
(2003) 10 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 16188 of 1998 and W.M.P.Nos. 24487 of 1998, 279, 1434 and 1435 of 1999

The Managing Director, Pullikai Mills

APPELLANT

Vs

The Presiding Officer, Labour Court and M. Ramasamy

RESPONDENT

Date of Decision : 06-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 LLJ 1148

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : M.R. Raghavan, for the Appellant; V. Govardhanan, for R2, for the Respondent

Judgement

A.K. Rajan, J.—The petitioner filed the above writ petition praying to issue a writ of Certiorari to call for the records on the file of the first

respondent in I.D. No. 274 of 1992 dated 25.08.1995 and quash the same.

2. The brief facts that are necessary for the disposal of the writ petition are as follows:

The second respondent was employed as Apprentice in the weaving department of the petitioner. On 31.10.1988, the second respondent

approached the Weaving Master at about 11.45 a.m. and submitted two leave letters of his co-employees and compelled him to grant leave to

those persons. The Weaving Master objected the same explaining the reasons for rejection of leave letters. On hearing the same, the second

respondent quarreled with him and behaved very indecently. For that action, the second respondent was suspended for one day and on the next

day, the second respondent threatened the Weaving Master with dire

consequences and filthy languages and also threatened him to take away his life. Summarily the second respondent was dismissed without conducting any enquiry. Against the said dismissal, he raised an industrial dispute in I.D.No.274 of 1992 before the first respondent herein. Before the Labour Court, Salem, the petitioner examined three witnesses on his side and the second respondent examined himself as a witness and 16 documents were marked by the parties. Though the third witness was examined, he was not cross-examined by the second respondent herein and the first respondent after going through the evidence found that the evidence adduced was not sufficient to prove the case of the management and, it set aside the order of termination of the second respondent and passed an award to reinstate the second respondent with full back wages. Against the said award, the management has filed the present writ petition.

3. The second respondent filed his counter contending that the order of termination has been challenged belatedly and on the ground of laches alone the writ petition is liable to be dismissed.

4. Heard both sides.

5. Mr. M.R. Raghavan, learned counsel appearing for the management submitted that the Labour Court's award is per verse because the Labour Court has not considered the evidence of the two witnesses wherein the witnesses have categorically stated that there was threat against Weaving Master by the employee the second respondent and another person who tried to intervene him and that evidence has not been considered at all and the Labour Court has simply rejected and it is not sufficient. But the learned counsel has not stated as to why it is not sufficient. On that ground alone the award is liable to be set aside.

6. Mr. V. Govardhanan, learned counsel appearing for the second respondent submitted that the Labour Court's award is a reasoned order and the Labour Court has considered the evidence adduced before it and has passed an order which cannot be said to be per verse.

7. Further, the learned counsel relied upon the judgment of the Supreme Court in Virudhachalam Co-op. Urban Bank Ltd. Vs. Labour Court and

Another, wherein it is held as follows:

Cashier of Bank dismissed from service for using indecorous language his explanation to charge memo. Such indecorous use of language per se

cannot be basis of dismissal. The Labour Court rightly exercised its jurisdiction in setting aside the order of dismissal and substituting it by a

direction to re-employ the worker with continuity of service but without back wages and also denying the three increments.

Jurisdiction under Article 226 is not appellate jurisdiction but writ Court has got supervisory control over the Labour Court.

8. The learned counsel further relied upon another decision of the supreme Court in (Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.,

wherein the Supreme Court has held as follows:

The punishment awarded to the appellant shockingly disproportionate to the charge framed against him. No responsible employer would ever

impose any like circumstances the punishment of dismissal of the employee. The victimization or unfair labour practice could well be interfered from

the conduct of the management in awarding extreme punishment of dismissal for filmsy charge of abuse of some worker or officer of the

management by the appellant within the premises of the factory. Therefore, the termination of the appellant's service is invalid and unsustainable in

law, and he is entitled to reinstatement with full backwages and other benefits including continuity of services.

9. Relying upon these judgments of the Supreme Court, the learned counsel appearing for the second respondent submitted that in this case also,

the charge was only using desecration language against another employee. Therefore, for that charge, the order of dismissal is not justifiable and the

Labour has rightly exercised its jurisdiction and this Court is not sitting in appeal over which the award of the Labour Court is reappraised and

hence, the writ petition is liable to be dismissed.

10. From the award of the Labour Court it is seen that the Labour Court has considered the evidence adduced before it on the side of the

Management and found the evidence on the side of the management was not sufficient to prove the charges. This Court is not sitting in appeal over

the award and, therefore, cannot reappraise the evidence adduced before the Labour Court. At the same time it cannot find that the findings of the

Labour Court cannot be said to be per verse in nature and, therefore, this Court cannot substitute its own view passed upon the evidence.

Therefore, the award of the Labour Court cannot be set aside.

11. At the same time, the Labour Court has not exercised the power u/s 11A of the Industrial Disputes Act but simply set aside the order of

termination without considering the other evidence available on record.

12. Under such circumstance, this Court has the power to exercise that power conferred u/s 11A of the Industrial Disputes Act and this Court can

mould the relief or modify the punishment imposed, considering the facts that the second respondent has abused his Weaving Master and cause

disrespect to his position, he also threatened him and also gone to the extent of saying that he would do away with his life. Considering the facts

and circumstances, much importance cannot be given to this sort of threat. But at the same time, superior officers are bound to be respected by his

subordinates. But the second respondent has not changed his attitude and threatened his Weaving Master with dire consequences and he never

bothered to change himself even when he was persuaded by another employee that he must speak with respect.

13. Taking into account all these aspects, this Court is of the view that the award of the Labour Court can be modified to the extent that the

second respondent be reinstated with 50% of back wages instead of reinstatement with full back wages.

In the result, with the above modification of the award of the labour Court, the writ petition is disposed of. Consequently, connected W.M. Ps. are

closed.