
(2001) 07 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 9419 of 1995

Manoharan R.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 4 LLJ 850

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the petitioner prays for the issue of a writ of certiorarified mandamus to call for the records relating to the award, dated November 25, 1994, in I.D. No. 98 of 1992 on the file of the first respondent to quash the same and to direct the respondent to reinstate the petitioner in service with continuity of service, back-wages and all attendant benefits.

2. The short facts which are sufficient for the disposal of the writ petition are that the petitioner was employed as a conductor on January 1, 1980. On July 17, 1983 he was apprehended by the second respondent and it was found that the petitioner tampered with the records of the Corporation, such as invoice sheet, ticket books by having altered the tickets of 0.75 paise denomination. The allegation was that Ticket No. Z-54984 to 54989 have not been accounted for and he has also altered the invoice sheet: By this method the petitioner misappropriated the money of the Corporation and caused loss to the Corporation. A chargememo, dated August 17, 1983, was issued. The petitioner submitted his explanation on August 22, 1983, He had admitted that he had altered the serial numbers of the tickets and also the invoice sheet. But he pleaded that the mistake had happened on account of his illness on July 17, 1983. He had also assured that he would be careful in future and that such

mistakes will not be repeated again. As the explanation was found to be unsatisfactory, the petitioner was placed under suspension and due enquiry was held in which the petitioner was given full opportunity to defend himself. The petitioner was ultimately dismissed from service by order, dated December 2, 1983. As against the said order the petitioner had approached the first respondent in I.D. No. 98 of 1992. The Labour Court after considering the merits held that the charges were proved and also the punishment of removal from service was justified in the circumstances of the case. With the result, the order of dismissal was confirmed. Hence, the above writ petition.

3. Learned counsel for the petitioner mainly raises the issue of no proper consideration of the quantum of punishment as would arise u/s 11-A of the Industrial Disputes Act, (hereinafter called the Act). Apart from stating that on that particular date, the petitioner was not doing well, learned counsel has not seriously challenged the finding of the guilt by the enquiry officer as well as the Labour Court. In fact, the petitioner himself has not seriously disputed in his own explanation as regards the erroneous entry in the invoice sheet as well as no proper accounting for five tickets.

4. Therefore, the only question arises for consideration is as to whether the quantum of punishment has been properly considered by the Labour Court by applying the principle enunciated u/s 11-A of the Act. In this context, learned counsel for the petitioner relies on the following judgment:

R.M. Parmar Vs. Gujarat Electricity Board, . Reliance is placed on the observation contained in the judgment including that taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service.

5. Learned counsel also took me through the history of framing of Section 11-A of the Act and the recommendations of the International Labour Organisation which came to be engrafted u/s 11-A of the Act.

6. Reliance is placed on the judgment of a Division Bench of this Court in Management of Binny Ltd. v. Additional Labour Court, Madras 1981 (2) L.L.N. 93. In that case, the Labour Court was confronted with a case of theft and finding that the dismissal was based on proper enquiry; but modified u/s 11-A and the Division Bench refused to interfere with the discretion exercised by the Labour Court.

7. Further reference is made to the judgment of the Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra, : Reliance is placed on the observation that Court would interfere if the punishment imposed by the disciplinary authority was one that would shock the conscience of the High Court or Tribunal.

8. I have considered the contentions of learned counsel for petitioner. This is not a case in which the Labour Court has not taken into consideration the

requirement u/s 11-A of the Act. In fact, the entire Para 7 is devoted for the said issue wherein the Labour Court has taken into account, the earlier decisions rendered by this Court. In Para 8 the Labour Court has taken into account the antecedents of the petitioner and found that on an earlier occasion also, the petitioner was suspended and found guilty of not issuing a ticket. In fact, in one of the decisions relied on by learned counsel for the petitioner in 1981 (2) L.L.N. 93 (supra) the Division bench held that the High Court will not under normal circumstances interfere with the discretion exercised by the Labour Court u/s 11-A of the Act.

9. In the present case, the nature of duties of a conductor is very onerous and he is holding the revenue of the Corporation in trust. It is not the amount which was found to be misappropriated which is important namely, in the present case Rs. 3.75. What is necessary to be borne in mind is the nature of duties and the action of the delinquent resulting in loss of revenue to the Corporation. In fact, the Supreme Court in a later judgment in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nookarara Sangha Etc., : has held that the quantum of misappropriation was really irrelevant. When once misappropriation is proved then it was within the discretion of the employer to consider the same and impose the maximum penalty.

10. In the present case, the Labour Court has rightly taken into account the nature of the duties of a conductor and has also confirmed the quantum of punishment after consideration of all the relevant materials.

11. Therefore, it is not possible for this Court to interfere with the discretion which has been rightly exercised by the Labour Court.

12. In the result, the writ petition is dismissed. No costs.