
(1991) 02 MAD CK 0106
In the Madras High Court
Case No : W.A. No. 1271 of 1987

T. Muthusamy

APPELLANT

Vs

P.O., Labour Court, Coimbatore and another

RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1991) 2 LLJ 405

Hon'ble Judges : A.S. Anand, C.J.;D.J. Jagannadha Raju, J

Bench : Division Bench

Judgement

Dr. A.S. Anand, C.J.—The only question involved in this writ appeal is whether the Learned Single Judge was right in interfering with the exercise of discretion by the Labour Court u/s 11-A of the Industrial Disputes Act in directing reinstatement of the appellant without back wages in lieu of his dismissal ordered by the second respondent.

2. The appellant was charge-sheeted and four charges were levelled against him. The first charge related to the disobedience of the appellant to follow the order of the management regarding insertion of cones in Alkathene bags. The second charge pertained to the alleged instigation of the appellant to his co-workers, Somasundaram and Vallingiri also not to put the cones in the bag. The third charge revolved round the refusal of the appellant to clean the half cops as well as the anti-rab brush while the fourth charge related to the act of the appellant in refusing to leave the premises of the respondent even after having been suspended by an order dated December 14, 1981. A domestic enquiry was conducted but we need not concern ourselves with that as we find that subsequently a dispute was raised by the appellant relating to his non-employment when, after the domestic enquiry, after taking into consideration the findings of the Enquiry Officer, the appellant was dismissed from service. The dispute relating to the non-employment of the appellant was adjudicated upon by the Presiding Officer, Labour Court, Coimbatore. The Labour Court found that

the appellant had failed to obey the directions of the employer and was guilty of misconduct inasmuch as he refused to obey to carry out the work entrusted to him by his superior. The Labour Court also found that the appellant had refused to clean the half cops as well as the anti-rab brush. The charge with regard to the alleged instigation of Thiru Somasundaram and Vallingiri was held not proved and consequently it was found by the Labour Court that there was no material to show that the appellant has instigated his co-workers not to put the cones in bags. The last charge relating to the refusal of the appellant to move out of the mill campus after the receipt of the order of suspension on December 14, 1981 till 1 P.M. on December 18, 1981 was found proved. After finding these charges as proved, the Labour Court held that the appellant had committed misconduct. The Labour Court further opined thus :

"In this case the management has terminated the services of the workman for the aforesaid acts of misconduct. It may be noted that of the four charges proved against him, his refusal to keep out of the mill premises alone is of a serious nature. It is possible that the refusal on the part of the workman to insert cones in Alkathene bags and to clean half cops and anti-rub brush is on account of his mistaken notion that insertion of cones in bags does not form part of his duty."

After having expressed this opinion and referring to certain judgments, the Labour Court proceeded to examine whether the case was fit one for exercise of the discretion u/s 11-A of the Industrial Disputes Act. The Labour Court noticed that u/s 11-A of the Industrial Disputes Act, it could set aside an order of discharge or dismissal passed by the management and direct reinstatement of the workman on such terms and conditions as it thinks fit or give such other relief to the workman 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. The Labour Court then proceeded to give the circumstances which in its opinion appear to have been the mitigating circumstances. In the words of the Labour Court -

"It is not the case of the management herein that the past record of the workman is such that his presence in the factory is always a source of trouble. He has not indulged in any act of violence. He has not caused any damage or loss to the property of the mill. Even production has not been hampered on account of his act."

After recording the aforesaid mitigating circumstances, the Labour Court recorded as follows :

"It is true that the acts indulged in by the workman will seriously undermine the discipline in the establishment and the management cannot exercise its disciplinary control over its work force in an effective manner."

Finally the Labour Court Found :

"However, considering the totality of the circumstances, I am inclined to take the view that the charges proved do not warrant the extreme punishment of dismissal. Instead, withholding of his back wages would, in my view, be adequate punishment for the misconducts committed by the workman."

3. The management questioned the award of the Labour Court before the Learned Single Judge in Writ Petition No. 306 of 1984. Vide judgment dated October 13, 1987, the learned single Judge set aside the award of the Labour Court. The learned single Judge observed as follows :

"Para 29 of the order reflects that the Labour Court was indecisive even though it was quite conscious that taking into account the serious nature of the charges, the punishment of dismissal is not shockingly disproportionate, and that if he is to continue in the establishment, it would undermine the discipline in the Mills. A Court or a Tribunal could never be vacillating or hesitant. It has exhibited its weakness in imposing punishment even though aspect of law and in applying it to the facts, it had given definitive finding. It is only a dealing with punishment to be imposed, its inability to take appropriate decision is self-evident. This cannot be taken advantage by the workman."

4. Miss Monica Sakhrani, appearing on behalf of the appellant, submitted that the approach of the Learned Single Judge was not at all justified. Learned Counsel argued that since the discretion had been exercised by the Labour Court after taking into consideration only relevant factors and nothing irrelevant had gone into the making of the Award, the Learned Single Judge was not justified in interfering with the exercise of discretion by the Labour Court which was both judicial and judicious. Argued Miss. Monica Sakhrani that the Learned Single Judge was not justified in interference in exercise of the writ jurisdiction with the award of the Labour Court unless he came to the conclusion that the discretion exercised by the Labour Court u/s 11-A of the Industrial Disputes Act was either perverse or so unreasonable that no reasonable person could take that view and since no such finding had been recorded by the learned Single Judge, the judgment under appeal deserves to be set aside and the Award of the Labour Court is entitled to be restored.

5. Mr. T. S. Gopalan, appearing for the second respondent, on the other hand submitted that since the Labour Court itself had come to the conclusion that the acts indulged by the workman will seriously undermine the discipline in the establishment and the management would not be able to exercise its disciplinary control over its work force in an effective manner, the direction to reinstate an employee who has been found guilty of such acts of misconduct was not at all justified, and the learned Single Judge, therefore, was perfectly right in setting aside the Award of the Labour Court.

6. We have given our thoughtful consideration to the respective contentions raised at the Bar. In Engine Valves Ltd. Vs. Labour Court, Madras and another, this Division Bench, after dealing with a catena of authorities, considered the

power of the Labour Courts and Tribunals u/s 11-A of the Industrial Disputes Act and Raju, J speaking for the Bench summed up the law as follows : (p. 383)

"We are of the view that the power and discretion conferred u/s 11-A of the Act have to be exercised judicially and judiciously and that there should be sufficient indication in the order itself of the fact that the Court exercising powers u/s 11-A of the Act was aware of and alive to the norms and requirements of Section 11-A of the Act. The Court exercising powers u/s 11-A of the Act after finding the misconduct to have been proved is first obliged to advert itself to the question of necessity or desirability to interfere with the punishment imposed by the management and, if the management could not justify the punishment imposed thereafter, it must consider the question as to the relief that is to be granted to the employee. In so considering the relief to be granted, the Court has an obligation to consider whether the punishment imposed is disproportionate or shockingly severe to the charges held proved and if so whether a reinstatement has to be ordered or whether any other lesser punishment has to be imposed".

7. A perusal of the Award of the Labour Court shows that there is sufficient indication in that Award of the fact that the Labour Court was aware and alive of the norms and requirements of Section 11-A of the Act. Having found the misconduct of the appellant to have been proved it then proceeded to consider the desirability to interfere with the punishment imposed by the management. While considering the relief to be granted, the Labour Court took into account the various mitigating circumstances which have been extracted elsewhere in this judgment. The approach of the Labour Court thus was perfectly right. The Labour Court recorded a finding that in the totality of circumstances the charges proved do not warrant the extreme punishment of dismissal. We, therefore, find the Labour Court to have exercised the discretion properly and judiciously and after taking all such relevant factors into consideration as are required by law to be so taken. The Parliament by enacting Section 11-A of the Industrial Disputes Act had advisedly left a wide discretion in the Labour Court or the Tribunal and, in our opinion, that discretion was exercised by the Labour Court both judicially and judiciously. We are unable to find from the Award of the Labour Court any vacillation or hesitation, let alone weakness as was observed by the Learned Single Judge in the Award of the Labour Court. In our opinion, there was no inability on the part of the Labour Court to take appropriate decision, and since the Labour Court considered the relevant factors for holding that the charge of misconduct had been proved against the appellant and after taking the facts and the mitigating circumstances of the case into consideration, reduced the punishment to that of reinstatement without back wages instead of dismissal. The Learned Single Judge was, therefore, not right in observing that the order of the Labour Court reflected any indecisiveness, vacillation or hesitation. The Learned Single Judge also did not show how the Award of the Labour Court, and particularly the exercise of discretion by the Labour Court by passing orders u/s 11-A of the Industrial Disputes Act, was in anyway perverse or unreasonable. There was no error apparent on the face of the Award or the proceedings of the

Labour Court warranting any interference in exercise of the writ jurisdiction by the learned single Judge. We are, therefore, unable to subscribe to the view of the learned single Judge. In our opinion, the Award of the Labour Court did not merit any interference at all.

8. We accordingly, for what we have already said above, answer the question posed earlier in the negative and set aside the judgment of the learned single judge and dismiss the writ petition. Consequently the Award of the Labour Court is upheld and restored. There shall, however, be no order as to costs.