



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28324 of 2004
and WVMP.No.2592 of 2004

The Hindustan Tele Printers
Employees Co-op Thrift and
Credit Society Ltd rep. By its
Special Officer, Guindy
Chennai 32.

... Petitioner

Vs.

1.The Presiding Officer
Principal Labour Court
Chennai.

2.B.Dheenan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the first respondent in the award passed in the I.D.No.228 of 1995 on its file and dated 29.04.2004 and quash the said award.



W.P.No.28324 of 2004

For Petitioner : Mr.Prasad Vijayakumar

For Respondents : Mr.L.Chandrakumar for R2
R1- Labour Court

ORDER

This Writ Petition is filed challenging the award passed by the Labour Court in I.D.No.228 of 1995 dated 29.04.2004. By the said award, the Workman was directed to be reinstated into service with continuity of service and back wages.

2. The brief facts leading to the filing of this Writ Petition are that the second respondent/workman herein, along with others, were earlier said to have been involved in making wrongful entries in the Loan Disbursement Register and misappropriated amounts between the period 04.09.1976 and 26.03.1981. On the charges of misappropriation, the second respondent Workman and the other persons involved faced criminal investigation. 11 cases were filed against the petitioner Workman and the



W.P.No.28324 of 2004

other persons under Sections 408, 477(A) of IPC r/w 109 of IPC. All these cases were tried before the learned *Judicial Magistrate No.I, Poonamallee* and by a judgement dated 29.08.2013 the second respondent Workman along with the others were found guilty of both the offences under *Sections 408 and 477 (A) of the Indian Penal Code r/w 109 of the Indian Penal Code*. The maximum punishment of one year is simple imprisonment, and a fine was imposed for various offences. Appeals were filed against each order of conviction in Criminal Appeal Nos.74 to 94 of 2013 and the said appeals were dismissed by the separate judgments dated 17.09.2014 by the II Additional District and Sessions Judge, Fast Track Court-II, Poonamallee, confirming the conviction as well as the punishment imposed by the learned Judicial Magistrate.

3. Aggrieved by the same, the Criminal Revision Nos.1072 to 1092 of 2014 were filed before this Court and the same were disposed of by an order dated 27.02.2015. While upholding the conviction, because the fine amount was paid and the misappropriated sums were also paid to the society and the age of the Workmen, instead of the punishment of imprisonment, the



W.P.No.28324 of 2004

beneficial provisions under the Probation of Offenders Act, 1958 were extended to the Workmen and it is also specifically held that they will be eligible for the benefit under Section 12 of the Probation of Offenders Act, i.e., they will not carry disqualification, they would suffer on account of the conviction. The paragraph No.6 of the said judgement of this Court is extracted hereunder:

“6. This Court notes that in such case, irregularities were in three cases and in small amounts of Rs.1,812/- and below. In the case on hand, there are as many as 11 instances, one involving a sum of Rs.35,796.75. Even so, given the position that as many as 31 years have passed and that petitioners are retired persons, all aged about 70, this Court would extend the benevolent provision of Probation of Offenders Act. Towards doing so, this Court reserved orders on 14.11.2014 affording petitioners a period of three months from such date to effect deposit of the misappropriated funds to the credit of respective complaint cases. Sums now stand deposited as evidenced by receipts issued by learned Judicial



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W.P.No.28324 of 2004

Magistrate No.I, Poonamallee, submitted before the Registry along with a memo, as directed by this Court. In the circumstances, this Court while confirming the finding of conviction and sentence of Courts below, would direct the petitioners be released on probation of good conduct, on each of them executing a bond in a sum of Rs.10,000/- (Rupees Ten Thousand Only) with one surety in a like sum to the satisfaction of the trial Court viz., Judicial Magistrate I, Poonamallee, undertaking to appear and receive sentence when called upon to do so, during a period of one year of the date of the bond and in the mean time to keep the peace and be of good behaviour. It is made clear that in keeping with Section 12 of the Probation of Offenders Act, petitioners shall not suffer disqualification, attaching to this conviction.”

4. In this background, simultaneously stating that the second respondent Workman and others prevented the Special Officer from taking further steps in proceeding to realize the surcharge amounts and also from



taking further steps to recover the said amount and upon being confronted, they also abused the Special Officer, a charge memorandum dated 16.07.1994 was issued. The said charge memorandum contains 7 specific items of charges. Upon receipt of the charge memorandum, the Workman submitted his detailed explanation on 25/07/1994, which runs to 21 pages. The explanation includes an introduction and the subject index and it goes in detail about who is the Special Officer and what are his functions. Thereafter, he proceeded to give a general explanation as to the fact that the Special Officer was only involved in corruption and was threatening the Workman etc. He made accusations against the Special Officer for taking vindictive proceedings. He has submitted that the surcharge proceedings were erroneous and that he has put in 17 years of unblemished service.

5. Thereafter, it is alleged on behalf of the management that some of the ledgers and other documents relating to the loan transactions were also taken away by the Workman and he indulged in fresh misconduct. Yet another charge memo was issued on 01.08.1994 which contains another 7 items of charges. In respect of the said charge memorandum, the workman



W.P.No.28324 of 2004

again had submitted a detailed explanation on 12.08.1994 denying the charges and again making allegations against the Special Officer that the entire charges are motivated and *malafide*.

6. Thereafter, when the domestic enquiry was conducted on various dates, the Workman remained absent on the ground that the documents which were sought for by him so as to put forth his case effectively were not furnished and also the charge memorandum was not translated and given to him in Tamil. The Enquiry Officer proceeded further with the enquiry and submitted a report on 04.10.1994 finding that out of 21 charges alleged against the workman 17 charges were proved. On the said report, the second show cause notice was issued on 24.11.1994 to which also the workman had submitted his explanation on 02.12.1994. After considering the explanation submitted by the Workman on 10.12.1994, he was terminated from service. Aggrieved by the same, the present industrial dispute was raised.

7. In the industrial dispute, the Workman alleged that the



W.P.No.28324 of 2004

procedure followed during the domestic enquiry was not fair and proper. It is also further pleaded by him that the charges are motivated and he was victimized. He was unable to comprehend and contest the same. Only after much difficulty, he translated the charge memorandum into Tamil and thereafter submitted his explanation. He also requested certain copies of the documents which were not provided to him. Therefore, he alleged that serving 3 successive charge memorandums on 16.09.1994, 01.08.1994 and 12.08.1994 is to victimise him and he has put in 17 years of unblemished service in the respondent society and therefore, he prayed for reinstatement with all the attendant benefits.

8. The industrial dispute was resisted by the management. While giving justification towards the charges made and also how the domestic enquiry was conducted in paragraph 5, it is specifically pleaded that the Court may decide the validity of the domestic enquiry as a preliminary issue and it is further pleaded that in the event of the Court coming to a conclusion that the domestic enquiry is not valid and vitiated for any reason, the management prayed for an opportunity to prove the charges before the Labour Court.



W.P.No.28324 of 2004

WEB COPY

9. Before the Labour Court, on behalf of the Workman, he examined himself as *P. W.1* and marked ***Ex.W.1*** to ***Ex.W.29***. On behalf of the management, two witnesses, *M. W.1* and *M. W.2* were examined and ***Ex.M.1*** to ***Ex.M.15*** were marked. Thereafter, by an award dated 29.04.2004, the Labour Court in paragraph.9, after considering the cross-examination of *M. W.1* found that the management had not furnished the copies of the documents in time and therefore, the petitioner was not in a position to peruse the documents and give proper reply. The Labour Court made the said finding in paragraph 10 of the award. Thereafter, again in paragraph 11, it considered the further cross-examination of *M. W.1* and concluded that it is not the case of the management that the petitioner knows English and it is the bounden duty of the management to furnish the Tamil translation of the charge memo and documents to the petitioner and it is clear that the charge memoranda in Tamil were not furnished to the petitioner. Thereafter, in paragraph 12, the claim was allowed, and the relief of reinstatement with the back wages was ordered. It is essential to extract paragraph No.12 of the said award, which reads thus:



W.P.No.28324 of 2004

WEB COPY

“12. I.D. was filed in the year 1995. M.W.I was examined only on 13.10.2003. 14.10.2003, 4.11.2003 10.11.2003 and 19.2.04. The ID was pending for the past 10 years. For the reasons, stated above, I hold that the non-employment of the petitioner is not justified and that the petitioner is entitled to the relief of reinstatement with continuity of service and back wages. The point is answered accordingly.”

10. Aggrieved by the same, the management has filed the present writ petition. It is pertinent to take note here that this Writ Petition was filed in the year 2004 and has been pending for the past 20 years. Now, the Workman is aged about 70 years. It can be seen that he entered service in the year 1977 and was dismissed from service in the year 1994. The industrial dispute itself is of the year 1995, which went on for 9 years, and the award was passed in the year 2004. Now, the Writ Petition is pending for 20 years. Pending the Writ Petition, it seems that no 17B application was filed. However, at the time of admission, this Court had directed the deposit of 50%



W.P.No.28324 of 2004

of the back wages as ordered by the Labour Court and 50% was deposited and the same was also permitted to be withdrawn by the Workman. The sum of Rs.1,93,117/- has been withdrawn by the Workman. It is under these circumstances that this Court is now taking the matter for final disposal.

11. Heard Mr.Prasad Vijaykumar, learned counsel appearing on behalf of the petitioner and Mr.L.Chandrakumar, the learned counsel appearing on behalf of the second respondent Workman.

12. The learned counsel appearing on behalf of the petitioner would submit that on the face of it, the award of the Labour Court is erroneous. Even the findings of the Labour Court that the domestic enquiry is not fair and proper is incorrect. In any event, the Labour Court ought to have permitted the management to let in evidence and on the merits of the charges, ought not to have ordered reinstatement with back wages. The learned counsel for the petitioner further taking this Court through the evidence on record and the documents which were marked in the domestic enquiry as well



W.P.No.28324 of 2004

as before the Labour Court would submit that the charges were duly proved and there is ample evidence to hold that the charges are proved and therefore in any event, the Labour Court appraised the evidence on record concerning the charges and arrived at a finding, it could not have ordered reinstatement with back wages.

13. Per contra, the learned counsel appearing on behalf of the second respondent workman would submit that in this case the enquiry was clearly vitiated since the documents which are prayed for by the Workman were never supplied. This apart, the entire charge memorandum was issued in English which put the Workman into grave prejudice. Therefore, the entire enquiry proceedings stood vitiated. As far as the earlier surcharge proceedings are concerned, by the judgment of this Court in the Criminal Revision granting the benefit under the Probation of Offenders Act, 1952 the petitioner cannot carry the tag of being a convict and no disqualification attached to the conviction can be made as against the workman. In view thereof, there is nothing for this Court to interfere in the award at this point of time and would pray that the Writ Petition will be dismissed.



W.P.No.28324 of 2004

WEB COPY

14. I considered the rival submissions made on either side and perused the material records of the case.

15. At the outset, when the Labour Court has found that the domestic enquiry was not fair and proper because the documents were not supplied to the Workman and that the charge memorandum is supplied in Tamil, then the Labour Court ought to have passed the preliminary award and thereafter permitted the management to let in evidence on the merits of the charges and ought to have considered the merits of the charges.

16. There is a specific pleading in the counter affidavit by the management in this regard. Therefore, on the face of it, the award of the Labour Court is unsustainable. Once this Court finds that the Labour Court did not follow the procedure, one of the options open to this Court is to remand the matter back to the Labour Court. However the remand cannot be made at this point in time as it would lead to thorough injustice to both sides as the litigation started in the year 1994 and now we are in 2024, almost 30



W.P.No.28324 of 2004

years have been completed. This Court is not inclined to remand the matter back to the Labour Court. Even assuming that the finding of the Labour Court that the enquiry is not fair and proper, then the further questions that have to be considered by this Court are whether there is evidence on record to prove the charges against the Workman and if the charges are held to be proved, then whether the punishment of dismissal from service is justified or not.

17. If all three charges in the memorandum are perused, the first charge relates to the Workman preventing the Special Officer from taking further action concerning the surcharge cases. It can be seen that regarding the misappropriation and surcharge, already the Criminal Court has found that even the charges as proved beyond doubt and the conviction is sustained, up to the level of this Court. As far as the argument of the learned counsel for the Workman concerning the Probation of Offenders Act, 1952 it is true that once the convict is released under the provisions of the Probation of Offender Act, 1952 under Section 12, the person released will not carry the disqualification of conviction. That would only mean that by merely holding that the petitioner as convicted in a criminal case, the Management cannot



W.P.No.28324 of 2004

issue a showcase notice based on conviction and dismiss the petitioner from service. However, the fact with reference to the proof of charge on merits can be taken into account. However, in this case, the management is not even relying on the very same charges, but these are different sets of charges that arose subsequently. The first charge alleged is the prevention of the Special Officer from proceedings with his duties. The second stage of charge is concerning withholding of the documents and the 3rd stage of charge leads to abusing the Special Officer etc. Detail evidence is let in and the relevant documents are marked. *M. W.1* and *M. W.2*, speak about the charges and all the statements which are made and the entire domestic enquiry proceedings are also brought on record before the Labour Court. It cannot be said that the charges are not proven. There is ample evidence to hold that the charges are proven.

18. Once the charges are held to be proved, then the next question is the justifiability of the punishment. In the backdrop of misappropriation of the amounts and repayment of the funds and thereafter the Special Officer being prevented from proceedings further to realize the



W.P.No.28324 of 2004

same, it cannot be said that the termination from service is disproportionate or unjustified given the facts and circumstances of this case.

19. Accordingly, I am inclined to interfere with the award of the Labour Court. However, it can be seen that pending disposal of the Writ Petition, no application was made and no order under 17-B was also passed. Given the same, 50% of the back wages which was already withdrawn by the Workman shall be left as it is and shall not be recovered back from the Workman. Therefore, the Writ Petition is allowed on the following terms:

i) *The award of the Labour Court dated 29.04.2004 made in I.D No.228 of 1995 shall stand set aside;*

ii) *It is held that the domestic enquiry held against the Workman is not fair and proper;*

iii) *However, the evidence on record is enough to hold that 17 Charges out of 21 charges levelled against the workman are proved;*

iv) *The punishment of termination from service is justified in the facts and circumstances of the case;*



W.P.No.28324 of 2004

WEB COPY

v) since the Workman has not paid 17B wages pending the Writ Petition, the sum of Rs.1,93,117/- already withdrawn by the Workman shall not be recovered again.

No costs. Consequently, connected Miscellaneous Petition is closed.

20.11.2024

Neutral Citation: Yes
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To

The Presiding Officer
Principal Labour Court
Chennai.



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W.P.No.28324 of 2004

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.28324 of 2004
and WVMP.No.2592 of 2004

20.11.2024