

## **Prasad Film Laboratories vs Presiding Officer, Principal Labour ... on 3 November, 2000**

**Equivalent citations:** [2001(89)FLR135], (2001)IILLJ48MAD, (2001)1MLJ251

**Author:** M. Karpagavinayagam

**Bench:** M. Karpagavinayagam

ORDER

M. Karpagavinayagam, J.

1. C. Jagannathan, the second respondent was an employee in the Chemical Department of the Film Laboratories of the petitioner company. Dwarakish Chitra Motion Pictures, a customer of the petitioner company gave three Cans of annex post negative films to the petitioner company for Fog testing. After Fog test when the films were returned to them by (he petitioner company, they complained of shortage in the length of film.

2. Based on the said complaint investigation was conducted. Ultimately, it was found out that the second respondent, an employee of the petitioner company committed theft of the said film from the company and used it for his private business of photography and video-taping and handed over to the Colour Laboratory for printing of Eastman colour negative. On this, police complaint was given.

The Virugambakkam Police seized the said materials from the laboratory.

3. Besides the prosecution by the police, an enquiry was conducted by the Enquiry Officer as directed by the petitioner company. After giving opportunity, on the basis of the evidence of six witnesses and eleven documents, the Enquiry Officer found the second respondent guilty of theft. Thereafter, after giving show cause notice and receiving his reply, he was dismissed from service by the order dated February 27, 1985.

4. Thereafter, the dispute was referred to the Labour Court. After hearing the case, the Presiding Officer of the Labour Court, the first respondent herein passed an award dated January 20, 1993 setting aside the order of dismissal and reinstating the second respondent in service of the petitioner company without back wages, even though he was found guilty of theft.

5. Aggrieved by the said award of reinstatement, the petitioner company has filed this writ petition seeking for the writ of certiorari to call for the records of the award and quash the same.

6. Mr. Venkataraman, the learned counsel appearing for the petitioner company would submit that having held that in regard to fairness and propriety of the domestic enquiry and when the second respondent himself confined his claim in regard to quantum of punishment alone, the Labour Court ought not to have set aside the order of dismissal and granted the relief of reinstatement without back wages by merely attaching importance to the value of the film stolen by the second respondent. According to the counsel for the petitioner, the discretion under Section 11-A of the Industrial Disputes Act has been exercised arbitrarily and perversely in setting aside the order of dismissal.

7. On the other hand, Mr. Senthilnathan, the learned counsel for the respondent would contend that the denial of back wages alone would be sufficient punishment and as such, the award passed by the Labour Court need not be disturbed.

8. The counsel for both would cite several authorities to substantiate their respective pleas.

9. On going through the records including the award and on considering the submissions made by the counsel for the parties, I am of the considered opinion that the award in question is liable to be set aside and title order of dismissal by the department concerned has to be restored for the reasons mentioned below.

10. Though the dispute was referred to the Labour Court on the ground that non-employment is unjustified or aggrieved over the dismissal order passed by the petitioner company on the basis of the domestic enquiry report, the second respondent, the employee did not choose to challenge the propriety of the enquiry and the finding of the Enquiry Officer, but chose to challenge the quantum of punishment alone.

11. On the basis of this plea, the Labour Court also would hold that the finding about the guilt of the second respondent of the Enquiry Officer is correct. However, it modified the punishment from the dismissal to that of reinstatement without back wages. To arrive at such a conclusion, the reasons given by the Labour Court are threefold: (1) the police case regarding the theft against the second respondent ended, in acquittal; (2) the film stolen by the second respondent is only 70 feet; (3) the denial of back wages, would be the appropriate punishment for the commission of theft.

12. As laid down by this Court as well as the Apex Court, the result of the criminal case would not be relevant either in the domestic enquiry or before the Labour Court. Moreover, in this case, the finding given by the enquiry officer after domestic enquiry that he was guilty of theft was accepted by the Labour Court. Furthermore, the second respondent himself would not choose to allege the finding of theft in spite of the fact that he was acquitted in the criminal case. Therefore, the Criminal Court's finding should not be allowed to weigh the mind of the Labour Court in regard to the imposition of punishment on the delinquent.

13. The second reason, namely, theft of only 70 feet film, would be most untenable, as the Courts are concerned only with the misconduct committed by the delinquent, viz., the commission of theft. The quantum or the proportion (sic) of the stolen property being small cannot be taken as a criterion to condone the dishonest act of theft which amounts to grave misconduct.

14. In the instant case, even after getting the show cause notice, the second respondent sent a reply stating that he was innocent and therefore, no punishment could be imposed on him. Furthermore, even before the Labour Court, despite his stand that he would not challenge the finding, he had not expressed his feelings of regret regarding his misconduct so as to consider his case sympathetically.

15. When the legality of the enquiry as also the findings, recorded therein were accepted by the second respondent workman, it has to be established before the Labour Court by the second respondent to show that the quantum of punishment, namely, dismissal was so harsh. The Labour Court would simply say that the reinstatement without back wages would be proportionate to the act of theft committed by the second respondent and the same would meet the ends of justice.

16. This approach by the Labour Court would show that the Labour Court has failed to exercise the judicial discretion vested in it in a judicial manner while determining the appropriateness of the penalty which had been imposed for the admitted and proved misconduct.

17. It is settled law that unless the gravity of the offence is first analysed, it is not proper for the Tribunal to hold that the punishment was disproportionate.

18. The counsel for the petitioner company would submit that the petitioner company has got a reputation and could ill afford to employ persons like the second respondent who had demonstrated his lack of integrity by committing theft of film handed over to the petitioner company by its customers.

19. This submission, in my view, does sound well. It is true that ordinarily the High Court would be slow in interfering with an order of reinstatement passed under Section 11-A of the Industrial Disputes Act, by way of a substitute for an order of dismissal. But, when there is an arbitrary order reinstating the second respondent who had committed theft of film from the petitioner company who reposed confidence on him, it cannot be allowed to stand because it tantamounts to an abuse of the discretionary jurisdiction conferred by Section 11-A of the Industrial Disputes Act, 1947.

20. As pointed out by the counsel for the petitioner, this Court on several occasions would hold that the property stolen may be small or large but it is the act of theft that is relevant for imposing penalty and that any sympathy shown in such cases is totally uncalled for and is opposed to public interest.

21. The workman was employed in the petitioner company, where the confidence of the customers is paramount for the success of the business and the same cannot be disputed. The effect of the continuation of employment of such person, who had lost the confidence of the employer will be very serious. The reinstatement of the persons like the second respondent, who had patently duped his employer by committing theft of the film entrusted by the customers would certainly harm the reputation of the petitioner company.

22. The Tribunal discharges its functions in the matter judicially. If the discretion has been properly exercised, this Court would not interfere with such exercise of discretion. The discretionary power to

Tribunal is not a free licence to direct reinstatement, even when it is not warranted and when the records do not warrant the setting aside the order of dismissal.

23. In my view the act of the theft committed by the second respondent is a grave misconduct and when the said misconduct is grave in nature, the gravity of the said act warrants the penalty of dismissal.

24. When a person is proved to have committed theft of the property of the company showing his lack of integrity and dishonesty, the Tribunal or the Court cannot direct the company to reinstate that workman, as it would amount to doing injustice to the institution like the petitioner company which has got a reputation.

25. The counsel for the second respondent would cite the decision in Management of Binny Limited v. Additional Labour Court, Madras 1979-II-LLJ-280 (Mad-DB) to show that in a theft case, the reinstatement without back wages ordered by the Tribunal was confirmed by this Court.

26. On going through the said judgment, it is clear that the judgment did not hold as a ratio that in all theft cases, the punishment of dismissal is disproportionate.

27. On the other hand, in the judgment reported in Catholic Syrian Bank Ltd. v. The Industrial Tribunal, , this Court on the strength of the various judgments of this Court and other High Courts including the judgment of the Gujarat High Court in Municipal Corporation of City of Ahmedabad v. Hussainmiya Chandmiya, 1994-III-LLJ (Suppl)-844 (Guj-DB) would hold that especially in a case like fraud, theft and the like, the dismissal would be proper punishment.

28. So, in the light of the settled principles, I am of the view that the impugned order passed by the Labour Court cannot be sustained.

29. In the result, the order of the Labour Court directing reinstatement is set aside and the order of dismissal passed by the employer is sustained and consequently, the dismissal of the second respondent is justified. Thus, the writ petition is allowed. No costs. Consequently, W.M.P. No. 15147 of 1992 is closed.