

(1999) 01 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 2760 of 1991

Narayanan and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-01-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2001) 3 LLJ 169

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the common award in Industrial dispute No. 96 of 1986, etc., dated September 10, 1990, on the file of the Labour Court, Coimbatore, petitioners numbering 14 have filed the above writ petition for quashing the same and also for direction directing the second respondent to reinstate all the 14 persons with back wages and with attended benefits.

2. The case of the petitioners is briefly stated hereunder:

Petitioners are employees of the second respondent herein. While they are ventilating their grievance through their union, the second respondent filed a complaint before the police. Ultimately at the instance of the management the prosecution launched against the petitioners ended in acquittal. In respect of the same incident the second respondent initiated domestic enquiry and on the basis of the report of the enquiry officer dismissed all the petitioners from service. Thereafter the petitioners raised a separate industrial dispute before the third respondent. By a common award, dated September 10, 1990, the Labour Court upheld the action of the management in dismissing 14 petitioners, consequently dismissed all the applications, against which they filed the present writ petition.

3. Third respondent has filed a counter-affidavit disputing various averments made by the petitioners. It is stated that on February 16, 1983 at about 5.30

P.M. about 20 workmen from Mudimund Division along with another 20 workmen from the 18th Division went in a procession carrying banners and shouting slogans. Near the factory they called the manager by name D. Pathy and demanded that the workmen should be paid the seven days wages which was deducted in the month of November 1982. Since the same was not accepted and after hearing that it could be discussed before the Labour Officer, they shouted slogans and one Narayanan and Dhodba Madhan struck the Manager from the left side. They also abused the Manager. His shirt was torn and the pant was also torn in the back. Thereafter under compulsion they obtained a statement from the Manager and also obtained his signature forcibly. In view of the violent activities indulged on February 16, 1983, a lockout was declared on February 17, 1983. Thereafter, on March 4, 1983 a settlement was made u/s 12(3) of the Industrial Disputes Act (hereinafter referred to as the Act), in which the workmen expressed regret for the incident which had taken place on February 16, 1983 and they also agreed that no wages shall be payable for the period of lockout. Arising out of the incidents, on February 26, 1983, a show cause notice was issued to the petitioners charging them with various acts of misconduct. All the petitioners participated in the enquiry. They examined 5 witnesses. The enquiry officer gave his finding on August 5, 1983, holding that the charges against the petitioners were proved. Based on the findings of the enquiry officer having regard to the gravity of the charges orders were passed on August 5, 1983 dismissing the petitioners from service. Aggrieved by the said order of dismissal, by separate order of reference the disputes raised by them were referred to third respondent for adjudication. The findings of the enquiry officer were duly considered by the third respondent and he rightly came to the conclusion that the findings of the enquiry officer do not improve the case for interference. With these averments they prayed for dismissal of the writ petition.

4. In the light of the above pleadings I have heard Sri Sankarasubbu, learned counsel appearing for the petitioners and Sri Ravindran, learned counsel for the second respondent-management.

5. After taking me through the enquiry proceedings, order of the management and the award of the Labour Court, Sri Sankarasubbu, learned counsel appearing for the petitioners, has raised the following contentions:

- (i) the enquiry officer has not analysed the petitioners' case independently;
- (ii) inasmuch as the incident took place outside the factory, that too beyond the working hours, none of the petitioners contravened the Standing Orders applicable to them;
- (iii) in view of the order passed by the criminal Court withdrawing the prosecution the second respondent-management is estopped from taking further proceedings in respect of the same incident; and
- (iv) in any event, in the light of Section 11A of the Act, the Labour Court ought to have exercised its discretion and passed appropriate orders.

6. On the other hand Shri Ravindran, learned counsel appearing for the second respondent-management would contend that all the petitioners were given adequate opportunity before the enquiry officer in order to put forth their defence. The contention that incident took place outside the factory has not been raised either during the enquiry or before the Labour Court. Likewise, the plea of estoppel has also not been raised before the enquiry officer or before the Labour Court. In the light of Exhibit M8-settlement and on the basis of the complaint made in Exhibit M2 irrespective of the criminal prosecution they are entitled to initiate departmental proceedings as per their Standing Orders. Inasmuch as the petitioners were given adequate opportunity before the enquiry officer, taking note of the gravity of the proved charges, the concerned authority has imposed appropriate punishment after considering the past records, absolutely there is no material for interference by this Court by exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

7. I have carefully considered the rival submissions.

8. There is no dispute that at the relevant time all the 14 petitioners were employed in the second respondent-management. They are all members of the A.I.T.U.C. Union. Since according to them the management did not agree with their demand, they raised a claim before the Labour Officer, Coonoor. After hearing the parties on February 15, 1983 the Labour Officer adjourned the matter for further hearing. At that stage, on February 16, 1983 at about 5.30 P.M. 14 petitioners and others raised slogans in support of their demand and went on a procession near the factory. On seeing the Manager by name D. Pathy they abused him in filthy language and also torn his shirt and pant. It is also the case of the management that the petitioners have assaulted the Manager by their joint action. A complaint was made with reference to the said incident which is marked as Exhibit M2. Apart from the criminal complaint, the second respondent-management initiated domestic enquiry by sending show-cause notice. Not satisfied with the explanation offered by them, an enquiry officer was appointed. Even though Sri Sankarasubbu, learned counsel for the petitioners vehemently contended that the enquiry officer has not analysed the case of each petitioner and the ultimate conclusion of the enquiry officer is perverse, I am unable to accept the said contention for the following reasons. It is seen from the records, the issue, namely whether the enquiry conducted was fair and after affording adequate opportunity to the workmen, a preliminary issue was raised. After considering all the materials the Labour Court, Coimbatore, by order, dated July 11, 1990, came to the conclusion that the domestic enquiry was conducted in accordance with the procedure and upheld the conclusion. As rightly pointed out by the learned counsel for the management, against the said order, dated July 11, 1990, the petitioners did not file any writ petition challenging the same. In other words, the conclusion that the enquiry was fair and in accordance with the procedure has become final. In the light of the said conclusion by the impugned proceedings the Labour Court in Para. 9 it is concluded:

(Vernacular matter omitted)

In the light of the said conclusion, in the absence of any challenge before this Court with regard to the said factual conclusion, the present contention of the learned counsel for the petitioners cannot be accepted. In view of the factual conclusion referred to above, it is unnecessary for me to refer the decisions referred to by the learned counsel for the petitioners, namely:

(i) Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ; and

(ii) Meenglas Tea Estate Vs. Its Workmen, .

Accordingly, I reject the first contention raised by the learned counsel for the petitioners.

9. Regarding the, second contention that inasmuch as the incident took place outside the factory, beyond the working hours, none of the workmen had contravened the Standing Orders of the company, learned counsel for the petitioners very much relied on a decision of the Supreme Court reported in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, By relying on the said Glaxo Laboratories case (supra), learned counsel for the petitioners has very much contended that for the action which took place outside the factory premises and beyond the working hours cannot be construed as misconduct on the basis of the Standing Orders. Standing Order applicable to the parties is marked as Exhibit M9. The perusal of the charges levelled against the petitioners relate to Standing Orders 23 (i), (xi, xii, xiii and xiv) which speak about wilful insubordination, disorderly behaviour, discipline, offence punishable under Indian Penal Code and safety of other employees. Before analysing the various decisions referred to by the learned counsel for the management, now it has to be seen how the decision in Glaxo Laboratories case is distinguishable. It is useful to refer the following conclusion of their Lordships in the case (Glaxo Laboratories):

"..... .Having examined the matter both on principle and precedent, it would clearly emerge that Clause 10 of S.O. 22 which collocates various heads of misconduct must be strictly construed being a penal provision in the sense that on the proof of a misconduct there in enumerated penalty upto and inclusive of dismissal from service can be imposed. We see no reason for departing from the well-established canon of construction that penal provisions must receive strict construction, and not extended beyond their normal requirement. The framer's intention in using the expression "committed within the premises of the establishment or in the vicinity thereof are the words of limitation and they must receive due attention at the hands of the interpreter and the clause should not receive such broad construction as to render the last clause redundant."

In the light of the said conclusion since the assault took place within the vicinity of the establishment, I am of the view that the decision in Glaxo Laboratories

case (supra) is not helpful to the petitioners" contentions. Now, I shall analyse how the view expressed in Glaxo Laboratories case has been considered by various other High Courts including this Court. In " B. P. L India Ltd. v. PSP Thozhilali Union, 1990 II LLJ 320, learned single Judge of the Kerala High Court after referring Glaxo Laboratories case has concluded that :

".....The Glaxo Laboratories case (supra), has not given any interpretation which would render the Standing Order a dead letter. There is a summary of all relevant decisions rendered till then in the Glaxo Laboratories case (supra). The points on which special attention is merited may also be noted in the process of perusing that detailed judgment."

Again :

"In the present case, it is unnecessary to stretch matters that far. The assault and attack took place just before the factory gate. It was referable to a strike situation of the factory concerned. Those assaulted and attacked were officers of the management. They were proceeding to attend the work, though the strike was on. The striking workers had their agitation shed at the factory gate itself. It is then abundantly clear that the provocation for the assault and attack was not a private feud, or an individual conflict. It arose out of industrial employment, and was directly and integrally connected with the employment situation, with a rational and strong connection with the employment of the assailants and the victims thereof. The decision is fully covered by Tata Oil Mills Co. Ltd. Vs. Its Workmen, ."

With respect I am in agreement with the conclusion arrived in that case and it supports the argument of the learned counsel for the second respondent.

10. In Ram Asrey and Others Vs. Labour Court II and Another, , learned single Judge of the Allahabad High Court after referring the Glaxo Laboratories case (supra) and Munchandani Electrical and Radio Industries, Ltd. v. Its Workmen, 1975 I LLJ 269, has concluded :

"Bearing in mind the principles enunciated in the two decisions of the Supreme Court referred to above and also keeping in view the fact that in the present case the assault had taken place right in front of the factory gate as soon as the concerned junior officer came out of the factory after finishing his day's work, it must be held that the assault amounted to misconduct being connected with the performance of the junior officer's duty and subversive of discipline and efficiency within the mill premises."

I am also in agreement with the view expressed by the learned judge.

11. In Engine Valves Ltd. Vs. Labour Court, Madras and another, , learned Judge of this Court (S. GOVINDASAMY, J.), after referring. Glaxo Laboratories case (supra) and Munchandani Electrical and Radio Industries case (supra), as well as Tata Oil Mills case (supra) has concluded :

"..... On an analysis of the above rulings it is manifest that the assault, if proved, would amount to an act subversive of discipline irrespective of the place where the assault had taken place, but where the consequence of such an act manifests itself it is also necessary that the causal connection between the misconduct and the employment should be established and in order to provide linkage between the alleged act of misconduct and employment, the causal connection must be real and substantial, immediate and proximate and not remote or tenuous.

In the instant case the alleged act is that the delinquent employees had assaulted the victim employee in a place which is at a distance of 1 Km. away from the factory for maintaining higher level production in the factory and for not heeding to their words. The alleged act, if proved, is certainly an act subversive of discipline, and that has causal connection with the employment especially in the prevailing circumstances, viz. that the demands of the workmen were not settled. Having due regard to the relevant Standing Order, application in the instant case, the alleged act, if proved would constitute misconduct and the delinquent employees are liable for consequential penal action. While so, the conclusion arrived at by the Labour Court that the alleged act of assault would not constitute misconduct is not sustainable in law. Hence the finding in so far as it relates to the fact that the act complained of did not constitute misconduct is concerned is liable to be set aside and accordingly it is set aside."

Considering the factual position in our case, I am in agreement with the view expressed by S. GOVINDASAMY, J.

12. The very same question was considered by Bombay High Court in Mahindra and Mahindra Ltd. Vs. S.A. Patil and Others, . After referring the Glaxo Laboratories case (supra) and Munchandani case (supra), has arrived the same conclusion.

13. It is clear that in view of the Standing Order, particularly Standing Orders 23(i), 23(xi) to 23(xiv) and in the light of the various decisions explained in Glaxo Laboratories case (supra), it is manifest that if the assault is proved it would amount to act subversive of discipline irrespective of the place where the assault had taken place, but whether the consequence of such an act manifests itself, it is necessary that the causal connection between the misconduct and the establishment should be established and in order to provide linkage between the alleged act of misconduct and employment, the causal connection must be real and substantial immediate and proximate and not remote. In our case it is clear that the altercation took place in front of the factory gate, particularly with reference to the dispute raised by the petitioners herein and others. Accordingly the alleged act if proved is certainly an act subversive of discipline and has causal connection with the employment, viz., with reference to the demand of the workmen which were not settled, hence having due regard to the Standing Orders referred to above the alleged act is proved would have misconduct and the delinquent employees are liable for consequential penal action. Accordingly, I reject the second contention raised by the learned counsel for the petitioners.

14. With regard to the third contention, Sri Sankarasubbu, learned counsel for the petitioners, by drawing my attention to the final report filed by the Assistant Public Prosecutor for withdrawal of the case and the order of the concerned Magistrate u/s 321 of the Criminal Procedure Code has contended that, in the light of the said proceedings withdrawing the prosecution the second respondent-management is estopped from proceeding the same by way of departmental proceedings. In support of the above contention Sri Sankarasubbu has very much relied on the decision of the Apex Court reported in *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, . In that decision their Lordships have observed, at pp. 8-9 of LLJ:

".....Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered..."

In view of the observation of their Lordships, the judgment in a criminal case acquitting the person concerned is not a complete bar as contended by the learned counsel for the petitioners. As a matter of fact, the last part of the observation supports the action of the management in initialing departmental proceedings.

15. He also relied on the decision of KANAKARAJ, J., reported in *M. Kaman v. Labour Court, Coimbatore*, 1992 I LLJ 158 and *Manipur Administration v. Thokchom Bira Singh*, 1964 MWN (Cri) 189. In the light of the conclusion arrived by their Lordships in *Corporation of Nagpur v. Ramchandra G. Modak* (supra), I am afraid how the above mentioned two decisions are helpful to the petitioners case. Apart from the above legal position, as rightly contended by the learned counsel for the second respondent nothing was placed before the enquiry officer or before the Labour Court with regard to the order passed by the criminal Court. Inasmuch as the Labour Court has passed an order on September 10, 1990 after the order of the criminal Court, dated July 28, 1984, nothing prevented the petitioners from placing the order of the criminal Court in support of their contention. As stated earlier, apart from the legal position as seen in *Corporation of Nagpur case* (supra), in the absence of plea before the Labour Court, it is not possible for the petitioners to raise such contention before this Court accordingly I reject the same.

16. Regarding the other contention that Labour Court has not considered the power vested on it u/s 11A of the Act it is true that after the decision of Mohd. Ramzan Khan case 1991 I LLJ 380, before inflicting the punishment second show-cause notice containing the proposed punishment has to be served on the delinquent. Admittedly, in our case order of dismissal was passed on August 3, 1983 well prior to the decision of Mohd. Ramzan Khan case (supra). As stated earlier, inasmuch as dismissal order was passed prior to the Mohd. Ramzan Khan

case (supra), in the absence of specific provision in the Standing Orders no need to issue second show-cause notice. The same view has been expressed by their Lordships in *Associated Cement Companies, Ltd. v. T. C. Shrivastava and Ors.*; 1984 II LLJ 36. Further, regarding the punishment of dismissal, the Labour Court after analysing the report of the enquiry officer came to the following conclusion:

(Vernacular matter omitted)

In the light of the said factual conclusion, even if the past records are clean, it is not possible for this Court to interfere with the said conclusion.

Accordingly, I do not find any acceptable merit in the contention raised by the learned counsel for the petitioners. Further, in a case like this when serious misconduct is proved by an acceptable evidence, it is not open to the Labour Court or this Court to interfere with the punishment. In *Dharmapuri District Co-operative Sugar Mills Vs. The Presiding Officer, Labour Court, Vellore* and another, , the Division Bench of this Court in similar circumstances have concluded, at page -837 :

".....We are clearly of the opinion that Section 11A of the Act is not intended to embarrass the management to such an extent. Section 11A of the Act was introduced to obviate the difficulty felt by the Labour Courts, Tribunals, etc., in modifying the judgments of discharge or dismissal on judgments flimsy grounds solely with a view to render justice to the parties. The Labour Courts and Tribunals cannot mechanically use the words. "punishment being disproportionate to the charges." As observed by the Supreme Court of India, unless the Labour Court finds the punishment to be highly disproportionate to the charges, the Labour Court should not interfere. One other aspect of the case may also be noticed before dealing with the judgments cited by Sri N.G.R. Prasad. On the facts of this case, the Labour Court had set aside the domestic enquiry and proceeded to take evidence. On the evidence the Labour Court has rendered certain findings, to which we have already made a reference. Having found the second respondent guilty of the charges, while exercising the function of imposing a punishment, the Labour Court is in fact in the position of management and the sentiments expressed by the management, when they terminated the services of the second respondent have to be kept in mind and we do not think that different principles will apply to the Labour Court while determining the punishment to be awarded to the guilty worker."

17. Finally, even though it is stated by the learned counsel for the petitioner that initially the complaint was made by the management with regard to persons in respect of the alleged assault before the police and it is not open to the management to initiate departmental proceedings against the 14 petitioners, learned counsel for the second respondent management has brought to my notice that in Exhibit M2 a complaint has been made against all the 14 petitioners. In such circumstance, the contra argument made by the learned counsel for the petitioner is liable to be rejected. It is also clear from Exhibit M8

settlement, the management is authorised to take appropriate action against the petitioners herein on the basis of the Standing Orders.

18. In the light of what is stated above, I am unable to accept any one of the contentions raised by the learned counsel for the petitioners and I am in entire agreement with the conclusion arrived by the Labour Court, Coimbatore, third respondent herein. Accordingly, the writ petition fails and the same is dismissed. However, there shall be no order as to costs.