

(1955) 11 MAD CK 0002
In the Madras High Court

The Managing Director, Madura Mills Co. Ltd.

APPELLANT

Vs

S. Muthiah and Another

RESPONDENT

Date of Decision : 28-11-1955

Acts Referred:

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7(1)(a)
Industrial Disputes Act, 1947 — Section 33(b)

Citation : AIR 1956 Mad 589 : (1956) 1 MLJ 462

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—The management of the Madura Mills Co. Ltd., Madurai, applied under Article 226 of the Constitution for the issue of a

writ of certiorari to set aside the order of the Labour Appellate Tribunal at Madras dated 18th June, 1955.

2. Industrial disputes between the management and the workers of Madura Mills were referred to the Industrial Tribunal at Madurai for

adjudication. One set of disputes was numbered as 23 of 1954. Those disputes were referred on 14th April, 1954. The Industrial Tribunal gave its

award, and on publication in the gazette it became enforceable from 25th September, 1954. The other set of disputes numbered as 38 of 1954

was referred on 3rd July, 1954, and the award of the Tribunal became enforceable on 22nd October, 1954.

3. During the pendency of those proceedings before the Industrial Tribunal, Madurai, but independent of them petitions were presented to the

Industrial Tribunal under Sections 33 and 33-A of the industrial Disputes Act, 1947 (Act XIV of 1947). Muthiah was one of the workmen in the

Mills. It was common ground his permanent ticket of employment was that of a

doffer in the spinning department of the Mills. It was equally common ground that from about 1945 due to an injury to one of his arms, the management assigned him the lighter work of bobbin picking in the same department. In 1954 the management effected certain improvements in the mechanical appliances for conveyance of bobbins to the ring frame section in the spinning department and the management found the need to reduce the number of workmen engaged in bobbin picking. The management directed 20 of the workmen hitherto employed in bobbin picking to work as doffers. Muthiah was one of them. He alone among the 20 protested against the change in work. He refused to carry out the order of the management. Industrial Disputes Nos. 23 of 1954 and 38 of 1954 were then pending adjudication before the Industrial Tribunal. Muthiah complained to the Industrial Tribunal u/s 33-A of the Industrial Disputes Act, that the management had contravened the provisions of Section 33 of the Industrial Disputes Act by changing the conditions of service in the Mills applicable to him. The management in its turn presented a petition to the Industrial Tribunal u/s 33(b) of the industrial Disputes Act for permission to dismiss Muthiah for disobedience of the lawful orders issued by the management.

4. The two petitions were heard together by the Industrial Tribunal and they were disposed of on 18th December, 1954. By then, the enquiry into the main industrial disputes Nos. 23 of 1954 and 38 of 1954 had terminated, and even the award in I.D. No. 38 of 1954 had become enforceable on 22nd October, 1954. The petitions under Sections 33 and 33-A of the Industrial Disputes Act, it should be remembered, had been filed even during, the pendency of the enquiry into the Industrial Disputes Nos. 23 and 38 of 1954. On 18th December, 1954, the Industrial Tribunal dismissed the application presented by Muthiah. It allowed the application presented by the management u/s 33(b) of the Industrial Disputes Act and granted the management permission to dismiss Muthiah.

5. Muthiah appealed to the Labour Appellate Tribunal. It was a consolidated appeal against the orders both on the application presented by Muthiah u/s 33-A. and on the application presented by the management u/s 33(b) of the Industrial Disputes Act.

6. On 31st January, 1955, the management dismissed Muthiah from service.

7. The Appellate Tribunal held that, as the industrial disputes referred to the Industrial Tribunal, Madurai, for adjudication had terminated long before 18th December, 1954, the Industrial Tribunal had no jurisdiction to grant the permissions sought by the management in the application it had presented u/s 33(b) of the Industrial Disputes Act. That order was, therefore, set aside. In dealing with the application presented by Muthiah u/s 33-A of the Industrial Disputes Act, the Appellate Tribunal came to the conclusion, that though what had been ordered by the management was only change in assignment of work it amounted in a change in the conditions of service within the meaning of Section 33(a) of the Industrial Disputes Act. As meanwhile Muthiah had been dismissed from service, the Appellate Tribunal ordered that Muthiah should be reinstated in service, and that the pay and allowances due to him from the date of dismissal, which was wrongful, should be paid to him. It was the validity of this order that the petitioner challenged in the application for the issue of a writ of certiorari.

8. The two main grounds on which the attack on the validity of the order of the Appellate Tribunal was based were: (1) The Appellate Tribunal had no jurisdiction to deal with an appeal against the order of the Industrial Tribunal on the application of the Petitioner presented u/s 33-A of the Industrial Disputes Act, because the requirements of Section 7 of the Industrial Disputes Appellate Tribunal Act (XLVIII of 1950) were not satisfied; (ii) in any event, the requirements of Section 33(a) of the Industrial Disputes Act were not satisfied. A change in the assignment of work, which was all the Appellate Tribunal found, did not amount to a change in the conditions of service applicable to the workmen within the meaning of Section 33(a) of the Industrial Disputes Act.

9. It is no doubt true that Muthiah, the first respondent in this application, presented a consolidated appeal against the orders of the Industrial Tribunal both on the application presented by the management and on the application presented by himself. Even if a substantial question of law arose in the appeal against the order of the industrial Tribunal on the application presented by the management u/s 33(b) of the Industrial Disputes Act, that would not make it a substantial question of law also in the appeal preferred against the order of the Industrial Tribunal on the application

presented by Muthiah u/s 33-A of the Industrial Disputes Act. That a single order was passed by the Industrial Tribunal and a single memorandum

of appeal was presented by Muthiah and that the questions were disposed of by a single order by the Appellate Tribunal do not really affect the

question at issue. It was really two appeals that the Appellate Tribunal had to dispose of, and the subject-matter of each appeal was really distinct.

I am not concerned now with the question, whether a substantial question of law arose for determination, within the meaning of Section 7(1)(a) of

the Industrial Disputes (Appellate Tribunal) Act in the appeal preferred against the order of Industrial Tribunal on the application preferred to it by

the management u/s 33(b) of the Industrial Disputes Act. My only concern is with the question, whether a substantial question of law arose in the

appeal against the order of the Industrial Tribunal, in so far as it related to the application of Muthiah preferred u/s 33-A of the Industrial Disputes

Act.

10. The jurisdiction of the Appellate Tribunal was obviously limited to the statutory right of appeal created by section 7 of Industrial Disputes

(Appellate Tribunal) Act. It was common ground that the appeal did not fall u/s 7(1)(b) of the Industrial Disputes (Appellate Tribunal), Act. Only

Section 7(1)(a) of the industrial Disputes (Appellate Tribunal) Act could have been invoked and the test to be satisfied as laid down by the

Industrial Disputes (Appellate Tribunal) Act was that the appeal involved a substantial question of law.

11. Mr. Rajah Iyer, learned Counsel for the petitioner, contended that even if the Appellate Tribunal was of the view, at the stage when the

consolidated appeal was admitted, that a substantial question of law arose for determination, its jurisdiction to determine the appeal was still

governed by Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act, and its jurisdiction depended upon the continuance of a substantial

question of law for determination in appeal. It is not necessary to express any opinion on the soundness or otherwise of this contention at this stage.

12. Both before the Industrial Tribunal and the Labour Appellate Tribunal the Union, which represented Muthiah, conceded that the management

had the right to transfer a workman from one department to another. It was common ground that the pay and other conditions of service of

Muthiah underwent no change when he was asked to work as a doffer. Both before the Industrial Tribunal and before the Labour Appellate

Tribunal, the contention put forward on behalf of Muthiah was that the change in the assignment of work was a colourable exercise of the power

the management had to order a transfer of a workman from one department to another, and that it was really a case of victimisation in revenge for

the activities of Muthiah as a member of his Labour Union. The Industrial Tribunal found that the charge of victimisation had not been established.

The Appellate Tribunal did not expressly or even impliedly reverse that finding, though in paragraph 8 of its order, the Appellate Tribunal stated:

In the circumstances of the case it looks more probable that the work of a doffer must have been assigned to him with some ulterior motive all of a

sudden on one particular date, though in fact he had been actually doing the work of bobbin picking for more than 9 years, and that it was

physically impossible for him to do the doffer's work.

In paragraphs 22 and 25 of its order, the Industrial Tribunal recorded that it was not even a case of transfer, because Muthiah's permanent

assignment was that of a doffer and when he was asked to go back to his permanent post, there was not even any "transfer". The Labour

Appellate Tribunal did not reverse this finding either. What, however, the Labour Appellate Tribunal categorically recorded as a finding in

paragraph 8 was, "We are of the view that this is the case of an assignment of work."

13. If it was a case of a change in the assignment of work, I am really unable to see how it would amount to a change in the conditions of service of

the workmen within the meaning of Section 33(a) of the Industrial Disputes Act.. The conditions of service remained the same, even after the

change in the assignment of work, as far as Muthiah was concerned. It is thus really a case of there being no evidence on record on which the

Labour Appellate Tribunal could base its final conclusion, that there was a change in the conditions of service applicable to that class of workmen

to which Muthiah belonged, even though there was a change in the assignment of work from bobbin picking to that of a doffer. That ground by

itself should be enough to hold that, even if the Appellate Tribunal had jurisdiction, the exercise of that jurisdiction was vitiated.

14. In my opinion the learned Counsel for the petitioner was also well founded in his contention, that the Labour Appellate Tribunal had no jurisdiction at all to determine the appeal against the order of the Industrial Tribunal on the application presented by Muthiah u/s 33-A of the Industrial "Disputes Act, because no substantial question of law arose for determination within the meaning of Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act. A change in the conditions of service should normally be basically a question of fact, in which case, it is difficult to see how a question of law would arise, much less a question of substantial law, which is what Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act requires. In this case there was not even a change in the conditions of service within the meaning of Section 33(a) of the Industrial Disputes Act.

15. It is true that the question in the specific form in which it has been raised and argued before me whether there was a substantial question of law for determination by the Appellate Tribunal, does not appear to have been raised before the Labour Appellate Tribunal itself. There was certainly no determination of such an issue by the Appellate Tribunal. The learned Counsel for the first respondent contended that as the petitioner had submitted to the jurisdiction of the Labour Appellate Tribunal, it was not open to the petitioner in these proceedings under Article 226 of the Constitution to challenge the jurisdiction of that Tribunal. In the circumstances of this case, I am unable to hold that the fact, that the petitioner participated in the proceedings before the Labour Appellate Tribunal, which covered not only the order of the Industrial Tribunal on the application preferred to it by the management but also the application presented to it by Muthiah, established that there was such a submission to jurisdiction which would disentitle the petitioner to the discretionary relief of a writ of certiorari. That the Labour Appellate Tribunal had no jurisdiction is my finding. As the learned Counsel for the petitioner urged, it was really only in these proceedings under Article 226 of the Constitution that such a contention could have been put forward.

16. The petition is allowed. The rule is made absolute. The order of the Labour Appellate Tribunal, in so far as it set aside the orders of the Industrial Tribunal on the application preferred to it by the first respondent u/s

33-A of the Industrial Disputes Act, is set aside. No order as to costs.