
(1980) 01 MAD CK 0011
In the Madras High Court
Case No : Writ Petition No. 540 of 1977

Sri Gopalakrishna Mills Pvt. Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 04-01-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2A

Citation : (1980) 1 LLJ 425

Hon'ble Judges : S. Padmanabhan, J; Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—This writ petition has been filed by the petitioner-management for the issue of a writ of certiorari to quash the award of the

Labour Court, Coimbatore passed in I.D. No. 55/76 on 20-12-1976.

2. The petitioner-management is a Textile Mill at Coimbatore engaged in the manufacture of yarn. The 2nd respondent herein, was employed by

the management as a spinning doffing boy and his duties inter alia included the work of doffing. During the 2nd half of the day shift on 13-9-1975,

the 2nd respondent refused to attend to his doffing work despite his superior ordering him to do so, saying that he would attend to his work only

after the maistry fetched him a basket. Even after he was served with a charge-sheet and a suspension order for his refusal to attend the work he

remained in the mills and did not permit a substitute who was placed in his post to attend to his work. By his refusal to permit a substitute to work

in his place he caused obstruction to the production process leading to the stoppage of all machines which resulted in the other workmen not being

provided with work. Even after the shift was over, he continued to remain inside the mill premises which led to the stoppage of the next shift also.

As a result of the aforesaid conduct of the second respondent on 13-9-75, two charge sheets dated 13-9-1975 and 14-9-75 were served on him

and he was asked to give his explanation. As the explanation offered by him was not found satisfactory, the management ordered an enquiry to be

conducted on the charges. An enquiry was actually held into the charges by an enquiry officer appointed for the purpose. The 2nd respondent fully

participated in the enquiry. After considering the defence put forward by him, the enquiry officer gave his findings on 21-10-75 holding him guilty

of the charges levelled in the two charge-sheets. Agreeing with the finding and taking into consideration the gravity of his misconduct and his past

record of service, the management passed orders on 1-11-75 dismissing him from service.

3. The second respondent raised an industrial dispute regarding his non-employment that dispute was referred to the first respondent for

adjudication in G.O. Rt. No. 907, Labour and Employment dated 29-4-76 and the said dispute was numbered as I.D. No. 55/76.

4. Before the Labour Court, the 2nd respondent filed a claim statement contending that on 13-9-75 the management suspended him without any

reason, that he has filed his explanations to the charge-sheets, that the domestic enquiry conducted on the charges was not fair and proper and,

therefore, his dismissal was not justified, and as such he has to be reinstated with continuity of service with back wages. The management in its

counter-statement contended that the case of the 2nd respondent was not at any time espoused by a substantial section of the workmen of the

establishment and, therefore, the dispute raised and not an industrial dispute, that the 2nd respondent refused to attend to his normal work,

behaved in an insubordinate manner with the superiors, prevented a substitute co-worker to work in his place and remind inside the mill premises

even after he was served an with an order of suspension pending enquiry, and that the management conducted an enquiry and based on the

findings rendered by the enquiry officer the 2nd respondent was dismissed from service. It was further conducted by the management that the

enquiry conducted was fair and proper, that the action taken against the 2nd respondent was in the best interest of the mills and that having regard

to the serious misconduct committed by him, the punishment by way of dismissal was quite justified.

5. The first respondent, dealing with the management's contention that there was no industrial dispute as the 2nd respondent's case has not been espoused by and substantial section of the workmen in the establishment and, therefore, the reference itself is bad, held that there was an industrial dispute as contemplated under the Industrial Disputes Act, hereinafter referred to as the Act, for being adjudicated and that even if the case of the 2nd respondent has not been espoused by a substantial section of the workmen in the establishment, still, it will be an industrial dispute under S. 2A of the Act, and, therefore, reference cannot be held to be bad as contended for by the management. On the question as to whether the domestic enquiry was fair and proper, the Labour Court took the view that the domestic enquiry cannot be considered to be fair and proper inasmuch as the workmen had been placed at a distinct disadvantage in the enquiry officer permitting the labour welfare officer to cross-examine the witnesses produced by the workman. Having held that the domestic enquiry was not fair and proper, the Labour Court had called upon the management to adduce further evidence, oral and documentary, in support of the charge levelled against the 2nd respondent. On the evidence so adduced before it by the management as well as by the 2nd respondent the Labour Court found that all the charges levelled against the workman had been established. The Labour Court in fact found after a due consideration of the evidence that the workman refused to attend to his normal work, behaved in an insubordinate manner with his superiors, prevented a substitute worker to Work in his place and wilfully remained inside the mill premises after he was served with an order of suspension pending enquiry. The Labour Court also found with reference to the 2nd respondent's past conduct that several warnings had been issued to him on earlier occasions and, therefore, if his past conduct is to be taken into consideration, there is considerable force in the plea of the management that he should not be reinstated in any event.

6. The Labour Court then went into the question as to whether the penalty of dismissal from service of the 2nd respondent is warranted on the facts disclosed and held that the order of dismissal would be disproportionate to the facts proved and that taking into consideration all the circumstances the ends of justice will be met by modifying the order of dismissal into one of reinstatement but without back wages or continuity of

service. The management is aggrieved against that the Labour Court's order in so far as it holds that the punishment of dismissal from service is disproportionate to the charges levelled against the 2nd respondent and directs his reinstatement.

7. As already stated, the Labour Court held agreeing with the contention of the management that the charges levelled against the 2nd respondent have been duly proved on the evidence adduced before it and that his past conduct was also such as to justify the management not to entertain him in service any longer. However, the Labour Court has chosen to direct his reinstatement, presumably exercising its power under S. 11A of the Act on the ground that the punishment of dismissal is disproportionate to the facts proved.

8. Section 11A was introduced by the amending Act 45/71 with effect from 15-12-71. That section enables the Labour Court to set aside the order of discharge or dismissal passed by the management and direct reinstatement of the workmen on such terms and conditions as it thinks fit or

give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case

may require, if it is satisfied that the order of discharge or dismissal was not justified in the course of an adjudication proceeding relating to the

discharge or dismissal of a workman. Dealing with the scope of the said section the Supreme Court in *The Workmen of Firestone Tyre and*

Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . Expressed the view that S. 11A has the effect of altering the law laid down by

that Court in that respect by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a

finding of misconduct arrived at by an employer as well as on the punishment imposed by him. The legal position as on 15-12-71 when that S.

11A was introduced was that once the misconduct with reference to which the punishment is imposed is proved either in the enquiry conducted by

the employer or the enquiry conducted by the Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in

cases where the punishment is so harsh as to suggest victimisation. However, after S. 11A came into force the Labour Court can also interfere with

the punishment imposed by the management not only on the ground of victimisation but also on the ground that an order of penalty by, way of

discharge of dismissal was not justified. Before the introduction of S. 11A in Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, , the Supreme Court, while dealing with the power of Industrial Tribunal either to order reinstatement or compensation in lieu of reinstatement in a case where the Tribunal finds that the order of discharge or dismissal of a workman is not justified or legal, expressed the view that the Tribunal has discretion to award compensation instead of reinstatement if exceptional so as to make reinstatement inexpedient or improper and that the Tribunal should exercise such discretion judicially and in accordance with well recognised principles in that regard and examine carefully the circumstances of each case and decide whether the case is one of the exception to the general rule that ordinarily reinstatement will follow once the order of discharge of dismissal is found to be not legal or justified. In a later decision in I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others, , the Supreme Court has laid down certain criteria for the Labour Court to award compensation in lieu of reinstatement. In that case it has been found by the Labour Court that the charge of habitual negligence or neglect of work alleged against the workman had not been established and it, therefore, ordered reinstatement of the workman. The management urged before the High Court inter alia that even if the charges are not held proved the Labour Court should not have ordered reinstatement but should have ordered compensation in lieu of reinstatement. Dealing with this aspect of the matter the Supreme Court expressed the view that every case has to be judged on its special facts, that in the case before it the service card of the employee showed that he had committed several faults in the past and was sometimes warned, sometimes suspended and sometimes reprimanded for all those omissions and commissions and ultimately observed;

We think on the facts and in the circumstances of this case it is not a fit case when the High Court ought to have sustained the order of reinstatement as passed by the Labour Court. We accordingly direct that in lieu of reinstatement respondent 3 will be entitled to get a compensation of Rs. 30,000 which will, roughly speaking include almost all sums of money payable to the workman such as basic pay, dearness allowance, etc., for a period of about five years.

The principle laid down in that case by the Supreme Court is that though ordinarily reinstatement is to follow the setting aside of the order of penalty or discharge or dismissal made by the management, where it is alleged by the management that the reinstatement is not expedient or proper in certain circumstances, the Labour Court has to examine the circumstances of each case to see whether the reinstatement or the discharged or dismissed employee is not inexpedient or improper and refuse to order reinstatement where such a course in the circumstances of the case is not either desirable or expedient.

9. The learned counsel for the 2nd respondent refers to a recent decision of a Division Bench of the Court in *Management of Binny Limited Vs.*

Additional Labour Court and Another, where the order of the Tribunal modifying the punishment under S. 11A, after finding that the dismissal

was based on a properly conducted enquiry, as one of reinstatement without continuity of service and back wages, was upheld by this Court. In

that case the Court found that the charge levelled against the workman was one of theft of certain articles and the charge has been duly found

proved by the Labour Court. The Labour Court, however, set aside the order of dismissal passed by the management and ordered reinstatement

of the workmen on the ground that the workman concerned has put in 11 years of service without any blemish and, therefore, he may be reinstated

without continuity of service and without back wages. The said order was upheld by this Court on the ground that S. 11A confers jurisdiction on

the Labour Court to set aside the order of dismissal and to direct reinstatement of the workman on such conditions and terms as the Labour Court

deemed fit, and that the Labour Court has not exercised its discretion arbitrarily in that case. According to the learned Judges the workman was

not found guilty of a similar misconduct or any other misconduct during his 11 years of service under the management and that important factor has

weighed very much with the Labour Court in the course of exercising its discretion under S. 11A. We do not understand the said decision as

saying that the number of years of service should be taken as a relevant criterion for modifying the punishment or showing leniency in the matter of

punishment. The Labour Court as well as the learned Judges in that case has referred to the fact that the past conduct of the workman during the

11 years of his service has been without any blemish, and, therefore, the Labour Court's discretion can be exercised to show some leniency. As a matter of fact in that case the past conduct of the workman has been taken to be a relevant factor. If that is the principle laid down in that case then we do not see how that decision will help the 2nd respondent in this case. His past conduct has been found by the Labour Court to be blame-worthy and the Labour Court specifically says that if his past conduct were to be taken into account, the punishment imposed by the management cannot be interfered with. If past conduct is a relevant criterion in finding out whether the punishment is proportionate to the charges, then the Labour Court in this case is not justified in setting aside the order of dismissal and ordering reinstatement ignoring the past conduct of the 2nd respondent which had been taken into account by the management while imposition of the penalty. We are not in a position to say that in this case, the Labour Court has exercised its discretion judicially, The Labour Court has ignored the serious nature of the charges and proceeded to direct reinstatement without continuity of service and back wages, without considering the question as to whether reinstatement is expedient and proper in the circumstances of the case. As has been pointed out by the Supreme Court in *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, , is the expression "misconduct" covers a large area of human conduct, a distinction should be made between technical misconduct which leaves no trial of indiscipline and misconduct resulting in damage of employer's property and serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviours to grave indiscipline. Therefore, it is not possible to treat all cases of misconduct alike. The nature and the quantum of punishment have, therefore, to depend on the nature of the charges. In this case the charge proved, is one of gross indiscipline and with reference to such a charge, the order of dismissal cannot be taken to be unjustified as has been held by the Labour Court.

10. The Labour Court has given the following reasons as to why it came to the conclusion that the punishment by way of dismissal is disproportionate to the facts proved; (1) the second respondent has stated in M. 4 the reply given by him to the charge sheet dated 14-9-75 that

he did not do the acts attributed to him in M. 2 with any intention to cause loss in the production of the Mills and that he undertook not to repeat any such instance in future. (2) In this explanation in M. 8 he has stated that he prevented the substitute worker not to do work as the union leaders had advised him to remain there until they arrive there and this shows that he was persuaded to prevent the substitute worker from working by the union leaders and the prevention was not on his own. (3) The stoppage of the second shift at 2.40 p.m. may be due to the other workers striking work in sympathy with the second respondent and, therefore, that has no bearing in considering the question of punishment to be imposed on the 2nd respondent. (4) The second respondent had remained in the mill premises because the union leaders had advised him to do so, and, therefore, he is a victim of series of circumstances, and (5) The second respondent has put in 8 years of service and he is unmarried. The question is whether the above circumstances pointed out by the Labour Court would justify its interference with the penalty of dismissal from service imposed by the management.

11. As regards the first reason, we are of the view that the motive of the workman in doing the acts attributed to him may not be quite material.

Once refusal to do his work and disobedience of the orders of the superiors are admitted or proved, the seriousness of the charge will not stand

mitigated with reference to the motive with which the workman behaved. The undertaking given in the second respondent's explanation, M. 4 not

to repeat the same in future has no relevance specially when it is found that an earlier occasion also the second respondent has behaved in similar

manner and that he has been let off with warning. We are, therefore, of the view that merely because the workman who has admittedly seriously

misconducted himself cannot, by giving an undertaking and not to do so in future or by saying that he had no intention to cause loss to the

management, escape the penal for such serious misconduct. In this case it is seen that it is not a misconduct which is of very inconsequential nature.

The second respondent not only stopped his work without justification but refused to do his work even when ordered by his superiors. He also

continued to remain on the spot and prevented the substitute worker from doing his work and as a result of which the workers in the second shift

on the same day could not do their duty. Therefore, having interfered with the normal working of the mill for two shifts, he cannot merely say that he did it without any motive for causing loss to the management and that he had no intention of doing the same in future. Is such were the case in all cases of misconduct by workmen they can escape any penal action or claim leniency contending that they committed misconduct without any motive to cause loss of inconvenience to the management and that it will not be repeated in future. Whether an undertaking not to commit misconduct in future or whether the workman had, any motive in committing the misconduct has to be considered with reference to the gravity of charges levelled against him and not do hors them. It cannot be said that wherever an undertaking is given not to repeat the misconduct in future it could be taken to be an extenuating circumstance. Everything will depend upon the nature of the charges. The charge in this case is one of insubordination by the second respondent insulting in the stoppage of work substantially in two shifts, and if the workman is to be reinstated, the management will entirely lose the disciplinary control it has over the work force. The Labour Court is not, therefore, justified in taking the statement of the second respondent into consideration.

12. Coming to reasons 2 and 4 given by the Labour Court, it is seen that the Labour Court has proceeded on the basis that the second respondent is a victim of circumstances, for his remaining in the mill and in not permitting the substitute worker to work and continuing to stay in the premises in spite of thin order of suspension from. service pending enquiry was due to the advice given by the union leaders. We do not see how the second respondent who committed the misconduct by refusing to do his normal work, in spite of orders from his superiors and prevented the substitute worker from working and stayed in the mill premises contrary to the orders of suspension, could say that he did it at the advice of the union leaders. Even if the union leaders had given such an advice, the second respondent having procured such an advice by approaching them and seeking their advice cannot escape the consequences of his action. He cannot throw the blame on the union leaders. In the circumstances we are of the view that in no sense the second respondent can be taken to be a victim of circumstances and, in our view, he is a victim of his own action. A

workman cannot commit the misconduct even on the advice of his union leaders. Therefore, even assuming that the union leaders had given some

advice to the second respondent, that will not be a justification for the misconduct committed by him. We are, therefore, clearly of the view that the

Labour Court is in error in stating that the second respondent was a victim of circumstances and, therefore, he should be lightly dealt with.

13. The third reason given by the Labour Court is that the workers in the second shift would have struck work in sympathy with the second

respondent and, the work in the second shift. We do not see any discussion on this aspect in any portion of the award of the Labour Court. The

Labour Court merely presumes perhaps on the submission made on behalf of the second respondent that the workers in the second shift struck

work in sympathy with him. We do not see how the Labour Court can accept with a fact asserted by the second respondent without going into

that question. Whether the stoppage of work in the second shift was due to the conduct of the second respondent in remaining in the mill premises

and refusing to go out or whether it was due to the workers going on a sympathetic strike has not, in fact, been gone into by the Labour Court. As

a matter of fact, one of the charges against the second respondent is that his conduct in remaining inside the mill premises led to the stoppage of the

next shift also, and consequently the management had to give "no work" to the workers in the second shift. The Labour Court has held all the

charges levelled against the second respondent by the management had been duly proved. That means that the management's case that the second

respondent's continuing to remain inside the mill premises led to the stoppage of the next shift also has been accepted by the Labour Court. While

so, we do not see how the Labour Court can say that the stoppage of work in the second shift may be due to the workers striking work in

sympathy with the second respondent especially when the management's version is that it had to give "no work" order to all the workmen working

in the second shift because of his conduct. Therefore, it is not only a pure conjecture on the part of the Labour Court when it is said that the

stoppage of second shift in the mill might be due to the workmen striking work in, sympathy with the second respondent, but it also goes against its

own finding that all the charge levelled against the second respondent had been duly proved. Therefore, the third reason given by the Labour Court

cannot also be accepted.

14. As regards the fifth reason that the second respondent has put in 8 years of service and he is unmarried we are definitely of the view that this is

not a proper ground for the Labour Court for interfering with the penalty imposed by the management. When a workman is charged for a serious

misconduct as in this case, one cannot go by the number of years of service put in by the workman or by the workman or by his age or by his

married or unmarried status. If an unmarried worker is entitled to seek lenience in the matter of punishment as has been held by the Labour Court,

a worker who is married and has children to support is equally entitled to claim leniency. This will lead to a situation that all workmen whether

married or unmarried can claim leniency. Similarly, the number of years of service also cannot be relevant in the matter of imposition of punishment

for proved misconduct. If a worker has put in a longer service, he cannot be taken to be licensed to commit misconduct. If leniency were to be

thought of on the lines pointed out by the Labour Court it will lead to considerable anomalies. The misconduct committed by a worker who has put

in lesser years of service and by another worker who has put in longer years of service are to be treated differently in the matter of punishment with

reference to their period of service, it will clearly offend the principle of equality. In fact the tendency on the part of a person who has put in less

number of years of service to commit a misconduct will be more when compared with the tendency of a person who has put in longer number of

years of service and, therefore, if any indivious distinction is to be made in the matter of punishment, a person who is put in a longer period of

service should meet with more serious punishment. In our view, leniency can only depend on the nature of the misconduct alleged against the

workman and not on the question as to whether the workman is married and whether he has put in a particular period of service.

15. In this case we are of the view that none of the reason given by the Labour Court is tenable. Having regard to the fact that the misconduct is a

serious misconduct the punishment of dismissal from service cannot be said to be disproportionate as has been held by the Labour Court. The

Labour Court itself finds that if the second respondent's past conduct is to be taken into account, the order of dismissal may be justified. But the

Labour Court has not said as to why the management cannot take into consideration the second respondent's past conduct. As a matter of fact it is not disputed that the standing orders of the petitioner-management specifically provided that the management can take note of the past conduct while awarding a punishment for any misconduct. If such a serious misconduct on the part of the second respondent is to be taken lightly and he is reinstated as has been done by the Labour Court, it will seriously undermine the discipline in the establishment and the management cannot exercise its disciplinary control over its work force in an effective manner. The second respondent caused stop page of work in the mill for two shifts by his misconduct. Such a misconduct has to be taken to be a serious one and cannot be lightly brushed aside on the ground that he is a victim of circumstances.

16. In this view of the matter we cannot say that the Labour Court has exercised its jurisdiction strickly in accordance with S. 11A. The Labour

Court's award is, therefore, quashed and the writ petition is allowed. There will, however, be no orders as to costs.

17. The second respondent seeks leave to file an appeal against the judgment just now rendered to the Supreme Court. But we does not see that

the case is one for grant of leave for appeal to Supreme Court. Hence, the request for leave is refused.