
(1995) 07 MAD CK 0066
In the Madras High Court
Case No : W. A. No. 214

N. Mohandas

APPELLANT

Vs

Southern Industrial Polymers (Private) Ltd., Ranipet and
Others

RESPONDENT

Date of Decision : 17-07-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1995) 07 MAD CK 0066

Hon'ble Judges : K.A. Swami, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Judgement

Raju, J.—The worker, who was unsuccessful before the learned Single Judge, is the appellant before us. The appellant was an employee of

the first respondent concern. Disciplinary action was taken against the appellant and several others. So far as the appellant is concerned, he was

placed under suspension on January 29, 1981, which was followed up by a charge memo containing three charges. He submitted an explanation

and thereupon a domestic enquiry was held in which the domestic Enquiry Officer, by his enquiry report returned a finding of guilt, holding the

charges proved on the evidence placed on record. The management dismissed him from service. Thereupon an industrial dispute has been raised

and the same referred to the second respondent Labour Court and entertained as Industrial Dispute No. 38 of 1982.

2. The Government in G. O. Ms. No. 110, Labour and Employment, dated January 18, 1982 referred the dispute relating to the non-employment

of about nine workers including the appellant to go into the question of the justification or otherwise for the same and for computing the relief in

terms of money. Before, the Labour Court, the workmen examined three witnesses and the management examined two witnesses in support of their respective claims, apart from marking several documents on either side. After a careful analysis and assessment of the evidence, oral and documentary, made available on either side, the second respondent Labour Court held the non-employment of the appellant to be justified. The case of the appellant has been specifically considered in great deal and at length in Paras. 8 to 10 of the award of the Labour Court. The second respondent Labour Court believed the evidence of M. Ws. 1 and 2 and which it found stood even corroborated by the sworn statement said to have been given by the very appellant marked as Exhibit M 13, to come to the conclusion that the appellant was not only found sleeping during night shift on January 19, 1981 while on duty in the laboratory, but in spite of the warning from the Laboratory Chemist and Production Engineer, he had not only switched off the oven, which has been kept in operation for testing the products manufactured by the factory, thereby endangering the quality of the product and also indulged in acts of wilful insubordination and disobedience of lawful and reasonable orders of superiors by threatening them also. The second respondent Labour Court found the evidence of W. W. I. to be wholly unacceptable in view of the admitted fact of his having switched off the oven on the purported ground that the oven did not maintain proper temperature. Thus the second respondent found on a careful consideration of the oral and documentary evidence made available on record the charges properly and sufficiently hold proved on relevant and vital evidence. On that view, the second respondent also found that no interference in called for with the findings recorded by the domestic Enquiry officer.

3. Regarding the quantum of punishment imposed, once again the Labour Court (second respondent), in our view, has considered the issue in great detail and found that having regard to the gravity of the charges held proved and also the past history and conduct of the appellant, the punishment of dismissal cannot be considered to be disproportionate or not warranted with reference to the gravity of the misconduct. The reference was thus answered against the appellant.

4. Aggrieved the appellant filed Writ Petition No. 8942 of 1985 challenging the

award, dated October 8, 1984, in Industrial Dispute No. 38 of

1982. The learned Single Judge, in our view, also meticulously went into the matter in great detail and recorded a finding that on going through the

award of the second respondent Labour Court, it cannot be contended that the findings of the Labour Court are vitiated on account of any want of

evidence or infirmity in the findings recorded. The learned Single Judge held that even the appreciation of the oral and documentary evidence on

record by the Labour Court cannot be said to be vitiated by any perversity of approach and consequently the well merited findings recorded by

the Labour Court did not call for any interference in exercise of the jurisdiction under Article 226 of the Constitution of India. Even with reference

to the quantum of punishment, the learned Single Judge was convinced of the fact that the punishment inflicted upon the appellant cannot be said to

be disproportionate with reference to the gravity of the misconduct held to have been proved, together with the past record of the appellant, which

was duly taken into account while inflicting such punishment. Hence the learned Single Judge rejected the writ petition repelling the challenge to the

award of the second respondent Labour Court.

5. In the appeal before us, the learned Counsel for the appellant, reiterated the very same grounds urged before the learned Single Judge and took

us through the award of the Labour Court at length and also some of the materials on record in support of his claim, and contended that the award

of the Labour Court suffered serious infirmity in that the materials disclosed from the evidence of M. Ws. 1 and 2, have not been given due weight

and credit before arriving at the punishment of dismissal is too severe and grossly disproportionate to the charges held proved and that a lesser

punishment would really meet the requirement of justice.

6. Per contra, Sri R. Krishnamurthy, learned Advocate-General appearing for the Counsel for the first respondent/management contended that

having regard to the meticulous, detailed and effective as well as subjective consideration undertaken by the Labour Court as well by the domestic

Enquiry Officer and findings recorded concurrently, which merited the approval of the learned Single Judge, there is absolutely no justification for

interfering with the orders of the authorities below as also that of the learned Single Judge. It was contended that this Court exercising jurisdiction

under Article 226 of the Constitution of India, does not function as a Court of Appeal, but only exercises its jurisdiction by way of supervision and control to ensure the Courts and Tribunals subordinate to it, function within well settled limits and norms and act in accordance with law. Adverting to the conclusions of the learned Single Judge, it was contended on behalf of the first respondent-management that no infirmity whatsoever could be held to have been committed by any of the authorities below, including the learned Single Judge of his Court, and, therefore, there is no scope for interference with the concurrent and well-merited findings recorded in the matter. As for the quantum of punishment, it was contended by the learned Senior Counsel for the first respondent management that the appellant was in the habit of committing acts of disobedience and adopting a confronting attitude from the beginning for which he has taken to task on more than one occasion and that such materials were also proposed to be taken into account in assessing the quantum of punishment by issuing a show-cause notice, dated June 17, 1981, giving an opportunity to the appellant to show cause against the same and it is only after considering such materials and taking into account the recalcitrant and incorrigible attitude of the appellant, which was found to be grossly subversive of discipline in the organization that the punishment of dismissal came to be imposed and that the Court may not be pleased to interfere with the said decision taken.

7. We have carefully considered that submissions of the learned Counsel appearing on either side. We are of the view that the learned Counsel for the appellant miserably failed to substantiate any valid or legal grievance in the matter by pointing out any illegality or serious infirmity or any perversity in the findings concurrently recorded by the domestic Enquiry Officer as also by the Labour Court Second respondent, on sufficient and relevant oral and documentary evidence. The factual findings recorded by the second respondent Labour Court could not be shown to have suffered any infirmity, warranting the interference of this Court under Article 226 of the Constitution of India. It is by now well settled that where the findings of the domestic Enquiry Officer or the Labour Court are based on some evidence, which is relevant and sufficiently proves the guilt of the delinquent concerned and that the evidence relied upon reasonably support the conclusion that the delinquent workers is guilty of the charge, it

is not the function of the High Court in a petition under Article 226 of the Constitution of India to review the evidence and to arrive at an independent finding on the evidence. The Labour Court is the sole judge of facts, and if there be some legal evidence on which the finding can be based, the adequacy or reliability of that evidence is not also a matter, which can be permitted to be canvassed before this Court in proceedings under Art. 226 of the Constitution of India. As noticed earlier, the finding recorded in this case against the appellant are found to be well merited, and in our view, based on legal evidence too. Consequently, there is no justification to interfere with any of the findings in respect of the guilt of the appellant.

8. So far as the quantum of punishment is concerned, the learned Advocate-General appearing for the first respondent-management, relied upon the decision in *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, to contend that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority, and though it may be open to the Appellate Authority to interfere with it, the High Court cannot in exercise of its jurisdiction under Article 226 of the Constitution of India assume the role of an Appellate Authority to interfere with the punishment. The power under Article 226 of the Constitution of India, it was contended, is one of the judicial review of the manner in which the decision was made and to ensure that the individual receive fair treatment, and not to ensure that the authority, after according a fair treatment reaches on matter, which is authorised by law to decide for itself a conclusion, which is correct in the eyes of the Court. No doubt, Labour Court u/s 11A of the Industrial Disputes Act is entitled to go into the quantum of punishment also keeping in view the gravity of the charges to see whether the punishment imposed is grossly disproportionate to the charges held proved. As noticed earlier, even on this aspect, the Labour Court has meticulously and at great detail analysed the question of quantum of punishment and specifically recorded its finding about the gravity of the charges held proved and also the recalcitrant and incorrigible attitude, as evidenced by the past history of service of the appellant, as reflected from the materials available on record and held that the punishment imposed upon the appellant cannot be said to be disproportionate to the

charges held proved. The learned Single Judge also has gone into this aspect and in our view correctly appreciated the a position and declined to interfere.

9. For all the reasons stated above, we are of the view that no interference whatsoever is called for in this appeal, with the order of the learned Single Judge. The appeal, therefore, fails and shall stand dismissed. No costs.