

(1989) 11 MAD CK 0029
In the Madras High Court
Case No : Writ Appeal No. 707 of 1983

The Management of Tafe	Vs	APPELLANT
Venkataraman and Others		RESPONDENT

Date of Decision : 01-11-1989

Acts Referred:

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

Citation : (1990) 2 LLJ 468

Hon'ble Judges : S. Nainar Sundaram, J; Bellie, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This writ appeal is directed against the order of the learned single Judge in W.P. No. 5313 of 1979. That writ

petition, in its turn, was directed against the award of the second-respondent in I.D. No. 224 of 1978. In that industrial dispute, there was an

adjudication by the second-respondent, on the question of the propriety of the non-employment of the first-respondent by the appellant. The first-

respondent's services with the appellant were terminated in disciplinary action. The second-respondent upheld the propriety of the disciplinary

action on merits. However, on the question of punishment, the second-respondent chose to interfere and directed reinstatement of the first

respondent by the appellant, denying the first respondent back-wages from 17 August 1976, when he was suspended pending disciplinary action

till the date of reinstatement. This award of the second-respondent had been examined by the learned single Judge and the learned single Judge

found no warrant to interfere with the discretion exercised by the second-respondent on the question of punishment and dismissed the writ petition.

That is how the writ appeal has come to be preferred by the appellant.

2. Mr. M. R. Narayanaswamy, learned counsel for the appellant, would submit that when the nature of the charge is considered, the punishment of

dismissal from service could not be said to be harsh an keeping in mind the need to maintain discipline in the establishment, that punishment ought

to have been sustained both by the second-respondent and by the learned single Judge. The charge, that was levelled against the first respondent

was that he slapped the charge-hand, while on duty, on 13th August, 1976. The finding of the second-respondent, as confirmed by the learned

single Judge, is that, this did happen and the domestic enquiry was not in any manner vitiated and it must be held. On 11th August 1976, the first-

respondent, during night-shift was found sleeping by the charge hand. The appellant issued a memorandum to the first-respondent on 13th August,

1976, calling for explanation. On 16th August, 1976, the first-respondent wrote a letter to the appellant that on 11th August, 1976 while he was

working in the night-shift he had taken ill on account of dysentery. The charge-hand complained to the appellant that on 13th August, 1976, the

first-respondent slapped him stating that the charge hand was responsible for the issuance of the memorandum by the appellant. On 17th August,

1976, the charge memorandum with regard to the misconduct of slapping of the charge hand by the first-respondent was issued by the appellant.

On the same day, the first-respondent replied and he denied the incident and the first respondent was also speaking about the strained relationship

between him and the charge-hand. We have traced the above facts only to show as to how the incident of slapping, as found against the first-

respondent, happened.

3. The well accepted principle on the question of exercise of powers u/s 11A of the Industrial Dispute Act, 1947, hereinafter referred to as the

Act, to evaluate the gravity of misconduct for the purpose of the punishment to be imposed on a workman is, that once that power has been

exercised, this Court under Article 226 of the Constitution of India, in the absence of any important legal principle, should not undertake to re-

examine the question of adequacy or inadequacy of the materials for interference by Labour Courts. The second-respondent adverted to the case

of the appellant that the first-respondent was in the habit of flouting the

instructions of his superiors. In paragraph 9 of the award, the second respondent points out that there is dearth of material as to the actual order passed on such allegation. Rightly the second-respondent eschewed the suggestion on the part of the appellant to maintain the extreme penalty of dismissal from services on the ground that the past conduct of the first-respondent was not complimentary to him. In paragraph 10 of the award, the first-respondent (second-respondent ?) has discussed the question as to whether the punishment imposed by the appellant, on the first-respondent was commensurate to the gravity of the misconduct or as to whether it was disproportionate. The second-respondent, after such discussion, came to the conclusion that the punishment was disproportionate. That was why the second-respondent, while ordering reinstatement of the first-respondent, deemed it to deny him wages for the period from 17th August, 1976 till the date of reinstatement. This was within the purview of the powers of the second-respondent. The learned single Judge, in our view, rightly declined to interfere with this discretion, on the part of the second-respondent. It cannot be stated that the second-respondent did not exercise the discretion judicially. The view taken by the second-respondent was that the punishment imposed by the appellant was disproportionate to the degree of guilt of the first-respondent. The second respondent has given reasons for his decision. Such being the position, we are not persuaded to interfere in writ appeal and accordingly this writ appeal is dismissed. But we make no order as to costs.