
(1980) 08 MAD CK 0003
In the Madras High Court

The Management of Machine Tools and Ancillaries Casting (P.) Ltd. APPELLANT

Vs

The Additional Labour Court and Others RESPONDENT

Date of Decision : 18-08-1980

Acts Referred:

Citation : (1980) 93 LW 775 : (1981) 1 MLJ 133

Hon'ble Judges : M.M. Ismail, C.J

Bench : Division Bench

Judgement

M.M. Ismail, C.J.—This is an appeal against the order of Mohan, J. dated 6th August, 1976 dismissing Writ Petition No. 2881 of 1973

filed by the appellant herein. The matter lies within a very narrow compass. Respondents 2 to 9 were the employees of the appellant herein and

their services were terminated. The non-employment of those persons was referred to the Additional Labour Court, Madras. The Additional

Labour Court by its award dated 9th. February, 1973 directed reinstatement of the respondents 2 to 9. To quash this award, the writ petition was

filed and the writ petition having been dismissed, the present appeal has been filed

2. The Labour Court as a fact found that the domestic enquiry was fair and proper. Nevertheless it held that the dismissal was invalid on the

ground that a notice to show cause why the punishment of dismissal should not be imposed on the respondents 2 to 9 was not issued to them

before passing the order in question as required by Order 17(4)(c) of the Model Standing Orders applicable to the appellant's concern as

contained in the Tamil Nadu Industrial Employment (Standing Order) Rules, 1947. It is admitted that in this case there is no registered standing

orders and consequently it is the Model Standing Orders that will apply to the appellant herein. Order 17(4)(c) of the model standing Orders, reads as follows;

If on the conclusion of the enquiry or as the case may be, of the criminal proceedings the workman has been found guilty of the charges framed against him and if it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly.

There are more than one provisos to this order and it is unnecessary to refer to those provisos.

3. Admittedly, after the domestic enquiry was over, no opportunity as contemplated in Order 17(4)(c) of the Model Standing Orders was given to respondents 2 to 9. It is in view of this only that the Labour Court held that the order of dismissal was invalid and the workmen were entitled to reinstatement. It is the correctness of this conclusion that is challenged before us.

4. The learned Counsel for the appellant contended that even though the appellant may be bound by the Model Standing Orders as a contract

between the appellant and its employees, an Industrial Tribunal or Labour Court is not bound by the Model Standing Orders and its jurisdiction is

wide, and consequently, even when, the Labour Court comes to the conclusion that the opportunity contemplated by Order 17(4)(c) of the Model

Standing Orders was not given to respondents 2 to 9, it was for the Labour Court to give such an opportunity to find out whether the order of

dismissal was proper or not. The Supreme Court had occasion to consider a Model Standing Order similar to the one in the present case in

Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen, . After referring to Standing Order 26; Clause (c) which provides that where it is proposed

to inflict the punishment of dismissal for any misconduct, the workman shall be given notice in writing to show cause within a specified period why

the proposed punishment may not be awarded and along with such notice he shall be given a copy of the findings of the enquiring officer on the

charge or charges, the Supreme Court observed as follows:

This clause clearly contemplates a notice to be given to the workman for the

purposes of enabling him to show cause within a specified period as to why the proposed punishment of dismissal should not be inflicted on him. The notice is required to, be given not as a mere idle formality; it has a meaning and a purpose. It is intended to provide an opportunity to the workman to show cause against the proposed punishment of dismissal. The workman may show that the findings of the enquiring officer are not justified on the evidence on record or that even if the findings are justified, they do not warrant the extreme penalty of dismissal from service having regard to the nature or gravity of the misconduct, the past record of the workman and any other extenuating circumstances. The notice must, therefore, give a reasonable opportunity to the workman. That is a condition precedent which must be satisfied before an order of dismissal can be validly passed by the employer.

5. Having regard to these observations of the Supreme Court, it is clear that the order of dismissal passed on respondents 2 to 9 in the present case without giving an opportunity to them as contemplated in Order 17(4)(e) of the Model Standing Orders is invalid and therefore the Labour Court was justified in setting aside the same.

6. However, the learned Counsel for the appellant contends that the decision of the Supreme Court does not mean that the respondents 2 to 9 can be straightway reinstated and that the Labour Court must itself conduct an enquiry even with regard to the proposed punishment. For this purpose, the learned Counsel relied on paragraph 11 of the same judgment of the Supreme Court to which we have drawn attention. In that paragraph, the Supreme Court referred to its two earlier decisions in *Oriental Textile Finishing Mills, Amritsar Vs. Labour Court, Jullundur and Others*, . and *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, . and observed as follows:

It was for this reason that in the present case the appellant made the application dated 12th March 1973 praying that if for any reason the Industrial

Tribunal was inclined to take the view that the domestic enquiry held by the appellant was improper or not according to law, the appellant should

be given an opportunity to prove its case on merits and for that purpose file and prove additional documents. This was clearly a request to the

Industrial Tribunal to try the issue as to the validity of the domestic enquiry as a preliminary issue and if the finding on this preliminary issue was

against the appellant, to give an opportunity to the appellant to adduce evidence for the purpose of establishing that the orders of dismissal were

justified. Now, the question as to what is the procedure to be followed by the Industrial Tribunal when such a request is made by the employer,

came up for consideration before this Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, .

6. In this case, there was no such request made by the appellant herein before the Labour Court, even assuming that on the basis of any such

request, the Labour Court can take further action. In view of this, the above decision is not of any assistance to support the contention of the

learned Counsel for the appellant that merely on the finding that there is infraction of Order 17(4)(c) of the Model Standing Orders, respondents 2

to 9 were not entitled to be reinstated. The writ appeal therefore fails and the same is dismissed. There will be no order as to costs in this appeal.