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## MADRAS HIGH COURT ON DISMISSAL OF WORKMAN

### **A. Introduction**

The High Court of Madras (“**HC**”), in *S Raja* case,<sup>1</sup> held that the usage of abusive language by a workman may not be a serious offence to impose a capital punishment of dismissal from service.

### **B. Brief Facts**

1. S Raja (“**Raja**”) was a Secretary of Hindustan Lever Limited Tea Workers’ Welfare Union (“**Union**”).
2. He played a role in defusing a tense situation during a meeting held in July 2009 where an officer of Hindustan Lever Limited Tea Works (“**HLL-TW**”) allegedly threatened workers into increasing production.
3. Raja reportedly calmed the other workers, asked them to resume their duties, and urged HLL-TW to address concerns through the Union.
4. In August 2009, Raja was unexpectedly served with an enquiry notice and he was subsequently terminated.
5. He raised an industrial dispute before the Government of Puducherry (“**Government**”), claiming that his termination was unfair and violated labour laws which was a result of his Union activities.
6. The Government referred the matter to Labour Court (“**LC**”) for resolution.
7. HLL-TW contended the following before the LC:
  - a. Raja was a permanent employee of Company and displayed aggressive and disruptive behaviour, had a history of conflict with other officers, and had previously faced disciplinary actions.
  - b. He was terminated only after a complaint was filed, a domestic inquiry was conducted and the charges against him were proved.
8. LC determined that the penalty of dismissal due to misconduct was excessively severe. As per Section 11A of the Industrial Disputes Act, 1947 (“**Act**”), LC ordered that he be reinstated with continuity of service and 50% back wages.
9. Aggrieved by the decision of LC, the Company approached HC.
10. Single Bench of HC allowed HLL-TW’s petition filed, quashed the LC’s order and held that award is not in consonance with the established legal principles.
11. Aggrieved by the Single Bench’s order, Raja appealed before the Division Bench (**DB**).

### **C. HC’s Judgment & Reasoning**

1. The DB modified the LC’s order and the Single Bench’s decision and:
  - a. Instructed HLL-TW to reinstate Raja in the same position, ensure continuous service and associated benefits. However, he will not be eligible for back wages and LC’s award is adjusted accordingly.
  - b. Held that the entire duration of the break will be treated as a continuous service for terminal benefits. HLL-TW is not required to make provident fund contributions from the dismissal date to the present.
  - c. Ordered that if minimum wage surpasses the last received wage, the last received wage will be effective from now on. Payments made under Section 17-B of Act<sup>3</sup>, will not be subject to adjustment.

<sup>1</sup> *S. Raja vs. Hindustan Unilever Ltd. and Ors.* (25.05.2023 - MADHC): MANU/TN/2917/2023.

<sup>2</sup> Paragraph 23 of the Judgement.

<sup>3</sup> Section 17-B: Payment of full wages to workman pending proceedings in higher courts.

- d. Held lastly that he cannot be assigned to the same location as before dismissal and must be transferred to a distant location in Tamil Nadu, if the Company has a branch there.
2. The Division Bench relied on a plethora of judgements<sup>4</sup> to observe that:
- a. “...In case of misappropriation or breach of trust, there is no need to bother about the past record. Other than this, while imposing the punishment, the authority concerned must take into account the extenuating or aggravating situation as well as the past record of an employee...”<sup>5</sup>
- b. “...It cannot be construed that [Raja] has been indulging in exhibition of such misbehaviour frequently. As stated earlier, the usage of abusive language may not be a serious one to impose a capital punishment of dismissal from service...”<sup>6</sup>

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<sup>4</sup> *Workmen of Tanganagaon Tea Estate vs. Management of Tanganagaon Tea Estate and Ors.* (18.12.1986 - GUHC): MANU/GH/0021/1986; *Charles vs. First Additional Labour Court, Madras and Ors.* (08.06.1993 - MADHC): MANU/TN/1064/1993; *Kanshal Kisbor vs. State of Uttar Pradesh and Ors.* (03.01.2023 - SC): MANU/SC/0004/2023 and *The Management of Madras Fertilisers Ltd., Manali, Madras vs. The Presiding Officer, Additional Labour Court, Madras and Ors.* (31.08.1989 - MADHC): MANU/TN/0159/1989.

<sup>5</sup> Paragraph 11 of the Judgement.

<sup>6</sup> Paragraph 12 of the Judgement.