

(1960) 01 MAD CK 0015
In the Madras High Court

Mettur Industries Ltd.

APPELLANT

Vs

Sundara Naidu and Another

RESPONDENT

Date of Decision : 29-01-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 32, 33

Citation : (1963) 2 LLJ 303

Hon'ble Judges : Ramachandra Ayyar, J

Bench : Single Bench

Judgement

Ramachandra Ayyar, J.—This petition is filed under Article 226 of the Constitution to call for the records in Petition No. 2 of 1958 in Industrial Dispute No. 62 of 1967 before the Industrial Tribunal, Madras, and to quash the order dated 7 July 1958 in the said petition.

2. There was an industrial dispute, Industrial Dispute No. 62 of 1957, pending between the petitioner and its workers. The award in that dispute was passed on 13 March 1958 and was published on 2 April 1958 and by 2 May 1958 the tribunal had become functus officio. In the meanwhile the petitioner had to take disciplinary action against one of its workmen, respondent 1 to this petition. It therefore started proceedings and on 2 February 1958 it dismissed him from service for misconduct. The order was to come into operation from 4 February 1958. Thereupon, the petitioner applied to the industrial tribunal for approval of its action u/s 33(2)(b) of the Industrial Disputes Act. The provisions of the proviso had been complied with by the payment of one month's wages to the employee. That application was Petition No. 2 of 1958. The industrial tribunal went into the matter but on a full consideration of the facts declined to grant the request of the petitioner to approve the action in regard to the removal of respondent 1. The legality of that order is questioned in these proceedings.

3. Learned counsel for the petitioner raised two contentions: firstly, that on the date when the tribunal purported to pass the order on Petition No. 2 of 1958 it

had no proper seisin of the case as it had become functus officio by reason of the award in Industrial Dispute No. 62 of 1957, and that therefore the industrial tribunal had no jurisdiction to pass the order it did; secondly that the order of the tribunal was vitiated by an error apparent on the face of the record in that instead of finding a prima Facie case to see whether the action of the management was proper in the circumstances of the case, it has proceeded to try the matter as if it were an original matter and come to a wrong conclusion in regard to the same. It is unnecessary to deal with the second point as I am of opinion that the learned Counsel for the petitioner is well-founded in his submissions on the first. Petition No. 2 of 1958 is interlocutory in nature, the main matter before the tribunal being Industrial Dispute No. 62 of 1957. After the termination of the proceedings in Industrial Dispute No. 62 of 1957 there would be no competence in the tribunal to dispose of Petition No. 2 of 1958. As I stated already, the industrial tribunal became functus officio in regard to Industrial Dispute No. 62 of 1957 by 2 May 1958. It had, therefore, no jurisdiction on 7 July 1958 to deal with an interlocutory matter when the main matter had already been disposed of. The jurisdiction u/s 32(b) is given to the tribunal only because of the pendency of the main dispute.

4. In a recent decision of the Supreme Court in *Martin Burn Ltd. Vs. R.N. Banerjee*, a similar situation arose. The Supreme Court observed at p. 250 that as the industrial tribunal had become functus officio on the expiry of the thirty days from the publication of its award in the dispute which was then pending before it, the application could not be disposed of and was, therefore, properly struck off. I am of opinion that the same result will follow in the present case. On the date when the tribunal purported to dispose of Petition No. 2 of 1958, it had no jurisdiction to do so as it had become functus officio.

5. Learned counsel for the petitioner asked me to approve the act of the "management in discharging its workers. That, however, cannot be granted as, in my opinion, it is not a relevant matter for disposal of the present application.

6. The order of the tribunal will be quashed and the rule nisi made absolute. There will, however, be no order as to costs.