *The Management of Madras Fertilisers Ltd., Manali, Madras Vs. The Presiding Officer, Additional Labour Court, Madras, Kuppuswami (Died) and M. Kannammal*, , categorically held that the Management ought not to have taken into account past record of service without giving opportunity to the workman to have his say and the final order of punishment is vitiated. According to the learned Counsel for the second respondent, the Labour Court has followed the aforesaid judgment and interfered with the punishment order. The learned Counsel also submits that the Labour Court has correctly relied the decision of the Honourable Apex Court reported in *Rama Kant Misra Vs. The State of Uttar Pradesh and Others*, wherein it is held that dismissal, for use of indiscreet, indecent or threatening language to the superior in the course of long unblemished service, is an excessive punishment.

5. The learned Counsel has also relied on the judgment of the Apex Court reported in *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, wherein the Apex Court interfered in the matter of dismissal and ordered reinstatement with full back wages, when the allegation of use of indecent language was held to be proved. The Supreme Court held that dismissal of a workman in the said circumstances amounts to unfair labour practice requiring reinstatement with full back wages.

6. The learned Counsel also brought to my notice that since the writ petitioner/ management failed to produce the entire original file and all the exhibits marked in the enquiry and more particularly the complaint of the witnesses examined in the enquiry, the same would vitiate the dismissal order. As the Labour Court is functioning as Appellate Court while exercising its power u/s 11(A) of the Act, it is the bounden duty of the employer to produce the entire enquiry record to sustain the dismissal order particularly when the employer pleads that the enquiry was conducted fairly and wants to sustain the dismissal order based on the departmental enquiry.

7. I have considered the submissions made on either side.

8. The only objection by the learned Counsel for the petitioner is the exercise of power by the Labour Court u/s 11(A) of the Act in substituting the punishment of dismissal into one that of ordering reinstatement with 50% back wages. According to the learned Counsel for the petitioner, the workman abused, threatened and attempted to assault the Assistant Factory Manager. Therefore, it is not a fit case warranting interference u/s 11(A) of the Act. The charges as found in charge memo is extracted hereunder:

Vernacular matter omitted

9. In the enquiry, only two witnesses were examined, one is the Assistant Factory Manager and another is Godown clerk. The security guard Mariarathinam was not examined. Therefore, the later portion of the charge that the workman uttered certain words in the presence of the security guard Thiru. Mariarathinam was not established. In fact, in Ex. M7/enquiry report, the Enquiry Officer has held as follows and the later portion of the charge was not held as proved.

Vernacular matter omitted

That is as per the findings, the second respondent refused to carry out the work as given by the Assistant Factory Manager and thereby, he disobeyed his orders. But, it is not so. Even the charge memo itself discloses that he objected for providing less number of workman for cleaning waste. According to workman, 12 workmen could be allotted for cleaning at cellar room, whereas only 7 persons were given. Nowhere, it is stated that he refused to do the work. As rightly pointed out by the learned Counsel for the workman, the following answer given by the Assistant Factory Manager in the enquiry would go to show that the Enquiry Officer was not correct in holding that the workman refused to carry out the work.

Vernacular matter omitted

10. Even as per the charge memo, the mere protest for providing seven workmen amounts to abusing the superior and that could not be the proper approach. The mere objection could not be characterized as abuse.

11. The other finding is that the workman had entered into arguments with

Assistant Factory Manager and also threatened and attempted to assault him. the argument relating to number of workmen required for cleaning waste could not be seriously taken note of and that could not constitute misconduct. According to the workman, he did not enter into argument and he politely asked. According to the Assistant Factory Manager, the workman entered into argument. The second respondent is an unskilled workman and he is an illiterate person. The Hon''ble Supreme Court in the decision Ramakant Misra v. State of U.P. & Ors., (supra), has held that the unskilled workers'' culture is that they would raise their voice while making their grievance. The following passage in this regard in Ramakant Misra ''case (supra) is usefully extracted hereunder:

8. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere.

Relying on the said judgment, the Labour Court has correctly held it is a trivial matter, for which the employer ought not to have dismissed the workman. Further the other charge was that he threatened and attempted to assault. In the charge it is stated as hereunder:

Vernacular matter omitted

12. The aforesaid judgment of the Hon''ble Supreme Court i.e. Ramakant Misra case (supra) is an answer to this allegation also. Mere alleged threatening without anything more would not be a ground to dismiss a workman. Further more, the allegation was that he attempted to assault, but the second witness did not corroborate the aforesaid allegation in his deposition. The second witness only stated that the workman came close to Assistant Factory Manager and the second witness did not state that the workman raised hands or attempted to assault. Taking into account the entirety of the facts, the Labour Court exercised its judicial discretion vested u/s 11-A of the Act.

13. In the aforesaid circumstances, it could not be said that exercise of power is a perverse one. Section 11(A) of Act was introduced in the year 1971 vesting power with the Labour Court to re-appreciate the evidence like an Appellate Court and also to modify and impose suitable punishment in lieu of dismissal. This was pursuant to the recommendations of the International Labour Organization. Prior to Section 11-A of the Act, the Labour Courts did not have power either to re-appreciate the evidence and to come to a different conclusion from of the Enquiry Officer and also did not have power to interfere with the quantum of punishment. The limited power to interfere in the matter of punishment was also elaborated by the Apex Court in Indian Iron and Steel Co.,

Ltd. and Another Vs. Their Workmen, . The Parliament in its wisdom introduced Section 11-A of the Act. The object and reasons for the enactment of Section 11-A has been stated in the judgment of the Apex Court reported in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, when the validity of Section 11(A) of the Act was challenged. The Apex Court did not strike down Section 11-A of the Act and approved the power of the Labour Court to reappreciate the evidence like an Appellate Court and to interfere u/s 11(A) of the Act. Para 3 of the judgment Workmen of M/s. Firestone Tyre & Rubber Company of India v. Management & Ors. (supra) is extracted hereunder:

3. Regarding Section 11-A, in the statement of objects and reasons it is stated as follows:

In Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative to the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and that other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to 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 reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947.

14. Further, when some workmen were dismissed by BPL India Limited due to

alleged misconduct, the Labour Court exercising its power u/s 11(A) of the Act reinstated the workmen with 25% back wages. The matter came to the Apex Court and the Apex Court in Palghat BPL and Palghat BPL and PSP Thozhilali Union Vs. BPL India Ltd. and Another, has held as follows:-

6. The Labour Court had discretion u/s 11-A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances, viz., the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on, the settlement during conciliation proceedings, though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstance, the Labour Court was well justified in taking lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75% of the back wages up to the date of the award. In our considered view, the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. It merely had gone into the question whether the act complained of is a misconduct.

For the aforesaid reasons, I am not inclined to interfere with the discretion exercised by the Labour Court. Accordingly, the writ petition fails and the same is dismissed. No costs.