
(1996) 08 MAD CK 0025
In the Madras High Court

S.M.B. Eswaran

APPELLANT

Vs

S. Kaliamoorthy and Another

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 41(1)

Citation : (1996) 2 MLJ 423

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Division Bench

Judgement

S.M. Abdul Wahab, J.—W.P. No. 10884 of 1987 is for quashing the order dated 21.7.1987 passed by the Presiding Officer, I Additional

Labour Court, in I.D. No. 43 of 1983.

2. W.P. No. 6103 of 1988 is for certiorarified mandamus calling for the records from the Presiding Officer, I Additional Labour Court relating to

the Award in I.D. No. 43 of 1983 dated 21.7.1987, and to direct the second respondent to reinstatement petitioner in service and to pay

backwages and other benefits.

3. In both the writ petitions, the award of the Presiding Officer, I Additional Labour Court, Madras-104 is under challenge.

4. Petitioner in W.P. No. 6103 of 1988 is an employee of the second respondent, petitioner in W.P. No. 10884 of 1987. His case is that he

joined the second respondent management in 1974. He formed an organisation called ""Thiruvarur Vitayapuram Varthaga Thozhialar Sangam"" in

1979. He was selected as the Secretary of the Sangam in the year 1980. The employer called him several times and asked to resign from the union

office bearer post and stop doing any union activities. He was warned with dire

consequences. While so on 20.4.1982 the management gave a termination order, several vague charges were made in the order of termination. No domestic enquiry was conducted. The termination was only by way of punishment. Therefore, the Union raised Industrial Dispute. After the failure of conciliation the matter was referred to the Labour Court.

The Labour Court has passed the above award justifying the termination, but at the same time for paying the compensation of Rs. 5,000 along with gratuity and bonus. Hence, the writ petition has been preferred by the workman.

5. The Labour Court has found that the termination was justified, but at the same time awarded compensation and hence the management has filed W.P. No. 10884 of 1987.

6. In its affidavit, the management contended that the employee took leave without permission from the management and did the work of sangam.

He was very negligent and inadvertent resulting in financial loss to the management. In spite of repeated advise and warning, the employee continued to be negligent in his duties. Therefore, his service was terminated on 20.4.1982 by giving him one month's pay and notice as provided

u/s 41(1) of the Tamil Nadu Shops and Establishments Act. After reference, the Labour Court conducted enquiry and came to the conclusion that

the termination was justified and all the charges levelled against the employee were proved. In conclusion, it has awarded a compensation of Rs.

5,000 plus gratuity and bonus in accordance with the statutory rules. Hence, the management has filed the W.P. No. 10884 of 1987.

7. Learned Counsel for the employee raised several contentions. First he contended that the Labour Court has placed the burden upon the

employee by directing him to lead evidence. When there was no domestic enquiry. Secondly he contended that the charges framed against the

employee were very, vague. He also contended that the finding of the Labour Court that the Union had no locus standi is erroneous. Yet another

finding of the Labour Court that the employee ought to have resorted to the proceedings under the Shops and Establishments Act and not to the

Labour Court is also not correct.

8. Now let us take up the first contention that the Labour Court has directed the employee to lead evidence first and therefore the proceedings is

vitiated. Perusal of the award of the Labour Court clearly shows that both the

parties have let in evidence. The workman has examined himself. He has also examined another two witnesses. On the other hand, the management has examined only one witness. Thirteen documents have been filed on behalf of the employee and 14 documents have been marked on behalf of the management. After framing the issue in para 6, the Labour Court has considered the evidence on the charges thread bare and has found that the charge absence of the employee from office and neglect of duty have been proved, it has considered the evidence of M.W.1. It has stated that the employee absented himself for work without obtaining leave. Xerox copy of leave register Ex.M-2 has been considered. It is a leave register for the month of April, 1981 to 1982. Similarly M-3 has also been considered. It is a leave letter given by the petitioner to the employer for grant of leave on 4.12.1982. After considering the abovesaid evidence, the Labour Court has found that the employee has absented himself very often.

9. With reference to another charge that he was negligent in his duty. Several documents have been considered. Ex.M-7 Balance Sheet, Ex.M-8 passbook of Punjab National Bank, Ex.M-9 is Pass book of Indian Bank, Ex.M-10 is pass book Indian Overseas Bank, Ex.M-11 is the first page of Day Book. Ex.M-12 is Auditors report. Ex. M-13 is fine receipt, and Ex.M-14 is the trial balance prepared by the petitioner/employer.

Since there were defects in the maintenance of account. The Labour Department has initiated Departmental Proceedings resulting in a fine of Rs. 50 to the management. There is also a finding that the employee has wrongly mentioned the bank debit balance for three banks while preparing annual account for the year 1982-83. To arrive at this finding also he has considered number of documents and evidence as is seen in para 10 of the award. After considering all the evidence it has come to the conclusion that the various charges levelled against the workman have been satisfactorily proved. It has also taken into account, the evidence of M.W.1, against him no motive was suggested by the workman. On the other hand, M. Ws. 1 and 2 are members of the Sangam. Therefore, the Labour Court has found that their evidence was interested. In these circumstances, I am not in a position to take a different view. There is every justification for the Labour Court to find that the non-employment of the employee was justified. Inasmuch as the evidence has been considered in

detail, simply because, the employee was asked to lead evidence in the first instance. I do not find that any prejudice has been caused to his case on that account.

10. Learned Counsel for the petitioner cited a decision in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, . In the said decision the

Supreme Court in para 39 has held that ""The observation clearly shows that the enquiry officer has missed the elementary principle of

jurisprudence that when allegations of misconduct are levelled against a person, it is the primary duty of the persons making those allegations to

establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty."" There cannot be any doubt about this

proposition. In this case as stated above, sufficient evidence has been let in by the management to prove the misconduct. The Labour Court has

not found in favour of the management on the ground that the employee has failed to lead evidence in his favour. Therefore, the said decision is not

helpful.

11. The other decision cited by the learned Counsel is Central Railway Vs. Raghubir Saran, . In the said case, a learned single Judge of the

Allahabad High Court has held, ""The department should not only lead evidence first, but prove it affirmatively that the employee was guilty of the

charge framed. Asking the respondent to appear first and examination of his witness was putting the burden on the respondent to prove the

negative."" In the said case, the finding of guilty recorded by the enquiry officer was on evidence of delinquent without reference or consideration of

departmental witness. Therefore, the proceedings were not upheld. Further emphasis in that case in, on, ""it could not be argued that no prejudice

had been caused."" But in this case, as stated above, the evidence of the management was considered at length and the finding has been arrived.

That apart, no prejudice has been caused in adopting the procedure of examining the employee's witness first.

12. The other contentions that the charges are vague is also untenable. They are very specific. The charge levelled against the petitioner that he

absented duty very often, he failed to maintain the records properly. In the termination order dated 30.4.1982, it is mentioned that even though

office hours were 9.30 a.m. to 6.30 p.m. the employee came to work at 9.50

a.m. or 10.00 a.m. in the morning and 2.30 or 3.30 p.m. in the afternoon and he left for lunch at 1.00 p.m. Again in para 4 it is stated that there were persons from outside and he went with them and returned to duty very late. Even when he went for tea in the morning or in the afternoon he never returned after half an hour. So the charges mentioned above, cannot be said to be vague.

13. Learned Counsel contended that the Labour Court has committed error in holding that the petition was not maintainable since the union which sponsored the case of the petitioner had no locus standi. On that ground, the Labour Court has not rejected the claim of the petitioner. Further, as we have found earlier, it has gone on merits in detail. Similarly, the other contentions that the view of the Labour Court that the employee ought to have raised the dispute under the Shops and Establishments Act, 1947 is wrong. As stated earlier, on this ground also the petition of the employee has not been rejected. But only after considering the merits of the case and findings that the charges have been proved, the Labour Court has held that the non-employment was justified. Further after justifying the non-employment it has also taken into account the circumstances for awarding the compensation to the employee. It has also directed payment of gratuity and bonus. In my view, the direction of the Labour Court is justified. Hence, both the writ petitions have to be rejected. Accordingly, these writ petitions are dismissed. However, there will be no order as to costs.