
(2000) 11 MAD CK 0050
In the Madras High Court
Case No : Writ Petition No. 22470 of 1993

Thangaraj A.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 92 FLR 858 : (2002) 1 LLJ 726

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; A.L. Somayaji, for S. Raghavan, for the Respondent

Final Decision : Partly Allowed

Judgement

Y. Venkatachalam, J.—The present writ petition is filed by the writ petitioner by name one A. Thangaraj, a resident of Moonrumavadi K.,

Pudur post, Madurai, invoking Article 226 of the Indian Constitution for the relief sought for setting aside the award passed against the petitioner

by the first respondent, viz., the Presiding Officer, Labour Court, Madurai, in I.D. No. 235 of 1990, dated April 23, 1993.

2. In support thereon, the petitioner has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to file the present

writ petition and requested this Court to allow the writ petition.

3. The other side contesting the second respondent/management has filed a counter-affidavit rebutting all the allegations levelled against them one

after another and requested this Court to dismiss the writ petition for want of merits.

4. The point for consideration is as to whether there are any valid grounds to allow the writ petition or not.

The point.

5. I have gone through the materials available on record, particularly with regard to the contents of the affidavit, counter-affidavit, besides the

award passed by the first respondent, viz., the Presiding Officer, Labour Court, Madurai. I have gone through the typed-set of papers and also

kept various points raised by counsel for the petitioner as well as the second respondent during the course of their arguments.

6. Having seen the entire materials available on record, the salient features of the present case on hand are as follows:

The writ petitioner by name A. Thangaraj was appointed before the second respondent as a trainee on December 22, 1983. Though the petitioner

was appointed as designated trainee no training was given. He was placed on probation from January 1, 1985, and was confirmed in service as a

boiler operator with effect from January 1, 1986. He was working before the second respondent on a monthly salary of Rs. 1,027. While he was

in service he was involved in the alleged misconduct of giving false complaint against his superior supervisor and also committed some irregularity.

Hence, the management ordered domestic enquiry for which an enquiry officer was appointed. The enquiry officer framed three charges against the

workman, the delinquent herein. The three charges levelled against the petitioner are as follows:

(i) That I gave a false complaint against Mr. Dwarakanath, a superior alleging that Mr. Dwarakanath threatened me with physical assault and

removal from the job;

(ii) that I made unnecessary propaganda about the report during working hours without attending to my work on July 31, 1989; and

(iii) that I obtained signatures from co-workers on a paper during working time without attending to my work.

7. A notice was served on the workmen to appear before the enquiry officer. The domestic enquiry was conducted and on the basis of the enquiry

report, the management came to a conclusion that charge No. 1 gave a false complaint against his superior officer is made out. Therefore, a show-

cause notice was issued on the petitioner as to why the capital punishment of

dismissal from service should not be awarded to the petitioner.

8. The workman/petitioner gave a reply stating that he did not commit any offence and the charges are not correct. He was not given any opportunity to defend his case in the domestic enquiry. The capital punishment of dismissal from service is disproportionate to the proved charges and further proceedings may be dropped against the petitioner.

9. Having received the explanation from the petitioner, the management came to a conclusion that the proved charge No. 1 to the effect that he gave a false complaint against his superior is a very serious offence and he does not deserve any mercy at the hands of the management and the capital punishment of dismissal from service is just and proper.

10. Aggrieved by the order of dismissal, the workman preferred a conciliation before the conciliation officer, the Deputy Commissioner of Labour concerned. Since the conciliation proceedings ended in failure, as there is no alternative the workman sent a representation to the Secretary, Labour and Employment, Government of Tamil Nadu, for referring the matter to the concerned Labour Court for adjudication. Having received the representation from the workman, the then Secretary, Labour and Employment, Government of Tamil Nadu, referred the matter to the Presiding Officer, Labour Court at Madurai, to give findings as to whether the dismissal order passed by the management against the workman is just and if not to what extent the workman is entitled to get the relief.

11. Having received the proceedings, the Presiding Officer, Labour Court, Madurai, registered the same in I.D. No. 235 of 1990 and commenced the enquiry and during the course of the enquiry, the Presiding Officer, Labour Court, did not record any oral evidence with regard to the documentary evidence. On behalf of the workman, exhibits W-1 to W-8 were marked and on behalf of the management M-1 to M-19 were marked. Having considered the entire materials available on record, the Presiding Officer, Labour Court, Madurai, the first respondent herein, came to a conclusion that the capital punishment of dismissal from service on the workman by the management is just and proper and the workman is not entitled to get any relief sought for and the point was answered against the petitioner herein. Aggrieved by the said findings, the petitioner has filed the present writ petition.

12. On behalf of the workman/petitioner, it is argued by learned counsel for the petitioner that the rule of law is very clear that the punishment should be proportionate to the proved charge, there is no dispute with regard to the settled law. Here the proved charge is that the workman gave a false complaint against his superior officer, that is made out. Even if it is made out, the capital punishment of dismissal from service is disproportionate to the proved charge. Learned counsel for the petitioner also relied upon a decision in Chandrapal Singh and Others Vs. Maharaj Singh and Another, . In the present case on hand, the proved charge against the petitioner is that he gave a false complaint against his superior officer on administrative side. With regard to the facts relied on by learned counsel for the petitioner, in the said ruling a false affidavit was filed in a Court of law. Therefore, I am of the clear view, that ruling is not helpful to the case of the petitioner herein.

13. Learned counsel for the petitioner further argued that assuming for a moment that even the charges are made out with regard to giving a false complaint against the superior officer by the petitioner for which the capital punishment of dismissal from service is disproportionate and the first respondent did not record anywhere about the unblemished service of the petitioner. The rule of law is very clear that if the previous service of the petitioner is taken into account, the punishment of dismissal is disproportionate. The petitioner is not a habitual offender of this nature and the previous service of the petitioner is free from punishment. In such a case, the law laid down by the Apex Court does not deserve any mercy on the authority. Even if the charges are proved with regard to giving a false complaint, when he is a first offender of this nature, the rule of law is very clear that a lighter punishment should be awarded on the delinquent. Instead of doing so, the capital punishment of dismissal from service of the petitioner has been awarded.

14. Learned counsel for the petitioner further brought to the notice of this Court that the first respondent, the Presiding Officer, Labour Court, Madurai, did not properly exercise Section 11-A of the Industrial Disputes Act, 1947 (hereinafter called as "the Act"), and the reasons given by the Presiding Officer, Labour Court, Madurai, are not correct, since the Presiding Officer came to a conclusion that if persons of this nature, who

are giving false complaint are given a lenient view, it is nothing but encouraging the persons of this type and, hence, he should be dealt with severely

and the Presiding Officer of the Labour Court, who is none other than the first respondent herein gave a finding since the workman gave false

complaint against his superior when once the charge is made out against the workman he should be dealt with severely and the punishment of

dismissal from service is just and proper.

15. On the other hand, learned senior counsel Mr. A.L. Somayaji, appearing for the second respondent/management argued that it is not a fit case

where it needs any interference by this Court with regard to the award passed by the first respondent against the workman. The award passed by

the first respondent against the workman/petitioner herein is well considered order and it is based on marking documentary evidence adduced by

both sides and the first respondent had examined the documents that are placed before it in an analytical manner and came to a conclusion that the

proved charge is very grave in giving a false complaint against his superior, it is not a small matter. The Presiding Officer of the Labour Court,

Madurai, in paragraph 12 of his order has categorically recorded that it is not a fit case to invoke Section 11-A of the Act. He also gave a finding

that if such person, who gave a false complaint against his superior, he should be dealt with severely. If lenient view is taken against such persons, it

is nothing but encouraging the person of such nature giving a false complaint against his superior officer in future. So his considered view is

recorded in paragraph 12 of the award. It is stated that the proved charge is very grave and if persons who are involved of such nature are not

dealt with severely it will lead to dangerous consequences. The other workmen also would stoop to that level, who follow the method adopted by

the delinquent workman and if such a situation is not nipped in the bud, it will lead to complication in future. Therefore, the Presiding Officer,

Labour Court, Madurai, has rightly exercised his power vested with him u/s 11-A of the said Act, and no relief was granted in favour of the

workman/ petitioner herein and it is a fit case where no relief can (sic) be granted in favour of the workman and the award passed by the first

respondent against the workman is perfectly valid and legal and the writ petition may be dismissed.

16. So far I have discussed the arguments advanced by learned counsel for the petitioner as well as learned senior counsel appearing for the second respondent. Now, I would like to examine as to whether the writ petitioner has made out a prima facie case in his favour. Now, I would also like to examine as to whether any valid and legal order is passed against the petitioner by the first respondent Labour Court, Madurai, from the point of view of the present case on hand coupled with the rule of law.

17. Admittedly, there is no dispute with regard to the fact that the workman is a permanent employee before the second respondent/management, who was working as boiler operator and he was approved probationer. There is also no dispute that he was involved in some misconduct and the management having been satisfied with the prima facie earlier misconduct as against the workman ordered domestic enquiry and the enquiry was conducted. It is alleged by counsel for the petitioner that during the course of enquiry, on behalf of the petitioner workman no ample and adequate opportunity was given to defend his case effectively before the enquiry officer. I have examined the enquiry report and from the said point of view, the enquiry officer has given sufficient time to the petitioner workman to defend his case and all the material papers have been supplied to him. It is not an ex parte enquiry and having considered the enquiry report, I am of the clear view that findings given by the enquiry officer are in accordance with the principles of natural justice and the enquiry report is legal and valid.

18. In the present case on hand now, I would like to examine the proved charge levelled against the petitioner that he gave a false complaint against his superior officer, and the award passed against the petitioner by the Presiding Officer, Labour Court, Madurai. It is canvassed on behalf of the management, the second respondent herein that the proved charge of giving a false complaint against workmen is fatal. It is also argued that the reasoning given by the first respondent in paragraph 12 of the award that if persons of this nature, who are giving false complaint against their superiors are given a lenient view. There will not be any safety for the superior officer if the complaint is accepted at the mercy of the subordinates.

19. The Presiding Officer, Labour Court, Madurai, the first respondent herein while giving the above reasons has categorically stated that it is not a fit case where Section 11-A of the said Act is attracted to award lesser

punishment. According to him, if a lesser punishment is awarded, certainly it is nothing but encouraging of indisciplined persons of this nature giving false complaint against superior officer and the position of the superior officer will become so delicate and also he gave reasons that person of this type should be dealt with severely, i.e., capital punishment of dismissal from service, it will not be considered that it is just and proper on the delinquent. Under those circumstances, the Presiding Officer, Labour Court, Madurai, gave a finding that the punishment of dismissal from service is just and proper and, accordingly, he confirmed the same.

20. With regard to the reasoning given by the first respondent in paragraphs 11 and 12 of the award if the Court exercises Section 11-A of the said Act and interferes with the capital punishment of dismissal from service, it is nothing but encouraging indiscipline and the safety and security of the superior officer will be in danger that is the general proposition with reference to the present writ petition. The rule of law is very clear that, while exercising Section 11-A of the Act, the Courts are bound to examine the previous service of the workman and it should be considered. It is settled law that if the previous service of the workman shows that he is an habitual offender of this nature, the capital punishment of dismissal from service is required.

21. The first respondent in an analytical manner analysed that if a lenient view is taken invoking Section 11-A of the said Act, and awarded lesser punishment other than the dismissal from service, it amounts to encouraging indiscipline and the safety and security of the superior officer will be in danger. That is the general proposition. With reference to the present case on hand the first respondent has decided the fate of the workman/petitioner herein. There is no material on record about the previous service condition of the workman/petitioner that he was habitual offender of this nature. Since the service condition of the petitioner is without any stigma or remarks, Section 11-A of the said Act can be extended to the writ petitioner. In view of the elaborate discussion on various aspects, I am of the view that the above reasoning given by the first respondent that it is not a fit case where Section 11-A will not be attracted is not correct, in view, of the fact that the petitioner's previous service is free from any remarks and he is the first offender of this nature. Hence, the award of the

capital punishment of dismissal from service is disproportionate to the proved charge and such dismissal order is hereby set aside.

22. In view of my earlier discussion, it is just and proper that a fresh appointment is awarded to the petitioner. For the foregoing reasons, the petitioner is not entitled to back wages, attendant benefits, continuity of service and he is only entitled to get fresh appointment before the second respondent.

23. In my considered view, it is just and proper punishment for the workman/petitioner herein appointing him as fresh candidate, by directing the management/second respondent to appoint the petitioner as fresh candidate. The petitioner is not entitled to get back wages, he is not entitled to get attendant benefits, he is not entitled to get pension benefits on the previous service, that has been served before the second respondent herein by the workman. The petitioner is entitled to get fresh appointment within 30 days from the date of receipt of a copy of this order.

24. In the result, the writ petition is partly allowed setting aside the award passed by the first respondent in I.D. No. 235 of 1990, dated April 23, 1990, and (1) directing the second respondent/management to appoint the workman/petitioner as a fresh candidate within 30 days from the date of receipt of a copy of this order; (2) the workman is not entitled to get any back wages, continuity of service, attendant benefits or any monetary benefits; (3) for the purpose of pension after his retirement before the second respondent/management, the past service rendered by the petitioner from the date of entering into service till his fresh appointment will not be calculated for pensionary benefits. This writ petition is ordered accordingly, with the above modification. But, in the circumstances, no costs.