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**(1953) 03 MAD CK 0043**  
**In the Madras High Court**

Minakshi Mills, Ltd.

APPELLANT

Vs

The Labour Appellate Tribunal and Others

RESPONDENT

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**Date of Decision :** 06-03-1953

**Acts Referred:**

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 12, 13, 18, 19

**Citation :** (1953) 1 LLJ 326

**Hon'ble Judges :** P.V. Rajamannar, C.J;T.L. Venkatarama Ayyar, J

**Bench :** Division Bench

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## **Judgement**

1. This is an appeal by the Minakshi Mills, Ltd., Madurai, under Clause 15 of the Letters Patent against the, judgment of Subba Rao, J., dismissing an application made by the appellant for the issue of a writ of certiorari to call for the records and proceedings relating to appeal No. 119 of 1951 before the Labour Appellate Tribunal, Bombay, and to quash its decision in the said appeal, dated 6 September 1951.

2. The facts and events which led up to that application are as follows; On 7 December 1949 the Government of Madras by its order Ms. No. 5793, referred the industrial dispute which had arisen between the workers and the managements of the Minakshi Mills, Ltd., Madurai, in respect of matters mentioned in the annexure to that order for adjudication to the industrial tribunal having its place of sitting at Madurai. The matters mentioned in the annexure included the payment of full wages for the third Shift from 1 April 1949, introduction of the system of three eight-hour shifts with half an hour rest interval with no out in wages, revision of basic wage, dearness allowance and time-scale and others, in August 1947, the Government had appointed a standardisation committee and a wage board to determine the standard of workload and the wage structure for different categories of workers in the textile mills in the Province. On 31 December 1947 the standardisation committee made its report and on 18 April 1949 the wage board made its report. On 29 January 1950 the Inspector of Factories, Madurai, addressed a letter to the manager of

the Minakshi Mills, Ltd., inviting their attention to the report of the wage board and requested them that the recommendations of the board may be given effect to in their mills and the fact reported to the office of the Inspector of Factories at an early date. On 2 February 1950 the mills were again reminded of this. On 9 February 1950 the factory manager of the mills wrote to the Labour Officer pointing-out that an implementation of the report of the wage board could not be done in isolation and that the report of the Standardisation Committee had to be implemented before implementing that of the wage board. On 23 February 1950 the manager of the mills notified that from and after 10 March 1950 the workloads as prescribed and defined by the Standardisation Committee's report and the report of the wage board based upon it would be brought into force and consequent retrenchment of labour would also be made. A list of workers who had to be retrenched was notified separately. The number of such workers was 539. On 24 February 1950 the factory manager of the mills wrote to the Inspector of Factories that they had issued a notice to the workers of their intention to implement the report of the wage board. Immediately the Commissioner of Labour wrote to the managing director of the mills on 25 February 1950 inviting their attention to Section 33 of the Industrial Disputes Act. He pointed out:

If as a result of this change workloads are increased it will amount to a change in conditions of service.

He therefore suggested that the mills should not make any change in the conditions of service without the express permission of the tribunal with whom the reference regarding wages etc., payable to the workers was pending adjudication. The mills replied to him that no permission of the tribunal was necessary for implementing the recommendations approved by the Government and asked by it to be implemented. On 10 March 1950 when the first shift of workers came in, the retrenched workers were excluded. The workers who were admitted were allotted work on the new basis of the interim workloads recommended by the standardisation committee. Apparently in the ringframe department, the factory manager of the mills issued therefore the following notice:

Whereas the workers of the entire ring-frame department acting on concert and without due notice have struck work from 8-45 a.m. today by staying inside the department and not attending to the prescribed number of spindles in accordance with the recommendations of the Government which have been implemented at their instance and such strike being illegal it has become necessary for the management to declare a lockout of the entire ringframe department.

What evidently happened was, the workers refused to attend to the extra work which they had to do according to the new work-load. This notice was succeeded by another notice to the following effect:

As the ringframe department has been locked out owing to illegal strike from

8-45 a m. today the management has been obliged to close down the other departments on loss of pay as they cannot be worked till the resumption of work in the ringframa department.

On 21 March 1950 Government referred to the industrial tribunal, Madurai, for adjudication the dispute between the workers and the management of the mills in respect of the following issue, namely :

"Whether the workers kept out of employment on and from 10 March 1950 as a result of the notice dated 23 February 1950 put up by the management are entitled to compensation, and if so, to what extent.

On 25 March 1950, the mills issued another notice intimating that in order to afford another opportunity to the workers to work on the basis of the Standardisation and Wage Board reports the mills would resume work from 29 March 1950. It is common ground that on 29 March 1950 work was offered again to the workers on the basis of the new workloads, but they refused to accept the offer. The mills therefore continued to remain closed. A prosecution was launched against the mills for contravention of the provisions of Section 33 of the Industrial Disputes Act. As the stalemate continued the Central Government, in order to resolve the deadlock, convened a conference at Delhi. The representatives of the management and of the workers and the representatives of the Central Government and the Madras Government met at Delhi and discussed the matters on 19 and 20 May 1950. After discussion on the various points of dispute, the following agreed conclusions were arrived at:

(1) The mills should reopen as soon as possible and in any case not later than 28 May 1950,

(2) The management of the Sri Minakshi Mills would reopen the mills on the same terms and conditions as prevailed before 10 March 1950 with regard to workloads, complement of labour, personnel, etc.

(3) Simultaneously, all matters at present under dispute between the management and labour which are under reference pending adjudication before the industrial tribunal at Madurai would be either transferred or referred to another special tribunal to consist of a person of the status of a High Court Judge, or, in case a High Court Judge is not available, any other person acceptable to both parties.

(4) The question of workload and wage structure with regard to the Sri Minakshi Mills should in addition, be expressly referred to the Special Tribunal so constituted.

(5) The intimation of the reopening of the mills will be sent by telegram to the Secretary to the Government of Madras, Development Department, who agrees to get the orders issued with the greatest possible expedition.

(6) The civil suit filed and notice of suit issued by the management covering the

questions to be adjudicated by the Special Tribunal will be withdrawn.

(7) The prosecutions pending against the management will be stayed and when the management implements the award passed by the Special Tribunal, the Government would consider the question of withdrawal of the prosecutions.

Presumably, in accordance with the said agreement the Government, passed an order (G.O. Ms. No. 2718, Development, dated 11 July 1950) purporting to be in exercise of the powers conferred by Section 7(1) and (2) read with Section 10(1) (c) of the Industrial Disputes Act, 1947, in supersession of the orders issued in their prior notifications, dated 7 December 1949 and 26 April 1950, constituting a Special Industrial Tribunal consisting of one person, namely, the Honourable Sri Justice P. Rajagopalan, I.C.S., Judge, High Court of Judicature, Madras and referred to the said tribunal the following among other matters in dispute between the workers and the management of Sri Mtnakshi Mills, Ltd., Madurai :

7. Whether all the workers thrown out of employment on or after 10 March 1950 by the management of the mills are entitled to compensation and if so, to what extent? " and

\* \* \* 9. Fixation of workloads and wage structure.

Rajagopalan, J., after a full enquiry, made his award. He annexed to his award his findings on the several issues framed by him as arising at the enquiry. In respect of the two items of dispute above mentioned, his award was as follows;

Dispute No. 7 : My award is the denial of employment to 539 workers on 10 March 1950 amounted to a retrenchment which the management was entitled to effect. It did not constitute an illegal lockout, and none of the 539 workers is entitled to any compensation. The stoppage of work which affected the other worker"s between 10 March and 28 May 1950 amounted to a lockout, but that lockout followed and was the direct result of an illegal strike by the workers. Therefore the lockout was not illegal. None of the workers is entitled to any compensation for that stoppage of work.

Dispute No. 9: "My award is that the Government should take early and adequate steps to fix the workload and wage structure for the Sri Minakshi Mills along with the other textile mills on a regional-cum-industry basis. Pending the action to be taken by the Government to give effect to my award referred to in the previous paragraph. I have decided to grant interim relief under this head to the management. As an interim measure pending action to be taken by the Government I direct that the management should be permitted to introduce in the several departments of the Sri Minakshi Mills, Ltd., Madurai, the interim workloads recommended by the Standardisation Committee when the Commissioner of Labour certifies that the power supplied to the mills is normal.

The workers preferred an appeal against the award to the Labour Appellate Tribunal at Bombay. The appeal was confined to two points only. But of the two we are concerned with one point, namely;

Whether all the workers thrown out of employment on or after 10 March 1950 by the management of the mills are entitled to compensation and if so, to what extent.

On this point the Appellate Tribunal disagreed with the Special Tribunal and allowed the appeal and ordered that the workmen shall be paid wages including dearness allowance for thirty days as compensation for their being kept out of work till 28 May 1950. The Appellate Tribunal overruled at the outset a preliminary objection taken by the respondent mills that no appeal was maintainable u/s 7(a) and (b) of the Industrial Disputes (Appellate Tribunal) Act, 1950. They held that the management had clearly contravened the provisions of Section 33 of the Industrial Disputes Act by adding to the workload when an industrial dispute was pending before the industrial tribunal, Madurai. They further held that the strike by the workers in the ringframe department was fully justified, that the lockout as ordered by the management was illegal and that the strike which followed that was not illegal as Section 24, Clause 3, of the Industrial Disputes Act lays down that a strike declared in consequence of an illegal lockout shall not be deemed to be illegal. The Appellate Tribunal came to the conclusion that all the workers were entitled to compensation, which they fixed at wages including dearness allowance for thirty days. It is this order of the Appellate Tribunal which the mills wanted to be quashed by a writ of certiorari.

3. Before Subba Rao, J., the management again urged that the appeal to the Appellate Tribunal was not maintainable. But the learned Judge overruled that objection and said that he would not go into the question whether the Appellate Tribunal had erred on a question of law or on a mixed question of fact and law. There was no error on law on the face of the record ; hence he dismissed the application. The appeal before us is against this order of dismissal passed by Subba Rao. J.

4. Mr. Rajagopala Ayyangar for the appellant, i.e., the management again pressed upon us the contention that no appeal lay against the award and decision of Rajagopalan J. He developed his contention from a twofold aspect, namely,

(1) that the case did not fall within Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act, 1950, and

(2) that the case fell within Section 7(2)(b) of that Act.

His contention that the appeal did not involve any substantial question of law can be easily disposed of. The question whether all the workers thrown out of employment on and after 10 March 1950 were entitled to compensation, the decision on which was adverse to the management is, in our opinion, a substantial question of law. The decision of that question depends upon the determination of the following points, namely, whether the introduction of the new workload and. wage structure contravened the provisions of Section 33 of the Industrial Disputes Act, whether the lockout by the management was legal or

not and whether the strike by the workmen was legal or not. The entire argument of Mr. Rajagopala Ayyangar rested on this, namely, that whether a particular alteration of the conditions of service was or was not to the prejudice of the workmen is a pure question of fact and as Rajagopalan, J., had decided that the alteration was not to their prejudice, no substantial question of law arose on that finding. In our opinion one should not take such a compartmental view of the matter as to split up Section 33 of the Industrial Disputes Act into several component parts and pose questions demanding several findings of fact. The only question which was involved was whether there was an alteration of the conditions of service by the employer to the prejudice of the workmen. This question is certainly at least a mixed question of fact and law, and undoubtedly, it is substantial because an adjudication on the dispute depends upon a decision on this issue. We agree with the Appellate Tribunal and Subba Rao, J., that the appeal did involve a substantial question of law.

5. Mr. Rajagopala Ayyangar next contended that the case fell within both the second and third clauses of Section 7(2)(b) of the Act. To successfully maintain his objection Mr. Rajagopala Ayyangar had to make out that the appeal was from a settlement arrived at between the parties in the course of conciliation proceeding, whether before a conciliation officer or a conciliation board or any other authority or that the appeal was from any decision of an arbitrator appointed under any law with the consent of parties to settle the dispute. We are clearly of the opinion that this appeal does not fall within either category. Taking the first alternative, it appears clear to us that the appeal is not from any settlement arrived at between the parties. The award of Rajagopalan, J., was passed after sustained contest between the parties. In support of his argument on this part of the case Mr. Rajagopala Ayyangar relied on decisions which construed the provisions of Order XXIII, Rule 3 of the Code of Civil "Procedure. In *Subbaraju v. Venkataramaraju* ILR 51 Mad. 800 it was held by a Pull Bench of this Court that where in a suit parties had referred their difference to arbitration without an order of the Court and an award was made, a decree in terms of the award could be passed by the Court under Order XXIII, Rule 3 of the Code, although the parties did not accept the award. The ratio decidendi of this decision was that an agreement to abide by the decision of an arbitrator is a compromise of the claim. The ruling in *Arumugha v. Balasubramania* ILR 1946 Mad. 39 which followed the Full Bench decision does not carry the matter any further. We do not think that the analogy is opposite. We find nothing in the conclusions agreed at the meeting in New Delhi from which it can be said that the parties agreed to be bound by the award to be made by the Special Tribunal to be appointed without questioning it if they had otherwise the right to attack it. The only agreement was that the matters in dispute should be transferred or referred to a particular tribunal. There is also another difficulty in the way of Mr. Rajagopala Ayyangar. There is no evidence of any conciliation proceedings, whether before a conciliation officer or a conciliation board or any other authority. Learned Counsel for the appellant conceded that there were no such proceedings before a

conciliation officer or a conciliation board, but he argued that there were such proceedings before Government which would fall within the phrase "any other authority," We do not agree with him.

6. The term "conciliation proceedings" though not defined in the Appellate Tribunal Act, must in this case be understood to refer to the conciliation proceedings mentioned in the Industrial Disputes Act. Section 2(e) of the Industrial Disputes Act defines "conciliation proceeding" as meaning any proceeding held by a conciliation officer or board under that Act. Sections 12, 13, 18, 19 and 20 deal with conciliation proceedings under that Act. We have no hesitation in holding that the "settlement" arrived at between the parties in the course of "conciliation proceedings" mentioned in Section 7(2)(b) of Act XLVIII of 1950 refers to the "settlement arrived at in the course of conciliation proceedings" under the Industrial Disputes Act (vide Sections 18 and 19). There has been no such settlement in this case. It is unnecessary in this view to discuss which is the other authority referred to in the clause.

7. Nor can the award of Rajagopalan, J., be deemed to be the decision of an arbitrator appointed under any law with the consent of parties to settle the dispute. In the first place Rajagopalan, J., was not appointed an arbitrator. He was expressly appointed as a special industrial tribunal under the Industrial Disputes Act. The term "any law" does not obviously include Industrial Disputes Act because that Act does not provide out for the appointment of arbitrator and it has been pointed out that it is misleading to equate the enquiry by the tribunal to arbitration proceedings vide *State of Madras Vs. C.P. Sarathy and Another*, . Some point was sought to be made by Mr. Rajagopala Ayyengar on of the terms of the Delhi agreement; namely, that the reference of the dispute should be to a Special Tribunal to consist of a person of the status of a High Court Judge or in case a High Court Judge was not available, any other person acceptable to both parties. It was said that such a provision was inconsistent with the provisions of Section 7 of the Industrial Disputes Act. We do not agree. We do not construe this term of the agreement to mean that the person to be appointed as the tribunal could be a person not qualified to be appointed u/s 7 of the Act. We agree with Subba Rao, J., that on a consideration of the terms of the agreed conclusions the parties to the dispute only intended that the tribunal to decide their dispute should be appointed under the Industrial Disputes Act. We agree with him that the use of the words "Special Tribunal" has no special significance. It only implies that this tribunal was concerned with the adjudication of only on specific dispute. Section 7 of the Industrial Disputes Act confers power on the Government to constitute one or more industrial tribunals for the adjudication of industrial disputes. The fact that there was already an industrial tribunal at Madurai would not preclude the Government from appointing another tribunal for a particular case or class of cases. That is what they did when they appointed Rajagopalan J. expressly under the provisions of the Act. The notification of appointment puts the matter beyond doubt, and it must not be overlooked that neither party raised any objection to treat Rajagopalan, J., as a tribunal

appointed under the Industrial Disputes Act. We may also mention that the said notification does not even make any reference to the Delhi agreement. Subba Rao, J., was therefore right in holding that the appeal to the Appellate Tribunal was maintainable.

8. If then the Appellate Tribunal had jurisdiction to entertain the appeal, the question which arises is, how far can this Court under its powers derived from Article 226 of the Constitution interfere with the decision of the Appellate Tribunal. Subba Rao, J., thought that he would not be justified in going into the question whether the tribunal erred on a question of law though he felt that the question was an arguable one.

9. However, we shall assume for the purpose of argument that this Court is not completely debarred from examining the decision of the Appellate Tribunal to find out if the tribunal has failed to exercise the jurisdiction vested in it by not deciding on essential question which arose for determination or to find out if its decision is totally vitiated by a completely unfounded assumption or a patent error. But are there any such grounds which could enable us to issue an appropriate writ or order quashing or setting aside the decision of the Appellate Tribunal in whole or in part?

10. We must confess that we are not quite satisfied with the disposal by the Appellate Tribunal of the main issues which arise in the case. But at the same time we are unable to say that there are any grounds on which our power under Article 226 can be legitimately invoked. The main question which was to be decided was whether the lockout by the management, i.e., the closure of mills from 10 March 1950 till 28 May 1950 was illegal. If it was, then undoubtedly the workmen were entitled to compensation because they were prevented from earning their wages unlawfully during that period. The decision of this question ultimately depended upon a determination of the point whether the management had contravened the provisions of Section 33 of the Industrial Disputes Act. The contention of the management was that an increase in the workload was not an alteration of a condition of service, and further even if it was it was not an alteration to the prejudice of the workman. Rajagopalan, J., upheld this contention entirely. The Appellate Tribunal differed from him and held that the workload was a condition of service and adding to the workload could not but be prejudicial to the workmen. Mr. Rajagopala Ayyangar, learned Counsel for the management, pressed upon us the argument that the question whether an alteration was or was not to the prejudice of the workmen was a question of fact and the finding of the industrial tribunal on the question was binding on the Appellate Tribunal. The finding of Rajagopalan, J., that the new workloads did not constitute as alteration to the prejudice of the workmen was based on the fact that the heavier workload was correlated to an increase in wages. He observed :

The wages recommended by the wage board were specifically linked up with the workloads recommended by the Standardisation Committee. The workers wanted an increase in wages without a corresponding increase in work. By implementing

the recommendations of both the wage board and the Standardisation Committee, as they were always intended to be, the management did not contravene the provisions of Section 33 of the Industrial Disputes Act.

The view that the Appellate Tribunal took was that adding to the workload would per se be to the prejudice of the workmen and the increase in the wage is not relevant in determining whether the increase was or was not to their prejudice. In other words they excluded the increase in wages from consideration in deciding the question. In so doing we do not think the Appellate Tribunal was interfering with a finding of fact as such. There can be no doubt that if the increase in wage is excluded from consideration, there can be only one answer to the question. Increase of work is and cannot but be to the prejudice of the workmen; Mr. Rajagopala Ayyangar referred us to another portion of the order of Rajagopalan, J., in which he said that the workloads recommended by the Standardisation Committee were not in any way unfair or too heavy for the workers. Such a finding is not inconsistent with the finding of the Appellate Tribunal that the increase in the workload is per se an alteration to the prejudice of the workmen. For instance, if a workman was only working for say three hours in a day, if he is made to work for five hours a day, then certainly the alteration is to his prejudice. This would be so even if it were found that the Imposition of five hours' work is not unfair or too heavy. In any event, we cannot say that the Appellate Tribunal were not acting within the limits of their jurisdiction in deciding on the question whether there was a contravention of the provisions of Section 33. They may be right or they may be wrong. But they had the jurisdiction and power to decide rightly or wrongly. This Court, cannot, acting under Article 226, convert itself into a Court of further appeal from the Appellate Tribunal. In *Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras*, the Supreme Court, dealing with the decision of the Labour Commissioner u/s 51 of the Madras Shops and Establishments Act, observed thus:

The Commissioner was certainly bound to decide the questions and he did decide them. At the worst he may have come to an erroneous conclusion, but the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Labour Commissioner to decide, and it does not relate to anything collateral, an erroneous decision upon which might affect his jurisdiction. The records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus there was absolutely no grounds here which would justify a superior Court in issuing a writ of certiorari for removal of an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions. What the High Court has done really is to exercise the powers of an appellate Court and correct what it considered to be an error in the decision of the Labour Commissioner. This obviously it cannot do.... No certiorari is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous.

11. If there has been a contravention of Section 33 of the Industrial Disputes Act, then it follows that the workmen were justified in refusing to do the extra work and it also follows that the discharge of the 539 employees was illegal, because it is admitted that these were "retrenched" because of the introduction of the new workload. It was argued by Mr. Rajagopala Ayyangar that with reference to these 539 men it was not correct to speak of any alteration in the condition of their service because they were no longer in service. But at the time when the management gave notice of the introduction of the new workload they were in service. In one sense the introduction of the new workload and their discharge were simultaneous. We are also of opinion that the discharge of these workmen would be in contravention of the second part of Section 33 as the permission of the tribunal was not obtained for their discharge. We do not agree with the contention that the discharge mentioned in this section refers only to discharge by way of punishment.

12. We agree with the learned Judge Subba Rao J. that there is no error apparent on the face of the record, nor any defect in procedure, which would justify the exercise of the Court's power under Article 226 of the Constitution. The appeal fails and is dismissed with costs. Advocate's fee Rs. 250.