
(1966) 07 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No's. 2583 of 1965 and 315 of 1966

Sri Rama Machinery Corporation (P) Ltd., Madras

APPELLANT

Vs

N.R. Murthy and Another

RESPONDENT

Date of Decision : 18-07-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 20, 33

Citation : AIR 1967 Mad 452 : (1967) 14 FLR 112 : (1966) 2 LLJ 899

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

This Judgment has been overruled by : Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, AIR 1976 SC 2062 :

(1976) 2 LLJ 259 : (1976) 4 SCC 606 : (1976) SCR 635 Supp : (1976) 1 SLJ 521

(1) These two writ petitions are connected and may be dealt with together. A dispute. I. D. 63 of 1963, concerning the discharge of the first

respondent herein and one Shanmugham was referred to the Labour Court u/s 10(1)(c) of the Industrial Disputes Act by the Government on 12-

12-1963. A compromise was entered into between the parties on 8-10-1964 by which the management agreed to reinstate Shanmugham from

25-9-1964 and to pay him three months' back wages. The management also agreed to reinstate the first respondent from 19-10-1964 and to pay

him back wages for three months. An award on the terms of the compromise was passed on 8-10-1964. On 19-10-1964 the first respondent was

reinstated and three months wages were paid to him, as agreed to in the management gave notice to 19 persons, including the first respondent,

intimating them that they were to be retrenched. Retrenchment compensation was paid and the management stated that the first respondent was

retrenched as the post of Supervisor had to be abolished due to shortage of work.

(2) The Award which was passed in terms of the compromise was published in the Fort St. George Gazette on 11-11-1964. On 9-12-1964, the

first respondent preferred a complaint in the Labour court under S. 33-A of the Act. The petitioner questioned the maintainability of the complaint.

On 5-6-1965 the Labour court held that the petition was maintainable. Against the said order. W. P. 2583 of 1965 is filed for the issue of a writ of

certiorari quashing the order of the Labour court holding that the petition is maintainable and W. P. 315 of 1966 is filed for the issue of a writ of

prohibition restraining the Labour court from proceeding further with the complaint of the first respondent.

(3) Mr. Ismail, learned counsel, for the petitioner management, submitted that the petition of the first respondent is not maintainable on two

grounds. Firstly, he submitted that the retrenchment was not during the pendency of any proceedings before a Labour court and as such neither

Section 33 nor section 33-A is attracted. Secondly, he submitted that the retrenchment of the first respondent would not fall under S. 33(1)(b) or

S. 33(2)(b), as the first respondent was not discharged or punished by dismissal or otherwise for any misconduct.

(4) It may be noted that the compromise was entered into on 8-10-1964 and the Award was passed on the same date. The Award was published

in the Fort St George Gazette on 11-11-1964. The first respondent was reinstated on 19-10-1964. The notice of retrenchment was given on 21-

10-1964. Now, the contention of the petitioner is that as the award was passed on 8-10-1964, and its terms were implemented on 19-10-1964

that there was nothing pending on 21-10-1964 when the notice of retrenchment was given. Section 33 provides that during the pendency of any

proceedings before a Labour court in respect of an industrial dispute, no employer shall alter the conditions of service or discharge or dismiss any

workman for any misconduct. Section 20 of the Act specifies when the proceedings commence and conclude. Sub-sec. (3) of S. 20 provides that

proceedings before a labour the date of the reference of the dispute for adjudication and such proceedings shall be deemed to have concluded on

the date on which the award becomes enforceable under S. 17-A.

We are not in this case concerned with the date of commencement of the

proceedings, the proceedings according to the section, shall be deemed to have concluded on the date on which the award becomes enforceable under S. 17-A. Section 17-A provides that an award shall become enforceable on the expiry of 30 days from the date of its publication under Section. Section 17 relates to the publication thereof in the Gazette. If the date of conclusion of the proceedings is taken to be the date on which the Award became enforceable under S. 17-A. which is 30 days from the date of publication in the Gazette, the date on which the proceeding shall be deemed to have been concluded, in this case, would be 11-12-1964, and as the retrenchment of the first respondent was before that date, it will be during the pendency of the industrial dispute attracting S. 33.

Mr. Ismail, learned counsel for the petitioner, submitted that the date given in section 17-A would only be applicable to cases where the Award was not complied with and becomes enforceable after the date of publication in the Gazette and not to cases where the Award had already been implemented. This contention cannot be accepted for the date of the conclusion of the proceedings is not a factual date but is only a national date, which is provided for in section 20(3), and for purposes of determining whether the proceedings has been concluded or not, the date that has to be taken into account is the date on which the Award becomes enforceable. Whether the terms of the award have been implemented or not, this date would be the date of expiry of 30 days after its publication u/s 17. It may be noted that section 17A(4) maintains a distinction between the date when the Award comes into operation and the date when the Award becomes enforceable. This contention of the petitioner is therefore rejected.

(5) The second contention of the learned counsel is that section 33(1)(b) and S. 33(2)(b) are applicable only when a person is discharged or punished, whether by dismissed or otherwise, for any misconduct. Learned counsel would emphasise the words ""punished for misconduct by dismissal"" and submit that when a person had been retrenched, even though for no proper reasons, the section will not be attracted, as it will not amount to discharge or dismissal as punishment for misconduct. This contention cannot be upheld, for section 33 is enacted for the purposes of maintaining the statutes quo and preventing the relationship between the management and the workers getting worse during pendency of the

industrial dispute. If the contention of the learned counsel for the petitioner is to be accepted, while section 33(2)(b) prohibited the discharge or dismissal as punishment for misconduct, the management would be at liberty to discharge or dismiss a worker without assigning any reasons. by way of victimisation or unfair labour practice. The word "misconduct" should be given a wide meaning to include discharge or dismissal by the management for inadequate or unsustainable reasons.

(6) In *Syamala Studios Madras v. Kannu Devar* (1966)79 MLW 329, I came to the conclusion that when the dismissal is deliberate and without any reasons, it cannot be said that the employer did not take action u/s 33 of the Act. Section 33-A was held to be applicable to such cases. Mr.

Ismail learned counsel for the petitioner, submitted that the above decision required reconsideration as the observations of the Supreme Court in

Management of Murgugan Mills Ltd. Vs. Industrial Tribunal Madras and Another, on which that decision is based, are not applicable to cases

arising under S. 33 of the Act. Mr. Ismail drew my attention to the finding of the Supreme Court in *Management of Murgugan Mills Ltd. Vs.*

Industrial Tribunal Madras and Another, where the Supreme Court found as a matter of fact that the employee's services were terminated for

dereliction of duty and go-slow in his work, which clearly amounted to punishment for misconduct. On that finding, it was submitted that section 33

of the Act is applicable, while in the present case the discharge or dismissal is not for any misconduct. This contention cannot be accepted, for

before the Supreme Court it was contended that the termination was not for any misconduct and was not necessary to obtain the approval of the

Tribunal. This contention was not accepted.

In dealing with the right of an employer to terminate the services of his workman, the Supreme Court referred to the decisions in *Buckingham and*

Carnatic Mills Ltd. v. Their Workers, 1951 II LLJ 314 (L.A.T.I.--Cal), *The Chartered Bank, Bombay Vs. The Chartered Bank Employees'*

Union, and *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, and observed that in *The Management of U.B. Dutt and*

Co. Vs. Workmen of U.B. Dutt and Co., the view taken by the Labour Appellate Tribunal was approved and it was held that even in a case like

the present, the requirement of bona fides was essential and if the termination of

service was a colourable exercise of the power or as a result of victimisation or unfair labour practice, the Industrial Tribunal would have the jurisdiction to intervene and set aside such termination. This observation is applicable to a case like the present, where the discharge was not for any misconduct but a discharge or dismissal pending an industrial dispute as a result of victimisation or unfair labour practice. Further, in my view, the word "misconduct" should be construed as to include any ground for dismissal or discharge, which is improper, amounting to victimisation or unfair labour practice. The second contention of the learned counsel has also to be rejected.

(7) The two writ petitions are dismissed with costs. Counsel's fee of Rs.100 in one writ petition. The Labour court will proceed with the petition pending before it according to law.

(8) Petitions dismissed.