

(1998) 03 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No's. 1807, 1809 and 1810/89

S. Chinnaiyan, P. Subramanian and Another and The
Workmen of Thanjavur Textiles Ltd.

APPELLANT

Vs

The Presiding Officer, I Addl. Labour Court and The
Management of Thanjavur Textiles Ltd.

RESPONDENT

Date of Decision : 13-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 —
Section 9A

Citation : (1998) 03 MAD CK 0024

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : K.S. Janakiraman, for the Appellant; N. Balasubramanian, for 2nd
Respondent, for the Respondent

Judgement

Y. Venkatachalam, J.—The Petitioners in all these Writ Petitions are workmen of the second Respondent management and these Writ

Petitions have been tiled against the award passed by the 1st Respondent Labour Court against the Petitioners herein. Therefore, as the subject

matter involved in all these writs is one and the same, all these Writ Petitions are taken up together and are disposed of by this common order with

the consent of the parties concerned.

2. Invoking Article 226 of the Constitution of India, the Petitioners herein have filed these Writ Petitions seeking for a writ of certiorari to call for

the records and papers connected with the impugned award of the 1st Respondent in I.D. Nos. 364, 315 & 418 of 1981 respectively and all

dated 28.4.88 and to quash the same in so far as it negated the claims of the

concerned workmen therein for reinstatement, in service with full back wages and other benefits.

3. In support of the Writ Petitions, the Petitioners have filed separate affidavits wherein they have narrated all the facts and circumstances that

forced them to file the present Writ Petitions and prayed that these Writ Petitions may be ordered as prayed for. Though on behalf of the

management no counter has been filed, they have argued the matter.

4. Heard the arguments advanced by the learned Counsel appearing for the respective parties. I have perused the contents of the affidavits

together with all the relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the

various points raised by the learned Counsel appearing for the parties during the course of their arguments.

5. The common point that arises for consideration in all these Writ Petitions is, as to whether there are any valid grounds to allow these Writ

Petitions or not.

6. From the records it is clear that all the Petitioners herein are active members of the different unions in the 2nd Respondent management and

there was a dispute between these Petitioners who belong to certain unions and the management regarding working of the Mill on Independence

day during the year 1980. For the said decision of the management these Petitioners and others expressed protest and however with the help of

some other workmen the management run the mill on that day. In that connection on that day, i.e., on 15.8.1980 there were some incidents inside

the Mill premises in which the Petitioners herein also were involved. On that ground the Petitioners were herein first suspended, then enquiry was

conducted on the charges framed against them and ultimately they were dismissed from service. Subsequently, Industrial Disputes were raised by

these Petitioners and the first Respondent passed awards, confirming the dismissal of the Petitioners in WP Nos. 1890 and 1810/89, but however

ordered reinstatement of the Petitioner in W.P. No. 1807/89 without back wages, Aggrieved by the said awards passed by the first Respondent

Labour Court, these Writ Petitions have been filed.

7. The common case of all these Petitioners herein is that the Respondent management is governed by the Tamil Nadu Industrial Establishment

(National and Festival Holidays) Act, 1958 and since last so many years the Petitioners and other workmen have been enjoying holidays declared under the Act. Further even Clause 42 of the Certified Standing Orders had made it clear that the workmen are entitled to have all the National and Festival Holidays. That being so, on the Independence Day of the year 1980 the management wanted to run the Mill contrary to the Rules and Regulations and the established practice. Therefore, on 12.8.1980 they put up a notice stating that the workers are required to attend work on that date and they would be paid only single day's wage. It is alleged by the Petitioners herein that the unions functioning in the Respondent management were not consulted for this sudden change and also no notice u/s 9-A was issued to the workers for the change in their service conditions. Even the option of individual workmen as required by Tamil Nadu Industrial Establishment (National and Festival Holidays) Act 1958 was also not obtained from the workmen. Therefore, the Petitioner and the members of the union had a meeting on the morning of 15.8.80 at their union office and it was unanimously resolved by the union that the workers should not accept this illegal change and should not go for work on that date and according to the decision of the Union, the Petitioners did not go for work on 15.8.80. Therefore it is categorically stated by the Petitioners herein that seeing the complete response from the workers and finding that no work was turned out on that date the management wanted to victimise the activities of the unions which were behind this boycott call, Here it is significant to note that it is contended by the 2nd Respondent management that even though Independence Day was observed as a paid holiday on earlier occasions, there is no Rule which prohibits running of the Mills on the Independence day, that the workmen were required to report for work on 15.8.80, with the object of increasing the production and before making such a notification the unions were consulted and it is only in pursuance of their agreement it was adopted to work on 15.8.80. All that the National and Festival Holidays Act contemplates is an individual notice to the employees Who were required to work on a National or Festival Holiday and double wages or in the alternative single wages with an option for an another holiday. Even though in the case of the Respondent/management that there is agreement between the management and the four recognised unions which justifies

the decision of the management to run the Mill on 15.8.80, it is an admitted fact that such individual notice could not be issued since there are more than workers. So from the above factor, it is clear that the management has failed to follow the mandatory provisions, prescribed for running the Mill on 15.8.80. But the management however wanted to run the Mill on the particular day with the available workers who are willing to work. But that was prevented and opposed by the Petitioners herein by assembling before the Mill premises and it is also an admitted fact that the Petitioners have committed certain misconduct during the said process. Therefore, immediately these Petitioners were suspended and charges were framed and enquiry ordered. All these show that the Respondent/management was certainly prejudiced against these Petitioners, and was watching for an appropriate opportunity to take revenge on them i.e., to victimize them.

8. Coming to the enquiry conducted by the management, it is an admitted fact that the Petitioners did not take part in the same stating that an outsider cannot conduct the enquiry. Further the copy of the complaint was also admittedly not given to the Petitioners, well in advance. In this regard it is significant to note that in the case of one of the Petitioner's herein (W.P.1810/89) there is change of Enquiry Officer. According to the Respondent/management the reason for the change of the Enquiry Officer was to speed up the Enquiry proceedings and to avoid delays. This aspect shows that the management however wanted to complete the enquiry earlier and to punish the Petitioners. Further, the request of the workers for copies of complaint and list of witnesses was acceded to only by the Enquiry Officer and they were given on 17.9.80, and not by the act of the management. Another significant aspect in this case is that the Petitioners herein did not take part in the enquiry conducted by the management and it can be considered only as an ex parte enquiry as rightly contended by the Petitioners herein. That being so, even though the Enquiry Officer recorded a finding that the charges framed against the Petitioners herein were proved, it cannot be said that the charges have been proved against the Petitioners beyond all reasonable doubt. In such circumstances, we cannot neglect the contention of the Petitioners herein that they have not been given all reasonable opportunity to prepare and defend themselves. While coming to such a conclusion, this Court is not saying

that there is no misconduct on the part of the Petitioners herein on the particular date. From the facts and circumstances of the case, it is clear the

Petitioners and others entered the Mill unlawfully and were involved in certain incidents. It is but natural in such circumstances. Therefore, we

cannot deny the allegation of the management that on the particular day some workers chose to force their entry into the Mill congregated

themselves into an unlawful assembly and started shouting slogans declaring then decision to forcibly stop the Mills. However the charges regarding

assault alleged against the Petitioners may be exaggerations on the part of the management as the management is prejudiced against them on their

union activities. This aspect of the matter is substantiated by the following observation made by the 1st Respondent in the award passed in I.D.

No. 418/81 in para-8.

It is no doubt true that there is a discrepancy between the charges sheet issued to these two workers and the evidence before the enquiry officer

with regard to the part played by Sadanandan at the time of occurrence and with regard to the actual person who attempted to assault

Vijayasekaran.

Further, it is appropriate place to mention the submission made by the management before the 1st Respondent in this following manner:

If by chance, this Court comes to the conclusion that the enquiry has not been conducted fairly and properly, an opportunity may be given to the

management to prove the charges against the Petitioner.

So, the above submission itself shows that the management itself has its own doubt whether the enquiry has been conducted fairly and properly or

not. Though it is stated by the management that the management is not at all interested with union affairs or activities and they are only interested to

maintain discipline inside the factory, this Court has to consider the allegation of the Petitioners that they have been victimised for their trade union

activities. Because admittedly the Petitioner in W.P. No. 1807/89 is the member of Tamil Nadu NoorpaJai Thozhilalar Munnetra Sangam, the

Petitioner in W.P. No. 1809/89 also a member of the same sangam whereas the Petitioners involved in W.P. No. 1810/89 are the President and

Secretary of the Petitioner union respectively. It is also significant to note that previously the staff of the Respondent Mills had no union of their own

and the Petitioners in W.P. No. 1810/89 started a staff union for the first time in the Mill on 31.12.1979 and a substantial number of the staff

became members of this union; Further the Vice-President and other workers were victimised by the Respondent and the above two Petitioners

took up the issue with the management and they have also published hand bills condemning the action of the management and wrote to the

management giving the name of five workmen including themselves and the Union has also placed a charter of demands with the management on

25.2.80. In such a situation the management as already observed announced 15.8.80 as a working day and the Petitioners herein and their union

decided not to attend work on that day and subsequently other incidents followed. In such circumstances, it is the categorical contention of the

Petitioners herein that they were victimised by the Respondent/management on a charge-sheet issued by the management in respect of an

occurrence said to have taken place on 15.8.80. There is much force in this contention of the Petitioners. Therefore, for all these reasons this Court

conies to the conclusion that the enquiry against these Petitioners has not been conducted by the management fairly and properly but at the same

time this Court is also of the views that the Petitioners could have indulged in the activities of being members of an unlawful assembly, using abusive

language in the premises against the other workers who were working inside and in behaving in an indecent manner at that time. But regarding the

charges of assault unless it is proved beyond reasonable doubt in a fairly and properly conducted enquiry the Petitioners cannot be punished with

the extreme penalty of dismissal. But regarding other misconducts of using abusive language and behaving in an indecent manner, certainly they

would not warrant the extreme penalty of dismissal from service. Therefore, all cases of miscount cannot be treated alike. The nature and quantum

of punishment have to be depend on the nature of charges. Therefore, on a overall consideration of the entire facts and circumstances of these

cases, I am of the view that if at all we consider that any charges have been proved against the Petitioners herein, that would be one of indiscipline

alone and not otherwise and for that misconduct on the part of the Petitioners herein they have to be punished in order to maintain discipline inside

the factory. Therefore, as rightly observed by the 1st Respondent in one of the I Ds herein, the Petitioners have to be imposed with certain

punishment. Therefore for all these reasons it cannot be said that all these Petitioners have committed a serious misconduct warranting the extreme penalty of dismissal from service. Time and again the Supreme Court has held in number of decisions that the punishment awarded in such case should be proportionate to the gravity of the proved charges. Therefore, for all the aforesaid reasons, and in view of my elaborate discussions made above and in the facts and circumstances of these cases, this Court is of the clear view that the dismissal of the Petitioners herein was not preceded by a fair and proper enquiry and all charges had not been properly proved in a fair and proper enquiry and as such the non-employment of these workmen was illegal and unjustified and at the same time the Petitioners herein are guilty of some misconduct amounting to indiscipline etc., as mentioned above which warrant some punishment.

9. On the strength of the above conclusion, coming to the case of the Petitioner in W.P. No. 1807/89, the 1st Respondent has rightly ordered reinstatement of the Petitioner therein but without back wages and therefore, no interference is called for in the said Writ Petition and that therefore, W.P. No. 1807/89 is liable to be dismissed confirming the impugned order of 1st Respondent Labour Court.

10. Whereas in the case of W.P. Nos. 1809 and 1810/89, the impugned orders of the 1st Respondent Labour Court are liable to be set aside and they are to be allowed ordering reinstatement of the Petitioners therein, but without back wages, which is punishment for their misconduct as already observed by this Court.

11. In the result, W.P. No. 1807/89 is dismissed confirming the impugned order of the 1st Respondent Labour Court, viz. reinstatement of the Petitioner without back wages. No costs, W.P. Nos. 1809 and 1810/89 are allowed, setting aside the impugned order of the first Respondent Labour Court. And the second Respondent management is hereby directed to reinstate the Petitioners therein, but without back wages. The 2nd Respondent/management is directed to reinstate these Petitioners in service within 30 days from the date of receipt of copy of this order. No costs.