

(1970) 02 MAD CK 0038
In the Madras High Court

The Workmen employed in Ennore Foundries Ltd.	APPELLANT
Vs	
Manager of Ennore Foundries Ltd. and Another	RESPONDENT

Date of Decision : 11-02-1970

Acts Referred:

Citation : (1970) 2 LLJ 222

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

Ismail, J.—The dismissal of five workmen and the suspension of another ten workmen employed in the Ennore Foundries Ltd, Ennore. gave rise to an industrial dispute, which was referred to the adjudication of the Labour Court, Madras, by the Government in G.O.R. No. 749, Industries, Labour and Housing dated April 25, 1967. The dispute with reference to the suspension of the ten workmen, after the filing of the claim and counter, was settled out of court and a joint memorandum to that effect was filed before the Labour Court on December 6, 1967. Consequently, the Labour Court had to deal with the reference relating to the dismissal of five workmen, namely, P.A. Verghese, P.S. Mani, A. Doss, Mohanram and Devasahayam. By an award made by the Labour Court on June 14, 1968, it came to the conclusion that the circumstances indicated that the dismissal of Verghese was more a case of victimisation than a case of trying to enforce discipline in the interests of the industry. It was also of the view that normally he should be reinstated, though perhaps without any back wages, because there was some misconduct at least; but in the circumstances of the case, reinstatement would not be beneficial either to the workmen or to the management and, therefore, in the opinion of the Labour Court, a liberal compensation of 15 months' salary inclusive of dearness allowance and, other allowances would be sufficient compensation for the four years service of Verghese, besides any gratuity that may be due to him in law. With regard to Mani, Doss and Mohanram, the Labour Court came to the conclusion that their dismissal did not seem to be just or proper. Here again, instead of directing reinstatement of the workmen, the Labour Court stated that payment of 20

months" salary for each of the three workmen, inclusive of dearness allowance and other allowances, by way of compensation would meet the ends of justice since they had each put in five years of service. With regard to Devasahayam, the Labour Court recorded:

In the circumstances I feel that no injustice has been done and that after a proper enquiry and a just finding that he had misconducted himself he was properly punished.

An argument that was advanced before the Labour Court was that the charge memos as well as the orders of dismissal in respect of the five workers were not issued or signed by the proper authority and therefore from that point of view also, the orders of dismissal were illegal. The Labour Court was of the view that it was unnecessary to discuss this aspect in greater detail, as it had given a finding on other aspects and passed final orders. Against this award of the Labour Court, the workmen have filed W.P. No. 3771 of 1968 challenging the award in so far as the Labour Court, instead of reinstating Verghese, Mani, Doss, and Mohanram, had directed payment of compensation only and in so far as it had held that the dismissal of Devasahayam was justified. As against this, the management has filed W.P. No. 1526 of 1969 contending that the finding and the conclusion of the Labour Court that Verghese was dismissed more by way of victimisation than by way of maintenance of discipline was erroneous and equally the finding of the Labour Court that the dismissal of Mani, Doss and Mohanram did not seem to be just and proper and was illegal.

2. In support of the respective contentions of the parties a large number of decisions were cited before me and each wanted me to hold that the award of the Labour Court to the extent to which it adversely affected the case of the respective parties is illegal and is liable to be set aside. In view of the conclusion I have come to and the order I propose to pass, it may not be necessary to go into all the details except to indicate the legal position which the Labour Court had failed to bear in mind, when passing the award in question. I propose to quash the award of the Labour Court except to a limited extent and remand the matter to the Labour Court for fresh disposal for the reason that the Labour Court had not borne in mind the extent of its jurisdiction, as settled by the various decisions of the Supreme Court in relation to a domestic enquiry conducted by a management against its workmen and the order of punishment passed by the said management, based upon such an enquiry conducted into the charges levelled against a workman.

3. Before I refer to the legal position in this behalf, it is necessary to refer to what exactly the Labour Court had held in respect of each of these workmen. As far as Verghese is concerned, he was dismissed from service on a charge of persistent absence without leave. The enquiry officer found that out of a total number of 206 days, he was absent for 37 days and out of these 37 days, he was absent without leave unauthorisedly for 26? days. According to standing order No. 17(2)(f) of the standing orders of the management, persistent absence

without leave will amount to a major misconduct. Standing Order No. 2(d) defines the word, "persistent" as meaning "an act of omission repeated a minimum of three times within a period of twelve months". The Labour Court in its award points out that though the enquiry officer found that Verghese was absent without leave for 26? days, before it the management confined itself only to eight specified days. Further, the Labour Court records that it had been proved that on five occasions without first applying for leave and getting it sanctioned, Verghese stopped away. Having stated so, the Labour Court refers to certain facts and contentions of the parties and ultimately records:

On the 25th when the enquiry was held he repeatedly requested for an adjournment but this was refused. This is very unjust to say the least. Further in the circumstances of this case when he was charged with having absented himself without leave for several days and when the enquiry officer gave a finding that he was absent for 26? days unauthorisedly and when at the hearing before me they could not prove it for more than five days, all these circumstances indicate that it was more a case of victimisation than a case of trying to enforce discipline in the interests of industry.

In an earlier part of the award, the Labour Court records:

It has been proved that on live occasions without first applying for leave and getting it sanctioned he stopped away. It is now on the evidence before me proved that he has to that extent misconducted himself. No doubt as contended on behalf of the management when misconduct is proved, one cannot take into consideration as to whether it will amount to victimisation also or not.

Thus, it will be seen that it is difficult to understand that exactly it was that weighed with the Labour Court, when it came to the conclusion referred to above. Was it the view of the Labour Court that the domestic enquiry was vitiated to any extent and therefore it had the right to ignore the domestic enquiry and on the basis of the materials placed before it, to come to a conclusion whether Verghese was guilty of misconduct or not? Was it the view of the Labour Court that since misconduct to the extent of Verghese absenting himself without leave had been established, the management was entitled to dismiss him from service and the question of victimisation did not come into the picture at all? Or was it the view of the Labour Court that this was a case of victimisation which enabled it to interfere with the matter? From what I have stated above, the position is not at all clear from the award of the Labour Court.

4. Similarly with regard to Mani, Doss and Mohanram, the Labour Court sets out in paragraphs 27 to 37 of its award as to what exactly had happened and the respective cases of the parties and then suddenly in paragraph 38 it states:

After a careful perusal of the oral and documentary evidence no doubt there seems to be some truth in the allegations that Mani was asked to do a particular job or to go to a particular department and that he refused. But his refusal to some extent can be justified because he says that he wanted a written memo for

transfer. This is a natural request. Subsequently when he is said to have been called by a peon to go to the Personnel Manager's office he is said to have stated that he was at that moment engaged in a very dangerous and delicate work and if he left the job it would cause great loss and therefore he would come after half an hour. I see no reason to disbelieve this version of his. If that is true, it cannot be said that his not having gone at once to the Personnel Manager's office is an act of indiscipline or a misconduct. I am unable to believe that Doss and Mohanram prevented Mani from going to the J Personnel Manager's office. Their dismissal in the circumstances does not seem to be just or proper.

Here again, it is not clear what exactly was the legal position which the Labour Court had in mind, when it made these observations. There is no specific finding by the Labour Court with regard to these three individuals, as to whether the domestic enquiry was vitiated in any manner or to any extent, justifying the ignoring of the domestic enquiry and the action taken by the management on the basis of the domestic enquiry altogether. The question of the Labour Court believing a particular thing or not believing a particular thing will arise only if it examines the evidence for the first time, when the matter is at large and the matter can be at large only, when the Labour Court records a finding that the domestic enquiry is vitiated and therefore the order passed by the management could not stand. Only with regard to Devasahayam, the Labour Court, as I have already pointed out, has recorded a clear-cut finding that no injustice has been done and that after a proper enquiry and a just finding that he had misconducted himself, he was properly punished, In view of this finding, I am of the opinion that the award with regard to Devasahayam does not warrant any interference whatever, Here again, there is the general question which I have referred to already. Even on the basis of the conclusion of the Labour Court that the order of dismissal passed against Devasahayam was justified, on merits, still there is a further question raised by the workmen that the charge memo not being signed by the proper officer and the order of dismissal also not being passed by the proper officer, the order of dismissal itself is illegal. As a matter of fact, one would have expected the Labour Court to have considered this question first before going into anything else. If the Labour Court came to the conclusion that the charge memo as well as the order of dismissal were not signed by the proper officer, it would have had to consider the effect of that impropriety on the legality and validity of the order of dismissal. If the Labour Court came to the conclusion that is the order of dismissal was not signed by the proper officer and on that ground the order of dismissal was invalid, no further question would have possibly arisen. Instead of giving a finding on that particular issue, the Labour Court went on the merits and recorded that it was unnecessary to give a finding on this issue. On the other hand, I am of the view that even with regard to the case of Devasahayam, it is necessary that the Labour Court should go into the question as to whether the order of dismissal was passed by the proper officer and, if not, what was the consequence of the order not being passed by the proper officer. The case of Devasahayam ultimately will depend upon the

conclusion of the Labour Court on this point, even though on merits I have reached the conclusion that with regard to his case, the award of the Labour Court does not call for any interference.

5. As far as the other four persons are concerned, this again is a matter which has to be gone into in the event of the Labour Court coming to the conclusion that their dismissals were justified on merits. The net result of this will be, when the matter goes back, the Labour Court will have to arrive at a conclusion on this controversy between the parties.

6. Before I indicate the legal position, one other submission advanced on behalf of the workmen has to be noticed. That submission is, once a tribunal or a Labour Court comes to a conclusion that dismissal is unjustified, the normal relief to which a workman is entitled is one of reinstatement and payment of compensation is one of exception, and unless the tribunal or the Labour Court indicates special or exceptional circumstances which will justify payment of compensation instead of an order of reinstatement, it ought to direct reinstatement and in this case such exceptional and special circumstances were not present and in any event were not referred to by the Labour Court.

7. Now, I shall indicate the legal position with regard to these contentions and the question that arises out of the award of the Labour Court.

In one of the very early cases, namely *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, the Supreme Court pointed out:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct the tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere,

- (i) when there is a want of good faith,
- (ii) when there is victimization or unfair labour practice,
- (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and
- (iv) when on the materials, the finding is completely baseless or perverse,

The same view was reiterated by the Supreme Court in *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, wherein it is further observed:

It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motive of

vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct, its judgment cannot be questioned provided the above mentioned principles are not violated. But in the absence of these facts or in case of violation of the principles set out above, its position is untenable.

In *The River Steam Navigation Co. Ltd. Vs. Shyam Sundar Tea Co. Ltd.*, the Supreme Court again pointed out:

It is well settled that if an employer serves the relevant charge or charges on his employee and holds proper and fair enquiry, it would be open to him to act upon the report submitted to him by the enquiry officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide, and amounts to an unfair labour practice.

In such an enquiry before the tribunal, it is not open to the tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when a proper enquiry has been held, it would be open to the enquiry officer holding the domestic enquiry to deal with the matter on the merits bona fide and come to his own conclusion.

Again, in *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, the Supreme Court had this to say:

The decision in the case of *Phulbari Tea Estate Vs. Its Workmen*, proceeds on the basis which is of basic importance in industrial adjudication that findings properly recorded in domestic enquiries which are conducted fairly, cannot be re-examined by industrial adjudication unless the said findings are either perverse, or are not supported by any evidence, or some other valid reason of that character. In such a case, the fact that the finding is not accepted by the Industrial Tribunal would not necessarily preclude the employer from justifying the dismissal of his employee on the merits, provided, of course, he leads evidence before the Industrial Tribunal and persuades the Tribunal to accept his case.

* * * * Since the enquiry has been fairly conducted, and the findings recorded therein are based on evidence which is believed, there would be no justification for the Industrial Tribunal to consider the same facts for itself. Findings properly recorded at such enquiries are binding on the parties, unless, of course, it is shown that the said findings are perverse or are not based on any evidence.

In *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, after referring to the earlier decisions of the court, the Supreme Court pointed out:

It is now settled law that the tribunal is not to examine the finding or the

quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a court of appeal. The tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimization of employee or employees or unfair labour practice. The tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair-play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed, the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such as no reasonable employer would even impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

In *J.K. Cotton Spinning and Weaving Co. Ltd. v. Its Workmen* 1965 II L.L.J. 153 what the Supreme Court has observed is as follows:

This Court has pointed out time and again that an industrial tribunal to which a dispute arising from dismissal has been referred for adjudication is not an appeal court having the power to examine the correctness of the conclusions of fact arrived at by a domestic tribunal. Where the Industrial Tribunal finds that there was nothing improper or unfair in an enquiry conducted by the domestic tribunal and where the action taken against workmen was not actuated by any ulterior motive and where the principles of natural justice have not been infringed, it is beyond the powers of an Industrial Tribunal to set at naught the action taken by the management which lay within its competence under the standing orders. Whether the material before the domestic tribunal was adequate or not or whether the particular witnesses upon whom reliance was placed by the tribunal should have been believed or not was entirely a matter for the consideration of the domestic tribunal. The Industrial Tribunal, while adjudicating upon an industrial dispute referred to it, does not possess the power of reviewing the evidence adduced before the domestic tribunal or of taking fresh evidence before it except in the limited class of cases to which we have referred in some of our decisions, as, for instance, our decision in *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, .

Finally in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, the Supreme Court has observed:

The jurisdiction of the tribunal being limited, it can deal with the merits of the

impugned orders only if it could properly come to the conclusion either that the domestic enquiries were not validly or properly held or that the findings given by the enquiry officers were vitiated either by reason of their being in breach of the rules of natural justice or perverse or contrary to the evidence *The River Steam Navigation Co. Ltd. Vs. Shyam Sundar Tea Co. Ltd.*, .

It is this aspect of the matter that the Labour Court in the present case has failed to bear in mind, namely, that its jurisdiction is limited and it can deal with the merits of the orders of dismissal passed by the management on the workmen in question, only if it properly comes to the conclusion that either the domestic enquiry was not validly or properly held or that the findings given by the enquiry officer were vitiated either by reason of their being in breach of the rules of natural justice or perverse or contrary to the evidence. As I have pointed out already, the Labour Court had not applied its mind at all to this aspect, namely, its jurisdiction, before it recorded its conclusions in respect of Verghese, Mani, Doss, and Mohanrarn.

8. There is another aspect to which I have already drawn attention. With regard to Verghese, the Labour Court pointed out that it was argued by the management that once the misconduct was proved, one cannot take into consideration as to whether it would amount to victimisation also or not. Notwithstanding this statement and also notwithstanding the conclusion that the misconduct to the extent of Verghese having been absent without leave on five occasions was established before it, the Labour Court recorded its opinion that the dismissal of Verghese was more a case of victimisation than a case of trying to enforce discipline in the interests of industry. Again, it is pertinent to note that with regard to Verghese, the Labour Court has stated:

Therefore even though he had misconducted himself by absenting himself at least for five days without getting leave sanctioned, I feel that the misconduct is not so serious as to warrant summary dismissal

It is in this context, Mr. V. Thiagarajan, learned Counsel appearing for the management, drew my attention to the following sentence occurring in the judgment of the Supreme Court in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, referred to already:

No question of victimization or the management having a bias against these workmen also can arise once it is held that the finding of misconduct alleged against the employees was properly arrived at and the domestic enquiry was in no way vitiated.

Similarly, he relied on the following sentence occurring in the judgment of the Supreme Court in *Hamdara Dawakhana Wakf v. Its Workmen and Ors.* 1962 II L.L.J. 772 :

Once it is held that Shamsul Zaman was guilty of misconduct and it is found that the said conclusion is not perverse, the dismissal of the offending workman must

be upheld even though the said workman may be an active worker in the union not liked by the appellant.

I have already pointed out the difficulty in appreciating what exactly the Labour Court has held, because in one place it states that once misconduct has been proved, the question of victimisation does not arise and in another place it records its conclusion that the dismissal of Verghese was more a case of victimisation than a case of trying to enforce discipline in the interests of industry.

9. There remains the legal position in relation to the contention put forward by the workmen that once the Labour Court came to the conclusion that the dismissal was not justified the normal relief to which a party is entitled, is reinstatement and payment of compensation is only an exceptional case. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Supreme Court recorded:

It is obvious that no hard and fast rule can be laid down in dealing with this problem. Each case must be considered on its own merits, and in reaching the final decision an attempt must be made to reconcile the conflicting claims made by the employee and employer. The employee is entitled to security of service and should be protected against wrongful dismissals, and so the normal rule would be reinstatement in such cases. Nevertheless in unusual or exceptional cases the tribunal may have to consider whether in the interest of the industry itself, it would be desirable or expedient not to direct reinstatement.

Again, in *Workmen of Bhajrang Jute Mills, Ltd. Vs. Bhajrang Jute Mills, Ltd. and Others*, the Supreme Court had this to say:

Once it is found that retrenchment is unjustified and improper, it is for the tribunals below to consider to what relief the retrenched workmen are entitled. Ordinarily, if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for reinstatement of the retrenched workmen; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay to defeat such a claim for reinstatement. This Court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that the employer has engaged fresh hands.

Thus, it will be clear that in the event of a Tribunal or a Labour Court coming to the conclusion that the dismissal of a workman is not justified, the normal relief that should follow is reinstatement, and payment of compensation in lieu of reinstatement should be only in exceptional cases and should not be a matter of routine. As far as the present case is concerned, with regard to Verghese the Labour Court did come to the conclusion that normally he should be reinstated, though perhaps without any back wages because there was some misconduct. After having said so, the Labour Court stated:

But in the circumstances of this case, I feel that reinstatement would not be beneficial either to the workman or to the management and it may only lead to unpleasantness and interfere in the smooth working of the factory by other workers adopting similar attitude and or being induced to adopt similar attitudes, Taking all aspects into consideration, I feel that a liberal compensation of 15 months salary inclusive of dearness allowance and other allowances would be sufficient compensation for his four years service besides any gratuity if any, that may be due to him in law.

Thus, it will be seen that the Labour Court has not recorded any exceptional or special circumstances, with reference to the facts of the particular case in order to warrant its conclusion that the normal remedy or reinstatement should not be given to Verghese, but he should be paid only compensation. It passes one's comprehension how reinstatement would not be beneficial even to the workman.

10. The position is worse with regard to the cases of Mani, Doss and Mohanram.

Having recorded the conclusion that their dismissal in the circumstances does not stem to be just or proper, this is what the Labour Court states:

But in the circumstances of this case though normally one should reinstate them in service I feel that it would not be in the interests of either party to reinstate them. A liberal compensation would meet the ends of justice. I feel that 20 months salary for each of these three workers inclusive of dearness allowance and other allowances would meet the ends of justice. They have put in five years service each. This would be besides gratuity, if any, to which they may be entitled to in law.

The Labour Court does not point out, what are the circumstances of this case which take away the normal right of the workmen to be reinstated and enable it to award payment of compensation in this behalf. Consequently, here again the true legal position has not been borne in mind, when the Labour Court ordered payment of compensation instead of reinstatement.

11. Under these circumstances, I am of the view that the award of the Labour Court suffers from a basic infirmity in its failure to appreciate the true and proper scope of its jurisdiction with reference to an industrial dispute coming before it, resulting from the dismissal of certain workmen by a management flowing from a domestic enquiry conducted into certain charges levelled against the concerned workmen. Therefore, in my opinion, the award of the Labour Court, except to the extent of the finding that the dismissal of Devasahayam was justified, must be set aside and the Labour Court must be directed to consider the relevant and important questions that arise before it. The first and foremost thing the Labour Court has to consider is, whether the domestic enquiry conducted against Verghese, Mani, Doss, and Mohanram was in any way vitiated so as to warrant the Labour Court ignoring that enquiry and the order passed by the management, based upon that enquiry. If the Labour Court comes to the conclusion that the domestic enquiry was in any way vitiated and therefore it has

got jurisdiction to go behind the order of the management and to find out whether the misconduct alleged against the workman was established or not, it has to consider the evidence, after giving an opportunity to the parties to lead evidence in this behalf, if necessary. Thirdly, if the Labour Court ultimately comes to the conclusion that the dismissal of the four workmen was not justified, it will have to consider the reliefs to which those workmen will be entitled, in the light of the principles laid down by the Supreme Court as indicated already. Lastly, the Labour Court will have to consider the point urged before it by the workmen that the charge memos were not issued and signed by the proper officer and the dismissal orders were also not signed by the proper officer and if it comes to the conclusion that they were not signed by the proper officer, it will have to consider whether that fact would invalidate the orders of dismissal passed against the workmen concerned. This question will be relevant even with regard to Devasahayam, whose dismissal on merits has been upheld by the Labour Court, which decision I have maintained in this writ petition.

12. In the result, both these writ petitions are allowed to the extent indicated above. There will be no orders as to costs in either of the writ petition.