
(2001) 07 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 8080 of 1995 and WMP No's. 12935, 23386 and 23387 of 1995

The Coimbatore Devanga Weavers Co-operative Production and Sales Society Ltd.

APPELLANT

Vs

C. Natarajan and The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2001) 07 MAD CK 0020

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.M. Loganathan, for the Appellant; S. Ayyathural and S.P. Prabakaran, AGP(E), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned Counsel appearing for the Petitioner and learned Additional Government Pleader (Education) for

Respondent No. 2.

2. The Petitioner, a Cooperative Society has filed this writ petition against the award of the Labour Court, Coimbatore directing the reinstatement

of Respondent No. 1 without payment of backwages. The first Respondent while working as an Appraiser under the Petitioner Cooperative

Society, was subjected to a disciplinary proceeding on the allegation (hat he had not credited a sum of Rs. 500/- and misappropriated the same

and he had also misappropriated the value of 180 kgs of raw silk. In the domestic enquiry, the first Respondent was found guilty and ultimately the

order of dismissal was passed. The matter was agitated before the Labour Court. The Presiding Officer, Labour Court came to the conclusion that

20 kgs of raw silk had been distributed but entered as 200 kgs, and the Petitioner had misappropriated 180 kgs of raw silk worth, Rs. 11,700/-

stood proved.... The Presiding Officer further concluded that the charge relating to Rs. 500/- was proved. In spite of such conclusion to the effect

that the charges of misappropriation had been proved, the Labour Court has directed reinstatement of Respondent No. 1 by concluding as follows:

Such misappropriation of society's funds is definitely a mistake. But it is seen that the Petitioner has been in service for a long time. The Petitioner

has misappropriated about Rs. 12,000/- worth of goods and cash. In the circumstances of the case and the long service of the Petitioner, 1

consider that justice will be rendered, if the Petitioner can be reinstated with continuity of service, but without backwages for the aforesaid charges.

The aforesaid direction of the Labour Court is under challenge in this writ petition.

3. During the pendency of the writ petition, the operation of the award had been stayed subject to compliance with Section 17-B of the Industrial

Disputes Act. It is not in dispute that the direction has been complied with.

4. The learned Counsel appearing for the Petitioner submitted that in view of the conclusion of the Labour Court that the first Respondent has

misappropriated about Rs. 12,000/- worth of goods and cash, the ultimate direction regarding reinstatement has to be taken to be illegal and to be quashed.

5. It is strange that the Labour Court after having concluded that there had been misappropriation, directed reinstatement and that too without

giving any cogent reasons. It appears to be a case of misplaced sympathy. Merely because the workman had been in service for a long time, it did

not give him licence to misappropriate the fund of the cooperative society. The conclusion of the Labour Court that the punishment was excessive,

compared to the nature of allegation, is wholly misconceived. In this connection. The decision of the Supreme Court reported in Janatha Bazar

(South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., appears to be

apposite. In the aforesaid case, the employees under the cooperative society had been charged for breach of trust and misappropriation of goods.

After holding an enquiry, the Management dismissed all of them. The Labour Court found that the charges of breach of trust and misappropriation

have been proved, but, in exercise of its discretionary power u/s 11-A of the Industrial Disputes Act, directed the reinstatement of the employees

with 25% of backwages. The Labour Court further ordered for continuity of their service by imposing penalty of stoppage of 5 increments with

cumulative effect. The aforesaid award was confirmed by the learned single Judge of the Karnataka High Court as well as by the Division Bench in

appeal and the lis ultimately reached the Supreme Court. It was observed by the Supreme Court as follows:

... As stated above, the learned single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges

against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been

established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management

removing the workmen from the service and reinstating them with 25% with backwages. Once act of misappropriation is proved, may be for a

small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well

settled. (Re. Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, In U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 this

Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was

removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing

tickets to 23 passengers for a sum of Rs. 2.35 but recovering Rs. 5.35 per head and also by making entry in the way bill as having received the

amount of Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that Corporation removing

the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development

Corporation Limited and another, etc. Vs. Kala Singh, etc., his Court considered the case of a workman who was working as a Dairy Helper-

cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk

centres and also inflated the quality of fat contents where there were less fat contents. The Court held that in view of proof of misconduct a

necessary confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to

exercise the power u/s 11-A of the I.D. Act to grant relief with minor penalty.

On the basis of the aforesaid conclusion, the Supreme Court ultimately allowed the appeal and observed that the High Court materially erred in

confirming the directions given by the Labour Court. It was further observed... in case of proved misappropriation, in our view, there was no

question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot

substitute the penalty imposed by the employer in such cases.

6. The facts and conclusions in the present case appear to be identical with the facts and conclusion of the aforesaid judgment. In the present case,

the employer after having found misappropriation by the employee, had directed dismissal of the employee. The said findings were confirmed by

the Labour Court and yet the Labour Court thought it fit to substitute the punishment by directing reinstatement. It appears as if the Labour Court

was trying to reward the employee for the misappropriation. As already indicated it is a glaring case of misplaced sympathy by the Labour Court,

concerned. Such award of the Labour Court cannot be sustained and it is accordingly quashed. The order passed by the Cooperative Society

dismissing the first Respondent is restored. The Writ Petition is accordingly, allowed.

7. Since the Respondent is now removed from service, I do not consider it as a fit case for awarding costs. Consequently, WMP. Nos. 12935,

23386 and 23387 of 1995 are closed.