

(1973) 10 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No's. 3247 of 1969 and 663 and 1236 of 1977

The Secretary, Palani Co-operative Sales Society and Another	APPELLANT
Vs	
The Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 09-10-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (1975) ILR (Mad) 308

Hon'ble Judges : K. Veeraswami, C.J.;Sethuraman, J;Natarajan, J

Bench : Full Bench

Advocate : P. Chidambaram, for S. Ramalingam, for the Appellant; A. Ramachandran, for Row and Reddy, S. Mahadevan and S.V. Ramamurthy, for the Respondent

Judgement

K. Veeraswami, C.J.—These petitions by the management arise out of an order made by the Labour Court, Madurai u/s 33-C of the Industrial Disputes Act, 1947. The Respondent asked his salary to be computed at Rs. 60 per month. He claimed the salary at that rate for the period of suspension commencing from December 6, 1967 to October 26, 1968 and also leave wages for the period from October 22, 1965 to October 26, 1968. We are not concerned with the second part of the claim. The Presiding Officer, Labour Court, took the view that under bye-law 13(h) the management had no power to suspend a worker pending an enquiry. On that view, he allowed the Respondent's claim so far as the salary for the period of suspension was concerned. Ramaprasada Rao J., found that there was conflict of views on the scope and interpretation of bye-law 13(h) and made a reference of the question to a Division Bench.

2. Bye-law 13 deals with disciplinary action against a member of the establishment. It is contemplated by the bye-law that a sub-committee shall be elected by the Board of Directors and such sub-committee shall exercise the powers specified against it in the succeeding sub-clause of the bye-law. We are concerned with Clause (h) which is:

The authority competent to suspend an employee may, in its discretion, sanction his subsistence allowance at a rate not exceeding one-fourth of his substantive pay during the period of his suspension. No employee shall in any case be kept under suspension for a period exceeding three months at a time.

Generally speaking where the power of appointment is vested in an authority, it has the power of disciplinary action as well which again necessarily involves the power to keep a particular member of the establishment under suspension in a suitable case pending an enquiry. No conferment of separate power to that effect is necessary. Apart from the power of appointment, the power can be implied in the disciplinary power to inflict punishment by way of removal or dismissal or any other punishment. In the instant case, Sub-clause (h) extracted above visualises the power of suspension. In our opinion, it is not confined to suspension by way of punishment. It is also applicable to a case of suspension pending an enquiry. Discretion is given in the case of such suspension to allow subsistence allowance at a rate of one-fourth of substantive pay during the period of suspension. If no order of sanction has been made, it may appear that during the period of suspension no remuneration will be permissible. But this discretion coupled as it is with a benefit, has to be exercised in every case reasonably and according to law and justice and not whimsically or arbitrarily. It is only for stated reasons that the authority suspending a member pending an enquiry can deny subsistence allowance to him. We construe the provision in that way, more especially because of the last sentence in the sub-clause which has restricted the power of suspension to a period not exceeding three months at a time. This means that the enquiry has to be expedited and the suspension cannot be for more than three months at a time. The last words at a time signify or indicate that the power can be exercised in suitable cases for extending the period of suspension beyond three months, every time restricting it only to three months.

3. Since the Presiding Officer, Labour Court, has taken the view that the power of suspension is available only by way of punishment and on that basis he awarded full salary for the period of suspension, we quash that part of the award. The matters involved in the three writ petitions will stand remitted to the Presiding Officer, Labour Court, Madurai for fresh disposal in the light of the observations made above and in accordance with law. The Presiding Officer will give the management a fresh opportunity to show whether it has exercised its discretion contemplated by bye-law 13(h) and further whether it passed orders of suspension each time for a period not exceeding three months, in the light of which the Presiding Officer will decide. The Presiding Officer will also take into account the subsequent dismissal of the employee concerned on the question whether in view of it his claim would be tenable and if so, to what extent. No costs.