
(1999) 10 MAD CK 0023
In the Madras High Court
Case No : Writ Petition No. 13143 of 1991

Vanamamalai V.

APPELLANT

Vs

Sundaram Textiles Ltd. and Another

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2000) 1 LLJ 702

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : S. Arunachalam, for S. Ramaswamy and V. Krishnamurthy, for the Appellant; D. Meenakshisundaram, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—The petitioner was employed as a doffer in the first respondent/management company. According to him, he has

put in a service of nearly 17 years without any blemish and he was drawing a monthly salary of Rs. 1350/-at the time of his dismissal from service.

The first respondent company is a Spinning Mill, and in the mill, doffers used to attend the work of doffing and they are expected to work as a

group, each group consisting of nearly 5 or 6 doffers. By nature of things, it is necessary that all of them should contribute to the production to

achieve the desired result, and in effect, the doffing work is a collective work. The petitioner has stated that one Thirumalainambi, who was also a

doffer had not done the work properly and in spite of the petitioner informing him that he should extend his full cooperation, the said

Thirumalainambi never bothered to do the work. On April 28, 1987 at about 5.30 a.m. there was a break for the third shift work. The petitioner,

the said Thirumalainambi and also some other workers who were working as a group during third shift, at the time of break, were talking about the conduct of Thirumalainambi. According to the petitioner, Thirumalainambi, instead of taking the advice from the writ petitioner, got enraged and abused in filthy language the petitioner and the family members of the petitioner. The petitioner has stated that he was provoked by the obscene and filthy language and in spite of the warning of the petitioner, the said Thirumalainambi continued to abuse the petitioner. The petitioner enraged at that, beat him with chappal lying there. Thirumalainambi gave a complaint on April 28, 1987 and another worker also gave a report on April 28, 1987. The petitioner also gave a complaint on April 29, 1987 and in the complaint the petitioner has stated that Thirumalainambi used abusive and obscene language. The first respondent management issued a charge memo to the petitioner on the basis of the complaint given by Thirumalainambi. Thirumalainambi also gave a criminal complaint and the same was taken on file in C.C.No. 56 of 1988 and the Criminal Court dismissed the complaint on April 17, 1989. The management on the basis of the charge memo dated April 29, 1987, conducted a domestic enquiry. A show-cause notice was issued by the first respondent management to the petitioner. The petitioner had admitted that he has beaten Thirumalainambi with chappal and he has stated that he felt very sorry about the incident and he assured that similar incident would not recur in future. The management did not accept the explanation given by the petitioner and an enquiry was conducted, and in the enquiry, Thirumalainambi was examined and he deposed that the petitioner had beaten him with chappal. One Rajapandi also corroborated the statement of Thirumalainambi. The petitioner also gave a statement before the enquiry officer, and the enquiry officer found that there is evidence to establish that the petitioner had beaten Thirumalainambi with chappal on his head and the charge was proved. The first respondent management accepted the report of the enquiry officer and passed an order of dismissal of the petitioner from service.

2. The petitioner raised an industrial dispute and the dispute was referred to the Labour Court, Madurai. Before the Labour Court, the petitioner has stated that the order of dismissal was not legally valid as no second show-cause notice was issued and the order of dismissal was passed

without taking into account the past conduct of the petitioner. The management in the counter statement filed before the Labour Court stated that

the petitioner has not done any extraordinary work and he was doing only the work which was expected from an ordinary worker and the labour

work done by him was done like an ordinary worker and the case of the management was that on the basis of the past record of service as well as

the grave nature of the charge levelled and proved against the petitioner, the order of dismissal was justified.

3. The Labour Court found that the petitioner himself has admitted that he had beaten Thirumalainambi with chappal and though in the Criminal

Court, the petitioner was acquitted, in the domestic enquiry, it was proved that the petitioner had beaten Thirumalainambi with chappal on his head.

The Labour Court also referred to the Standing Orders of the first respondent management and held that the act of beating a co-worker with

chappal is cruel, indecent and uncivilised one which would tend to create disorderly behaviour in the factory. The Labour Court also held that

under the relevant clause of the Standing Orders, it was not mandatory to consider the past record, but however when the order of dismissal was

passed, the management had noticed the past record of the petitioner. The Labour Court, holding that past record of the petitioner was taken into

account, came to the conclusion that the order of dismissal passed by the first respondent was justified. However, the Labour Court directed the

first respondent management to pay a sum of Rs. 25,000/- as compensation.

4. The petitioner has challenged the award of the Labour Court on several grounds, but during the course of arguments, learned counsel for the

petitioner confined himself to two grounds that the order of dismissal passed against the petitioner for beating a co-worker on a sudden

provocation is not justified in law, and there was no riotous disorderly behaviour as found in Clause 15 (a) of the Standing Orders. It is also stated

that the past record of the petitioner was not considered and there was no adverse remark in the past record of the petitioner and the non-

consideration of the past record would vitiate the entire order. The petitioner has stated that the Labour Court was not correct in its view that the

requirement of considering the past record cannot be regarded as mandatory and the Labour Court was also not correct in holding that the past

record was considered. It is also stated that the judgment of the criminal Court acquitting the petitioner has to be given weight and when the

petitioner on a sudden provocation beat another workman, it cannot be regarded as a misconduct warranting dismissal from service. It is also

stated that the alleged misconduct has nothing to do with the management and the work of the petitioner.

5. The management has filed a counter affidavit stating that under Clause 15(9) of the certified Standing Orders, a riotous or disorderly behaviour

would constitute a misconduct. It is also stated that it is not correct to state that the past record of the petitioner was not considered while ordering

the punishment. It is also stated that there are no mitigating circumstances to award a lesser punishment. It is stated that the act of hitting a co-

worker with chappal is a crime and when the petitioner was found to have committed a grave misconduct, the punishment of dismissal is justified

and valid and even if the past record is found to be good, the dismissal of the petitioner is valid and the petitioner was also awarded a

compensation of Rs.25,000/-. It is also stated that the petitioner has admitted that he beat his co-worker with chappal and the judgment of criminal

Court is not relevant and would not operate as a bar against the disciplinary action being taken. It is also stated that the incident took place inside

the factory and in connection with the work of the management and therefore, the said act would constitute a misconduct and the punishment of

dismissal from service was properly imposed.

6. Mr. S. Arunachalam, learned counsel for the petitioner submitted that the interpretation placed by the Labour Court on the Clause 16(2)(e) of

the Standing Orders is not correct and the past record of the employee and the extenuating circumstances that existed should have been

considered.

According to the learned counsel, the Labour Court's view that it is not mandatory to consider the past record is not correct. Learned counsel

referred to the claim statement filed by the petitioner before the Labour Court and submitted that the past record of the petitioner was not

considered and the order of dismissal was passed without taking note of the past record, though in the order of dismissal, it is stated that past

record of the petitioner was considered. Learned counsel submitted that the

statement made by the petitioner in the claim statement shows that there was no previous complaint against the petitioner and it is mandatory to take into account the past record of the petitioner. Learned counsel also referred to certain passages in the book, Law on Industrial Disputes by O.P. Malhotra and submitted that on a spur of moment, the incident had taken place and the petitioner has admitted in the inquiry that he beat Thirumalainambi with chappal and he tendered his apology. Learned counsel submitted that due to sudden provocation the incident had occurred and the punishment was imposed without taking into account the time at which the incident had occurred and without taking into consideration the past record of the petitioner.

7. Mr. Meenakshisundaram, learned counsel for the first respondent submitted that the past record of the writ petitioner was taken into account and his past record, as stated in the counter affidavit, was not extraordinary and he was an ordinary worker and considering the gravity of the charge levelled and proved against the petitioner, the punishment of dismissal was justified. Learned counsel also submitted that the charge levelled against the petitioner was a grave one of beating a co-worker with chappal and when the grave charge was proved, the punishment of dismissal was justified. Learned counsel for the first respondent also submitted that it is not correct to state that the Labour Court has omitted to take into account the past record of the petitioner. Learned counsel for the first respondent also submitted that the Petitioner during the inquiry proceedings, admitted that he beat the co-worker with chappal which is a grave misconduct and there are no extenuating circumstances, warranting the reduction in the matter of punishment. He also submitted that it is not a case of victimisation, and it is also not a case of unfair labour practice adopted by the management, and for the misconduct of beating the co-worker with chappal, the punishment of dismissal was imposed.

8. Before considering the submissions of the learned counsel for the parties, it is relevant to notice here that the finding of the Labour Court that the petitioner has beaten Thirumalainambi with chappal on his head on April 28, 1987 has not been seriously challenged by the learned counsel for the petitioner. The inquiry officer also, on the basis of evidence, recorded a finding that the writ petitioner beat Thirumalainambi with chappal on his

head and the petitioner himself has admitted the same. The disciplinary authority also accepted the finding of the inquiry officer and the Labour

Court also recorded a finding that the charge was proved and the only question that arises is whether the order of dismissal is justified.

9. In considering the question, it is relevant to notice the decisions relied upon by the learned counsel for the parties,

(i) Rama Kant Misra Vs. The State of Uttar Pradesh and Others, . In the case, the appellant before the Supreme Court was charged that he used

some language improper and discreet in nature and an order of dismissal was passed. The Supreme Court held that the order of dismissal passed

in that case was not justified, and observed as under :

The respondent-management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years service he

rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it

is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation

of each person in the society differs and indiscreet, improper, abusive language may show lack of culture, but merely the use of such language on

one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty

of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the

Court must interfere.

(ii) In National Carbon Co. v. Labour Court 1987 I LLJ 405, the charge levelled against the employee was of slapping or attempting to slap and

this Court held that the punishment was not justified and the following observations of the learned Judge of this Court are relevant for the purpose

of this case:-

After the introduction of Section 11A of the Industrial Disputes Act, 1947, the power has come to be vested with the Labour Court, even if it

finds that the employer has proved the misconduct to interfere with the punishment of discharge or dismissal and award a lesser punishment, taking

note of the relevant circumstances.

(iii) In The Management of Tafe Vs. Venkataraman and Others, , the employee

was charged for slapping another employee and this Court while

holding that the order of dismissal was not justified, made the following observations :

The well accepted principle on the question of exercise of powers u/s 11A of the Industrial Disputes 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.

(iv) In Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others, , the Supreme Court while construing the provisions of Section 73 of the

Indian Army Act, 1950, held that the sentence has to suit the offence and the offender and where there is disproportionate punishment, the Court

has the power to interfere with the award of the punishment. The Supreme Court held as under :

Under Section 73 of the Army Act, the Court Martial may award more than one punishment. In the instant case, Section 63 also is not mentioned

in the chargesheet. Assuming that the offence committed by the appellant is covered by the residuary Section 63 but in awarding punishment the

Court-martial has to keep in view the spirit behind Section 72 of the Act and it has to give due regard to the nature and degree of the offence. It

can be seen that Section 63 provides for awarding any of the lesser punishments enumerated in Section 71 of the Act. In view of these provisions

of law and having regard to the nature and degree of the offence it is to be viewed that the punishment awarded to the appellant, namely, three

months rigorous imprisonment and dismissal from service are severe and are also violative of Section 72.

(v) In The Management of K.P.V. Shaik Mohammed Rowther and Co. (P) Ltd. Vs. P. Govindarajulu and Another, , workman was charged for

leaving the premises without prior permission and remaining absent from service and refusing to acknowledge the communication from the

company demanding explanation for his unexplained absence and threatening and abusing his co-workers, and this Court held that where the

charges against the workman were proved, the order of removal from service would be justified, and this Court held as under :

The workman had been found guilty of misconduct after the enquiry which had been properly held. It is the workman who chose to stay from the

enquiry. The enquiry was found to be valid and having been held in accordance with the requirements of the applicable Standing Orders and the

principles of natural justice. The Tribunal, even independently of that enquiry held that the petitioner/ workman had without reasons remained

absent, and had failed to comply with the order of transfer. The only course, which the Tribunal could have adopted after recording these findings

was to dismiss the claim of the workman and not to proceed to direct as it has, directing that the alcoholic workman as found by the Tribunal, to

be rehabilitated by reinstating him, and rewarding his improper behaviour and misconduct with backwages for a period of almost ten years. In that

case, this Court also held that the past conduct of the petitioner would be of no relevance in considering the grave nature of misconduct and this

Court held that, ""It is not necessary to place any reliance upon the workman's past conduct and it can well be kept out of consideration in deciding

as to whether the discharge of the workman by the employer was in accordance with law.

(vi) In *Dattu Balu Sangar v. Docks Manager, Bombay Port Trust* 1997 Lab.I.C. 3297, the workman was charged with the offence of committing

theft, fraud and dishonesty in respect of Port Trust property and the Bombay High Court held that the misconduct is of serious nature and the past

record would not be of much relevance. The observation of the Bombay High Court is also relevant for the purpose of this case:

In large number of cases this Court has taken a view that if the misconduct is of a serious nature, then the consequence of the misconduct is not

important and what is important is the misconduct per se. We have to see the gravity of the misconduct. In the present case the charge against the

workman is of theft and/or fraud, dishonesty in respect of the property of the B.P.T. These charges have been proved and looking to the serious

nature of the misconduct it is not for this Court to substitute its own view and impose a different punishment. It is ultimately for the Management to

impose appropriate punishment. It cannot be said that the misconduct, in the present case, is not of a serious nature. The petitioner tried to take

away from the premises of B.P.T. machine parts which belong to B.P.T. or to a party who has kept the goods in the custody of B.P.T. No

mitigating circumstances have been shown for imposition of a lesser punishment.

(vii) In *State of Punjab and Ors. v. Ram Singh* : (1993)ILLJ218SC , the gunman of the Deputy Commissioner of Police was charged on the

ground that he was found drunken roaming in the market with service revolver and abusing the Medical Officer on duty and the Supreme Court

held that the single act of heavy drinking of alcohol by the workman while on duty is a gravest misconduct warranting dismissal from service. The

Apex Court while construing the expression, ""misconduct"" held as under :

Thus it could be seen that the word misconduct though not capable of precise definition, its reflection receives its connotation from the context, the

delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or

wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct

but not mere error of judgment, carelessness or negligence in performance of duty; the act complained of bears forbidden quality, or character, its

ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the

statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this

behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

(viii) In an unreported decision in W.P. No. 166 of 1963, *M. SRINIVASAN, J.* (as His Lordship then was) held that where the worker is guilty of

a serious offence, the past record of the worker would be of no relevance and the learned Judge laid down the following proposition of law :

Where a worker is guilty of a serious offence inviting dismissal, very little will turn upon the previous record of the worker. The fact that a person

had a previous good record can hardly weigh with the management when it finds that the worker by inciting an illegal strike was paralysing the

working of the industry. If, in such an instance, the management proceeded to dismiss the person, I am unable to see how the failure to take into

account, the previous record vitiates the final order. What the Standing Order

merely says is that the management shall take into account the gravity of the misconduct, the previous record, if any, of the workman, and any other extenuating or aggravating circumstances. There may be cases where the gravity of the offence, standing by itself, would justify the dismissal, and no amount of previous good conduct might off-set the gravity of the misconduct. It would depend upon the facts of each case whether the order of dismissal is liable to be interfered with for such a reason as this.

(ix) In *Binny Ltd. Vs. Their Workmen*, the Supreme Court held that the records of the domestic tribunal demonstrate that the worker was not given a chance either to cross-examine the witnesses or to explain his testimony regarding his past conduct, the enquiry would stand vitiated.

(x) In *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , the Supreme Court held that this Court does not act as a Court of appeal against an award of the Labour Court. The Apex Court held as under;

That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not and should not act as

Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon the discretion it must be

exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise

jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts

of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for though no legislature can

impose limitation on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes

about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of cases.

10. As already observed by me, there is no dispute by the writ petitioner that the inquiry held was fair or valid. The petitioner has not raised any

dispute that he was not given any opportunity, and there was a violation of the principles of natural justice in the holding of the enquiry. The charge

that the petitioner has beaten Thirumalainambi on his head with chappal belonging to another employee is also proved and there is evidence in

support of the charge. The Labour Court held that the charge levelled against the petitioner was a grave charge and the past conduct of the petitioner need not be looked into. The Labour Court also found that the past record was also looked into as evident from the order of dismissal which has been passed by the first respondent management. I agree with the learned counsel for the petitioner that the Labour Court was not correct in its view that the past record of the employee need not be looked into. The correct way of reading the relevant Standing Order is not only to take into account the nature of the charge levelled against the petitioner, but also the previous record of the employee and extenuating or aggravating circumstances that may exist. The relevant clause of the Standing Orders has to be read as a whole, and it is not permissible to pick out a portion of the clause and hold that that portion is mandatory in nature and the other portions are not mandatory in nature. The words, "if any in the relevant clause of the Standing Orders following the words "previous record" do not dispense with the requirement of taking into account the past record and the said expression, "if any" in my opinion, means that if there is past record that should be taken into account. Similarly, the extenuating or aggravating circumstances should also be taken into account and the expression "that may exist" following the words "extenuating circumstances" means that extenuating circumstances, if exist, should be taken into consideration. In other words, all the conditions contained in the relevant clause of the Standing Orders should be taken into account before awarding punishment. Though the Labour Court was not correct in its view that only first part of the clause is mandatory and the latter parts of the same clause are directory, the Labour Court also found that the past record of the petitioner was taken into account. It was found by the Labour Court that the management has taken into account the past record of the petitioner and the petitioner was an ordinary worker and his performance was not extraordinary and taking into account the grave misconduct committed by the petitioner, the order of dismissal was held to be justified by the Labour Court. The order of dismissal shows that the petitioner's past performance was taken into account and the order of dismissal was passed as there was no extenuating circumstance for awarding a lesser punishment than that of order of dismissal. I hold that the Labour Court has discussed the evidence and taken into consideration all aspects of the

matter and exercised discretion u/s 11A of the Industrial Disputes Act and held that the order of dismissal was quite justified. I am also of the view

that the act of beating a worker with chappal on his head is a grave misconduct and if such act is condoned, and the employee is ordered to be

reinstated, it would lead to industrial unrest and labour discontent in the factory.

11. The decisions relied upon by the learned counsel for the petitioner relating to the use of filthy language by an employee against another

employee cannot be pressed into service in the case of an assault of a co-employee with chappal. The decisions relating to the attempt to slap a

co-employee are also not applicable as the Labour Court, in those cases, found that the order of dismissal was not justified and hence, this Court

declined to interfere with the discretion exercised by the Labour Court. On the other hand, the Labour Court in this case has found that the charge

levelled against the petitioner was a grave charge of beating a co-worker with chappal on his head and his lacklustre performance was taken into

account. The Labour Court also found no reason to interfere with the order of dismissal. I hold that the Labour Court has exercised its discretion

properly and I do not find any reason to interfere with the discretion exercised by the Labour Court.

12. Though the Labour Court has exercised its discretion properly, I am of the view that the amount of compensation ordered viz., Rs.25,000/-

should suitably be increased and I hold that the petitioner would be entitled to compensation of a sum of Rs 50,000/- and the first respondent is

directed to pay the balance of Rs.25,000/- within a period of six weeks from the date of the judgment, to the petitioner directly.

13. In the result, the writ petition fails and accordingly, it is dismissed, subject to the above modification in the quantum of compensation amount.

However, in the circumstances, there will be no order as to costs.