

Workmen, Employed in Engine Valves Limited Vs. Engine Valves Limited

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Court : Chennai

Decided On : Feb-25-1983

Reported in : (1983)IILLJ232Mad

Judge : K.B.N. Singh and ;Sathia Dev, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10A, 11A and 12(5)

Appeal No. : W.A. No. 165 of 1977

Appellant : Workmen, Employed in Engine Valves Limited

Respondent : Engine Valves Limited

Judgement :

Sathiadev, J.

1. This appeal is preferred against the judgment in W.P. No. 7315 of 1975, which in turn confirmed the order of the Additional Labour Court, Madras, in I.D. No. 95 of 1974, dated 30th June, 1975, holding that the dismissal of two workmen named Ambalavanan and Muralidharan by the first respondent - Management of Engine Valves Limited, Madras, was correct. First respondent charge-sheeted these two persons under Exhibits M-2 and M-3, dated 19th March, 1974, stating that the worker by name P. Shankar had reported to them under exhibit M-1, dated 18th March, 1974, that at about 5.25 p.m. on 15th March, 1974, they assaulted him for

having given over-production, at a place nearly one kilometer away from the respondent - company, and hence clause 16(h) & 16(t) of the Standing Orders of the Company had been violated. They submitted their explanations under Exhibit M-4 and M-5 claiming that at about 5.40 p.m. on that day, they were discussing with the other workmen in the factory itself regarding the talks going on with the Management. A domestic enquiry was conducted, in which the Management examined 6 witness and the workmen examined 9 witnesses, and the Enquiry Officer in his finding under Exhibit M-9, dated 10th April, 1974, held that the workmen were guilty of misconduct falling under the later part of clause 16(t) of the Standing Order, it being commission of service act of misconduct viz., an act subversive of discipline. First respondent herein (hereinafter referred to as Management) passed orders of dismissal under Exhibit M-13 and M-14, dated 23rd April, 1974. Aggrieved against the said order, the Union raised an industrial dispute, which in true resulted in the dispute being referred by government so second respondent, who passed the award on 30th June, 1975.

2. Mr. N. G. R. Prasad, learned Counsel for the appellant, contends that the Labour Court has misunderstood the law applicable to the reference made to it, and there being a failure to invoke. S. 11A of the Industrial Disputes Act, the award being illegal, the learned Judge ought to have remitted the matter of proper disposal. He would further state that there being a misreading of the evidence on record, any attempt made to render a finding on the alleged misconduct, should have been taken note of by the learned Judge, and there being patent errors committed, the appellant is entitled to the relief, as prayed for.

3. Mr. M. R. Narayanaswamy, learned Counsel for Management, would submit that when appellant at no point of time, till the filing of the writ petition, having invoked S. 11A, the Labour Court suo motu cannot be expected to apply it. In spite of whatever the Labour Court might have observed in para 12 of its order pertaining to its jurisdiction, since it had dealt with the evidence on record and found that the order of dismissal is justified, appellant can no longer of plead about any misreading of evidence by it. Learned Single Judge has also carefully gone through the evidence and found no valid ground existing for holding that the dismissal was not justified. When there is absence of pleading, rested on S. 11A,

appellant cannot make it a ground for the matter being remitted.

4. It is the admitted case, that, till the filing of the writ petition, at no point of time, appellant had ever specially mentioned S. 11A to be applied. This section came into force with effect from 15th December, 1971. The Management passed orders of dismissal on 23rd April, 1974. Labour Court passed its order on 30th June, 1975. Even the occurrence is said to have taken place, only on 15th March, 1974. Therefore, when orders have been passed subsequent to the enactment of S. 11A, would it be applicable only if the workmen seem for relief by referring to it or would it be obligatory on the part of the Labour Court itself to take notice of its existence, and find out as to what extent it would be relevant for the disposal of the reference

5. On the scope and applicability of S. 11A, the earliest of the decisions is that reported in *Workmen of Firestone tyre & Rubber Co. v. Management* : (1973)ILLJ278SC . It was held therein by the Supreme Court that :

'... The words 'in the course of the adjudication proceedings the Tribunal is satisfied that the order of discharge or dismissal was not justified' clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal at that the finding of misconduct, is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd. case*, : (1958)ILLJ260SC can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter.'

It then held that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had not held an enquiry or the enquiry held by

him is found to be defective. Then it proceeded to hold :

'... To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved or not warrant the punishment of dismissal or discharge. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S. 11A'.

Hence, the contention raised that the stage for interference under S. 11A by the Tribunal is reached, only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer, was rejected, and held as above.

6. Referring to an earlier decision of that Court in *Indian Iron and Steel Company Ltd., and another v. Their Workmen* (supra) it was pointed out that previously the Tribunal had no power to interfere with a finding of misconduct recorded in the domestic enquiry, unless the infirmities like want to good faith, victimisation, unfair labour practice, etc., on the part of the management exist. After S. 11A was incorporated, 'the Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out'. Hence, it is not the satisfaction of the employer which is sufficient, but the Tribunal has to satisfy itself by considering the evidence on record.

7. Considering as to whether an Arbitrator while functioning under S. 11A of Industrial Disputes Act, should take note of S. 11A it was held by the Supreme Court in *Gujarat Steel Tubes Ltd. v. G.S.T. Mazdoor Sabha* : (1980)ILLJ137SC , that such an Arbitrator will have to take a decision keeping in view the spirit of S. 11A, thus emphasising the important role assigned to S. 11A, in dealing with the termination order passed against the workmen.

8. A Division Bench of this Court in Sri Gopalakrishna Mills (P) Ltd. v. Labour Court : (1980)ILLJ425Mad , recognises the power of the Labour Court to deal with the punishment imposed and the extent to which it could interfere, but does not deal with the point involved herein.

9. In K. Ramaswamy v. Government of Tamil Nadu : (1979)ILLJ304Mad , it was held that when the appropriate Government passed an order under Section S. 12(5) refusing to refer a dispute for adjudication, it is bound to take note of S. 11A thus stressing the significance of the section in dealing with right of workmen.

10. A Division Bench of Gujarat High Court in R. M. Parmar v. Gujarat Electricity Board, Baroda : (1983)ILLJ261Guj , held that it is not necessary for a workman to admit charges or to plead guilty in order to enable him to invoke the jurisdiction of the Court under S. 11A to reduce the penalty, and he need not with bended knees and folded hands plead before Labour Court for reduction of penalty, particularly when he has been conferred with a right to invoke the said powers of the Labour Court under S. 11A for reduction of the penalty.

11. In Rama Kant Misra v. State of Uttar Pradesh : (1982)ILLJ472SC , the Supreme Court held that, before it can exercise the discretion conferred by S. 11A, the Court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. It was further held therein that, even if the misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge, justified on the facts and circumstances of the case, would have to be gone into, since a penalty must be commensurate with the gravity of the offence charged. It was held therein that the order of dismissal was not justified, and hence, the workman was directed to be reinstated with all the benefits.

12. Mr. M. R. Narayanaswamy, learned Counsel for management refers to M/s. Iron and Steel Company v. Their Workmen (supra), and contends that prior to 15th December, 1971, it was held that the Tribunal could not act as a Court of appeal and substitute its own judgment for that of the management, and would interfere (i) when there is want of good faith; (ii) when there is victimisation or unfair labour practice; (iii) when the management has committed a basic error or violation of a

principle of nature justice; and (iv) when on the materials, the finding is completely baseless or perverse, and therefore, even subsequent to the decision rendered in *Workmen of Firestone Tyre and Rubber Company v. Management* (supra), unless the affected workmen invokes S. 11A none of the decision above referred to, imples a Labour Court to apply S. 11A on its own. When there has been no pleading on this aspect, he would submit that none of the decisions above referred to, would be of any assistance to appellant at this belated stage, to ask for S. 11A to be applied.

13. This Court considers that, when S. 11A had been incorporated with effect from 15th December, 1971, a Labour Court functioning under Act, is bound to apply such amendments which are carried out from time to time, irrespective of any plea raised pertaining to its jurisdiction. As pointed out in the decisions above referred subsequent to introduction of S. 11A when a jurisdiction had been conferred on the Tribunal to satisfy itself about the correctness of the finding of misconduct, the Labour Court failed to exercise the jurisdiction enjoined upon it under the provisions of the Act. It is not for a workman to plead an incidental and consequential relief, which is made available to him by statute, and no management can be heard to plead that a statutory benefit should not be extended to an affected workman. Unless, as pointed out in *Workmen of Firestone Tyre and Rubber Company v. Management* (supra), the Tribunal satisfies itself about the correctness of the finding, its award would be illegal. Hence, this Court holds that a Labour Court suo motu has to apply S. 11A, irrespective of whether a workman had mentioned the said section or nor, and pleaded for relief thereunder or not.

14. Labour Court in understanding the jurisdiction it could exercise, had stated as follows :

'..... It is not the jurisdiction of this Court to decide whether the charge framed against the workman concerned had been established to the satisfaction of this Court. This Court has only to be satisfied whether the management was justified in coming to the conclusion that the charge against the workman was well-founded on the evidence available and placed before the domestic enquiry. If there is

evidence to show that the management had been actuated by any sinister motives or had indulged in unfair labour practice, or that the workman had been victimised for any activities of his in connection with the trade union it might have had reasons to be critical of the enquiry held by the management vide the decision reported in *Balipara Tea Estate v. Its Workmen* : (1959) IILLJ245SC

It is needless to state that it has proceeded to pass an award on an erroneous understanding of its powers, as extracted above. It is sought to be contended by Mr. M. R. Narayanaswami, learned Counsel for management, that this sentence is of no relevance, particularly when in the concluding portion, the Tribunal had analysed the evidence on record and found the dismissal valid. The learned single Judge has also held that 'it is not open to the petitioners to take advantage of the single sentence occurring in paragraph 12 of the award and make much out of it'. Labour Court has chosen to spell out to what extent it could exercise its jurisdiction when called upon to reappraise evidence. It is stated by it that on behalf of the workers, it was vehemently contended that the management had not examined anyone of the eye witness, apart from M. Ws. 2 to 6, and hence, the enquiry is vitiated and the findings are perverse. It is to impress that it would not be open to the workmen to call upon it to reappraise the evidence, it had stated as extracted above. When, in a crystal clear manner, by referring to the decision in *Balipara Tea Estate v. Its Workmen* (supra) it has circumscribed the jurisdiction which it could exercise, it could not be correct to characterise that it was a chance sentence in the award, which would not vitiate it. Labour Court having chosen to look at the evidence on record, only on the basis or principles laid down in the decision in *Balipara Tea Estate's* case (supra), which was no longer good law in the light of S. 11A having been enacted, whatever limited analysis it had made of the evidence, in the concluding portion of the order cannot be understood as done, in the light of what it could do under S. 11A of the Act. Hence, the learned Judge was not correct in holding that appellant is taking advantage of a single sentence, whereas it is only because of this approach Labour Court had failed to exercise its jurisdiction under S. 11A of the Act. This being one of the errors in the order of the learned Judge, with reference to the jurisdiction of the Labour Court, this appeal requires to be allowed.

15. The next patent error pointed out is that, the learned Judge had stated that the Labour Court 'also considered the quantum of punishment as it is required to do so under S. 11A', though in no part of the order, such a consideration had been made. This plea has to be straightway rejected because, it is not even the claim of the management that Labour Court had considered the quantum of punishment in any portion of its order. This is again, another error which entails setting aside the order of the learned Judge.

16. The third error made out is that, the learned Judge has taken the view that S. 11A confers jurisdiction on the Labour Court to reappraise evidence and consider the quantum of punishment, only when it is satisfied that the order of discharge or dismissal was not justified. In paragraph 38 in *Workmen of Firestone Tyre & Rubber Company v. Management* (supra), the Supreme Court rejected the contention that the stage for interference under S. 11A would reach, only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer, and proceeded to hold that, in satisfying itself about the correctness of the finding, it must itself reappraise the evidence and find out whether the misconduct alleged has been made out or not. To come to a conclusion either way, it will have to first reappraise the evidence for itself. Therefore, the conclusion of the learned Judge that 'there is absolutely no infirmity' is not correct.

17. As stated above, one of the objections taken by Mr. Narayanaswamy, learned Counsel for the management is that, when there is no pleading on a substantial point, no relief could be extended under S. 11A. To substantiate his contention, he first refers to *J. K. Iron and Steel Co., Kanpur v. The Iron and Steel Mazdoor Union, Kanpur* : (1956)ILLJ227SC , wherein it took into account that, when what was referred related only to the justification for retrenchment of workmen, whereas the award directed laying off by rotation of persons whose cases were not before Arbitrator it was held that, the pleadings of the parties cannot be ignored, since the reason for requiring pleadings and issues, is to ascertain the dispute between parties; to narrow the area of conflict and to see just where the two sides differ. Taking note of the attitude of both the Arbitrator and the Appellate Tribunal, in basing their conclusions on irrelevant considerations and ignoring the relevant

questions that arose for consideration out of the pleadings of the parties, the matter was remitted to the Tribunal for a proper decision after drawing up issues that arose out of the pleadings.

18. Reliance is then made on *Shankar Chakravarti v. Britannia Biscuit Company* : (1979) IILLJ194SC , in which it was laid down that :

'..... It is well settled that allegation which is not pleaded, even if there is evidence in support of it cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in *Tin Printers (P) Ltd. v. Industrial Tribunal* , commends to us. The rules of fair play demand where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.'

19. What was dealt with in the above decision pertained to factual aspects and it was also recognised therein that the pleadings before such bodies are not to be read strictly, but it should be such as to put the other party on sufficient notice of what was being claimed.

20. He then refers to *Parry & Co. v. Judge 2nd I.T.O. Calcutta* : (1970) IILLJ429SC , which after referring to *J. K. Iron & Steel Co. : (1956) ILLJ227SC* , held, that a Labour Tribunal has to confine itself to pleadings and issues arising therefrom, and it is not open to it to fly at a tangent disregarding the pleadings and reach any conclusion that it thought as just and proper.

21. The following passage in *Maxwell on Interpretation of Statutes (11th Edition)* is also relied upon :

'..... So whenever a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority when the case arises and its exercise is duly applied for by a party interested and having a right to make the application, and the exercise depends, not on the discretion of the Courts or Judges, but upon proof of the particular case out of which the power arises

22. At page 286 of Craies on Statute Law (6th Edition), it is stated as follows :

'..... When, 'said the Court', a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority, when the case arises and its exercise is duly applied for by a party interested, and having the right to make the application

23. Rule 34(2A) of Tamil Nadu Industrial Disputes Rules 1958 is read out to show that a Labour Court has to see the real issue involved in matter, and therefore, unless the workmen seek for a specific issue framed on S. 11A, its invocability is unavailable to them.

24. On behalf of the appellant, it is claimed that no doubt S. 11A has not been mentioned either in the claim statement or in its reply, but the relief asked for, was for reinstatement of the workmen with full back wages, continuity of service and other attendant benefits, which would mean that, the relief asked for being wider, the failure to refer to S. 11A had not in any manner, deprived the management to deal with its applicability, if only the Tribunal had chosen to hear the arguments on reappraisal of evidence. When it is the duty of the Labour Court to bear in mind the applicability of S. 11A, which is a statutory benefit conferred on the workmen, there is no need for any specific pleading on this aspect.

25. Even if for any reason it be held that the Labour Court need not suo motu refer to S. 11A, when not specifically mentioned, yet the failure to refer to the said section by its number would not deprive a workman of the right to secure the benefit under S. 11A, because they have sought for reinstatement, which itself is a sufficient indication to the management to place the necessary materials as to why such a relief should not be granted and which would adequately meet the

requirements, which have to be placed by the management under S. 11A.

26. One other point taken by appellant is that, Labour Court misread the evidence on record, if for any reason it be held that it had applied S. 11A in spite of what it stated about the jurisdiction which it would exercise relying upon Balipara Tea Estate (supra). It is contended that so far as Ambalavanan is concerned, M. Ws 2 and 6 have stated that they have not seen him at the place of the occurrence. The enquiry officer has stated that as regards D-1, both M. Ws. 2 and 6 say that they 'did not see him'. It is only M.W. 1 Shankar, who claims to have been assaulted, has stated in his complaint, that Ambalavanan had questioned him as to why he was giving higher production and if on the following Monday he repeats such performance, he would be beaten, and so stating beat him.

27. It has been the claim of the appellant that, when management had not examined anyone of the eye witnesses mentioned in the complaint, apart from M.W. 2, and when he has stated that Ambalavanan was not seen by him, the finding of the enquiry officer that he was guilty of misconduct is perverse, when no valid grounds were stated as to how far the claim of M.W. 1 alone could be acted upon. When this aspect was highlighted, Labour Court stated that it had no jurisdiction to reappraise the evidence. It is for the limited aspects, as laid down in Balipara Tea Estate (supra), it had referred to the evidence tendered before the enquiry officer. In so doing, it stated that the evidence of M. Ws. 1, 2 and M.W. 6 clearly and sufficiently prove that these two workmen did assault the complainant for having given higher production. It is this solitary sentence which is relied upon by the learned counsel for management, to plead that the evidence on record in respect of both of them having been analysed in this manner, it is to the effect that the Tribunal had chosen to act upon the uncorroborated claim of M.W. 1 and found that Ambalavanan had also assaulted Shankar. The learned single Judge also held that these observations are general in character.

28. When a charge framed has to be proved to the hilt on the evidence recorded, it would not subserve the purpose, unless the constituted authority analyses the evidence on record and gives valid reasons as to why in spite of the evidence of an eye witness, that he had not seen Ambalavanan, and more so when none of

the other eye witness mentioned by him in the complaint having not been examined, the uncorroborated evidence of the complainant alone should be acted upon. When there is no discussion on this aspect by the Tribunal, the contention of the appellant that there has been not only non-consideration of valid materials, but there has been a misreading of the evidence, deserves to be accepted.

29. Reliance is placed on *Kumari C. Gabriel v. State of Madras* : (1959)2MLJ15 , wherein it was held that in all enquiries, judicial, departmental, or other, not only in the procedural stages, but also in dealing with the evidence and the material on record when drawing up the final orders, it must be done fairly, and one of the essential requirements is that the conclusion must be rested on the evidence and not on matters outside the record. It should not be based on a misreading of the evidence. Such requirements being basic cannot be whittled down; whatever be the nature of the enquiry, justice should manifestly appear to have been done. Per contra learned Counsel for the management, would plead that the standard of proof required in such proceedings is not asking to what takes place in a trial in criminal Courts or in Civil Courts, and there is no need for the Tribunal to give elaborate reasons for the conclusions or findings rendered by it. To sustain this contention, he first refers to *Balipara Tea Estate case* (supra), which was rendered by the Supreme Court prior to S. 11A, holding that an Industrial Tribunal need not deal with the merits of the matter afresh, as if it were a trial for a criminal offence, and in that case, the Tribunal, had misdirected itself in insisting upon conclusive proof of guilt by the management adducing the necessary evidence, since it was well settled that a Tribunal had to find out only whether there was justification for the management to dismiss an employee and whether a case of misconduct has been made out in the enquiry itself.

30. In *Union v. Sardar Bahadur* : (1972)ILLJ1SC , which dealt with disciplinary proceedings taken against a Central Government servant, it was held that, such a proceedings is not a criminal trial and therefore, the scope of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt.

31. Dealing with the case of a bus conductor in the State Transport undertaking in *State of Haryana v. Rattan Singh* : (1982)ILLJ46SC , it was reiterated that in a

domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply and all materials which are logically probative for a prudent mind are permissible, and that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow, what is strictly speaking, not relevant under the Evidence Act. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding, is certainly available for the Court to look into, because it amounts to an error of law apparent on the record.

32. These decisions can be of no assistance to management, because an Industrial Tribunal is duty bound to reappraise the evidence on record, and find out the correctness of the finding of misconduct. It cannot in a general manner touch upon the evidence without fully comprehending the evidence on record. No doubt a contention was raised resting upon the decision in *Girija Nandini v. Bijendra Narain* : [1967]1SCR93 , that it is not the duty of the appellate Court, when it agrees with the view of the Trial Court on the evidence, either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court, and that expression of general agreement with reasons given in the decision which is under appeal, would ordinarily suffice. Such an approach is no longer available to a Tribunal constituted under the Industrial Disputes Act, subsequent to 15th December, 1971. A reappraisal of evidence contemplates an elaborate and meticulous consideration of the evidence on record and reasons to be given for upholding the findings rendered in the domestic enquiry. It is to remove the menace of arbitrariness, unreasonable attitude in holding the enquiry, unfair approach made in the conduct of proceedings etc. Labour Courts, are now enjoined to scrutinise carefully and find out whether the misconduct alleged is established or not. It is to safeguard the vital interests of the weaker section of the society, District Judges and Senior Judicial Officers are posted to function as Presiding Officers of Labour Courts, and they cannot in a haphazard or cursory manner touch upon the evidence on record in a general way and uphold the findings of the enquiry officer. This would be an unsatisfactory manner of discharging duties cast upon such officers. Having been assigned, to dispose of only cases pertaining to Industrial Disputes, they are duty bound to meticulously consider the evidence on record and devote their utmost attention and care in

finding out whether the misconduct alleged had been made out on the materials adduced in the enquiry. If only there had been a reappraisal of the evidence on record, then the Tribunal would have given a valid reason, as to why the sole testimony of M.W. 1 alone should be acted upon in the instant matter, as against Ambalavanan.

33. The learned single Judge also held, that there are only general observations, and in his view, it being not a criminal trial, there are no merits in the contention of the appellant about failure of the Labour Court in stating as to whose evidence it depends upon to hold the workmen guilty of the charges. This approach has ceased to exist nearly a decade back, and the cardinal duty of a Labour Court is to carefully analyse the evidence on record and given valid reasons for each one of the findings rendered by it. Any half-hearted cursory and general conclusions, for disposing of evidence on record, by using oft-repeated sentences, which could get in with any matter; and the entire evidence tendered by parties to proceedings being summarily and in a wholesale manner disposed of as unbelievable or bristles with inconsistencies and improbabilities as found by the enquiry officer, and hence claim is not made out etc., cannot any longer be countenanced or approved by this Court. Whatever limited discussion of evidence is made by the Labour Court in the concluding portion of its order, does not disclose any application of mind to the evidence on record, to the extent required under S. 11A of the Act. Hence, there being not only failure to consider the evidence on record, but also misreading of evidence, another illegality having been committed, the need has arisen for the matter being remitted to it, for proper disposal.

34. It is claimed that the principles laid down in *Management, SRP Tools Ltd. v. Presiding Officer* 1974 I L.L.J. 413, would apply, but Mr. M. R. Narayanaswami, points out that it was set aside in *The Management of SRP Tools Ltd. v. Presiding Officer, Madras*, (W.A. No. 243 of 1974).

35. The other aspect is, whether it should be in respect of only Ambalavanan or it has to be redone in respect of both the workmen. When the order passed is beset with so many infirmities, particularly pertaining to the aspect of failure to exercise its jurisdiction, the matter has to be decided afresh in respect of both the workmen.

36. Hence, for all the reasons above stated, this appeal is allowed with costs payable by first respondent, resulting in the matter being remitted to the Labour Court, Madras, for fresh disposal. Advocate's fee fixed at Rs. 300.

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