



W.P.Nos. 27607 of 2019 & 16645 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos. 27607 of 2019 & 16645 of 2020

and

W.M.P.No. 27113 of 2019

W.P.No. 27607 of 2019

The Management
Wichitra Auto Limited,
Rep. by its Authorised Signatory- R. Dhamodharan,
No. 85, Maduravoil By-pass Road,
Ayanampakkam,
Chennai - 600 053.

... Petitioner

Vs

P. Dilli

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the III Additional Labour Court, Chennai in I.D.No. 323 of 2015 and quash its Award dated 28.06.2019.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeerahamed

For Respondent : Mrs.V.Porkodi



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P. Dilli

... Petitioner

Vs

The Management
Wichitra Auto Limited,
Rep. by its Authorised Signatory
No. 85, Maduravoil By-pass Road,
Ayanampakkam,
Chennai - 600 053.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, after calling for the records pertaining to the Award dated 28.06.2019 in ID. No 323/2015 from the file of the III Additional Labour Court, Chennai and quash the same in so far as denying/depriving the petitioner back wages and of all other attendant benefits and consequently direct the respondent to pay the back wages and other attendant benefits to the petitioner in addition to the relief of the reinstatement, which are already awarded to the petitioner.

For Petitioner : Mrs.V.Porkodi

For Respondent : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeerahamed



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ORDER

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These two writ petitions are challenging the very same Award of the Labour Court being filed by the workman as well as the management, in I.D.No.323 of 2015 dated 28.06.2019 and as such are taken up by way of this common order for disposal. Irrespective of their array, in the writ petitions M/s.Wichitra Auto Limited is referred to as Management and Mr.P.Dilli is referred to as workman in this order.

2. The brief facts leading to filing of these writ petitions are that the workman joined the management on 10.01.1996 as Operator and was continuing in service for a period of about 18 years. While so, on 24.02.2014 a charge memorandum was issued to the workman. The essence of the charge against the workman is that as against the production norm of 200 units per hour, the workman was giving a lesser output on the days mentioned in the charge memorandum when he was employed in Cell No. 002 in the Crimping unit, while all the other workmen who are similarly employed have been giving the said production norm of 200 units per hour. It is essential to extract the charge which reads as under:-



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உமக்கு Cell 002 என்ற மெஷினில் பார்ட் என் 29046630ல் கிரிம்ப்பிங் செய்யும் வேலை அளிக்கப்பட்ட போது, நீர் ஒரு உடிப்டுக்கு கொடுக்க வேண்டிய உற்பத்தியை கொடுக்காமல், குறைவாவே தொடர்ந்து கொடுத்து வருவதாகவும், ஆனால் அந்த Cell-ல் பணிபுரியும் மற்ற ஆபரேட்டர்கள் அவர்கள் கொடுக்க வேண்டிய உற்பத்தியை கொடுத்துள்ளனர் என்றும் இது சம்பந்தமாக உமது மேலதிகாரி உம்மை நேரில் அழைத்து மற்ற ஆபரேட்டர்கள் போல் உற்பத்தியை அளிக்குமாறு பலமுறை அறிவுறுத்தியும், நீர் வேண்டுமென்றே உற்பத்தியை குறைவாக கொடுத்து “Go Slow” வில் ஈடுபட்டு வருவதாகவும் உம்மீது ரிப்போர்ட் செய்யப்பட்டிருக்கிறது. அதன் விபரம் தேதி வாரியாக கீழ்க்கண்டவாறு பட்டியலிடப்பட்டுள்ளது.

தேதி	உடிப்ட்	Cell நெ.	பார்ட் நெ.	கொடுக்க வேண்டிய உற்பத்தி Per Hour	நீர் கொடுத்த உற்பத்தி Per Hour
21.12.2013	1	2	29046630	200	159
02.01.2014	1	2	29046630	200	164
03.01.2014	1	2	29046630	200	165
04.01.2014	1	2	29046630	200	165
16.01.2014	1	2	29046630	200	172
17.01.2014	1	2	29046630	200	161
18.01.2014	1	2	29046630	200	172
27.01.2014	1	2	29046630	200	181
28.01.2014	1	2	29046630	200	182
31.01.2014	1	2	29046630	200	176
01.02.2014	1	2	29046630	200	170
04.02.2014	2	2	29046630	200	178
05.02.2014	2	2	29046630	200	169
08.02.2014	2	2	29046630	200	179
10.02.2014	1	2	29046630	200	170



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2. இது சம்பந்தமாக சம்பந்தப்பட்ட உற்பத்தி காட்டுகளின் நகல்கள் இத்துடன் இணைக்கப்பட்டுள்ளன.

3. மேற்கூறிய உமது செய்கைகள் உண்மை என நீரூபிக்கப்பட்டால் அவை நமது கம்பெனி

நிலை ஆணைகள் பிரகாரம்:-

19.8 “நிலை ஆணைகளை மீறி நடத்தல்”

19.11 “நிறுவனத்தின் ஒழுங்குக்கு குந்தகம் விளைவிக்கும் நடத்தையில் ஈடுபடுதல்

19.93 “சட்டபூர்வமான, நியாயமான மேலதிகாரியினுடைய ஆணையை வேண்டுமென்றே கீழ்ப்படியாமல் இருந்தல்” மற்றும்

19.81 வேலையை தாமதமான செய்தல்,
ஆகிற கடும் ஒழுங்கீன நடத்தைகளாகும்.

3. The workman submitted an explanation on 08.03.2014, denying the charge and submitting that only because he joined a particular trade union and was actively involved in that trade union, he is being victimised and that he was giving production to the best of his ability. He has denied that he willfully went-slow. The domestic enquiry was held. On behalf of the Management, one R. Varadharajan and one M. Sukumaran were examined as M.W.1 & M.W.2 and Ex.M1 to M39 were marked. On behalf of the workman, the delinquent examined himself as WW1 and one A.S. Annamalai and K. Gopi were examined as W.W.2 and W.W.3. No documents were examined on the side of the workman.



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4. The domestic enquiry officer after appreciation of the evidence on record, by his report dated 20.08.2014 returned a finding that the charge as such is proved and the workman by his conduct has violated the Standing Orders, acted in a manner so as to cause industrial unrest and acted in violation of the instructions given by his superiors and has acted in a manner as to go slow. Thereafter, a second show cause notice was issued and not finding favour with the explanation submitted by the workman, by an order dated 16.10.2014, the management dismissed the workman from service. Aggrieved by this, the workman raised a dispute, and upon failure of conciliation, a claim statement was filed by the workman in I.D.No. 323 of 2015.

5. In the claim statement, the workman contended that the enquiry was not fair and proper and on merits of the charge, it is his contention that he was victimised for his trade union activities and that he didn't go-slow. The claim statement was resisted by the management by detailed counter statement by contending that the domestic enquiry was fair and proper. There is ample



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evidence on record to prove the guilt. The charge of going slow is a serious charge, considering the factory line which is involved. It would also amount to unfair labour practice on the part of the workman. Therefore, when the serious charge is proved, appropriate punishment has been imposed. Before the Labour Court, the workman examined himself as W.W.1 and Ex.W.1 to W.19 were marked on behalf of the workman. On behalf the management, no witnesses were examined but however, Ex.M.1 to M.30 were marked before the Labour Court.

6. It is admitted on behalf of learned Counsel for both sides that, though averments were made regarding the fairness of enquiry, that question was not argued before the Labour Court. The fairness of enquiry was accepted by both sides and what was argued before the Labour Court was with reference to the further exercise of power under Section 11A of the Industrial Disputes Act, specifically as to whether or not the charge was proved by way of some reliable evidence or whether the finding of guilt is perverse and whether the punishment was disproportionate or unduly harsh on the workman. Therefore, the Labour Court considered only the said issues



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on the basis of evidence on record and found that there was no proper evidence to prove the charge and allowed the claim of the workman, however, ordered reinstatement without back wages. Aggrieved by which, both the management as well as the workman are before this Court.

7. Heard Mr.S.Ravindran, learned Senior Counsel appearing on behalf of the management and Mrs.V.Porkodi, the learned counsel appearing on behalf of the workman.

8. Mr S.Ravindran, the learned Senior Counsel appearing on behalf of management would submit that the charge memo was duly issued, due opportunity has been given to the workman and detailed domestic enquiry has been held. The workman had cross examined the management witness and after due appreciation of evidence the domestic enquiry officer has returned a finding of guilt. In that scenario, when the procedure is not faulted, the jurisdiction of the Labour Court under Section 11A to reappraise the evidence is only to see whether at all the findings of the domestic enquiry is based on some evidence and whether it would be a plausible conclusion to arrive at as



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to the guilt of the charge. It cannot replace its own deductions or alternative views as if it were an Appellate Court. Therefore, the jurisdiction of the Labour Court under section 11A was very limited. Within the limited jurisdiction, the Labour Court firstly keeps the plea of victimisation made by the workman in the background. The Labour Court had not given any conclusive finding regarding the allegation of victimization. It merely extracts the pleading and holds that it will keep the same in the background. The said approach is erroneous. Proven misconduct is antithetic to the plea of victimization. Therefore, when there is a proven misconduct, the plea of victimization ought not to have been considered by the Labour Court.

9. As far as the proof of charge is concerned, when the management has examined two witnesses and they have categorically deposed that it is the standard which is followed in the industry, especially when the industry is a production line. When every other workman is able to give the output of 200 units and the same being the industry norm and when the petitioner alone has not given the said norms, then the conclusion of the enquiry officer that he has gone slow cannot be termed as perverse or without evidence. When the



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management has categorically produced evidence in the form of output given by the similarly situated operators, then the management has discharged its burden to the extent of preponderance of probability, which is only the standard of proof which is required for proving the charge in a domestic enquiry. When there is adequate evidence in proof of the charge, then the finding of the Labour Court is beyond jurisdiction and therefore, this Court should interfere in exercise of its power under Article 226 of the Constitution of India.

10. The learned senior counsel for the management would relied upon the judgment of the Hon'ble Supreme Court of India in ***Bank of India vs. T.S.Kelawala and Others*** reported in ***1990 SCC (4) 744*** for the proposition that the misconduct of go-slow cannot be considered leniently by the Labour Court or this Court. The learned senior Counsel would placed strong emphasis on the fact that the management is a factory which is very much dependent on the production line. If one workman gives one component lesser than the optimum level, then that would cause serious prejudice to the very functioning of the unit. The learned counsel would further submit that,

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that is not only a serious misconduct, it would also affect the other workman who want to give the output and in that sense is an unfair labour practice by the workman.

11. He would submit that any sympathy shown in cases like this would be a misplaced sympathy and would rely upon the judgement of the Hon'ble Supreme Court of India in ***Davalsab Husainsab Mulla vs. North West Karnataka Road Transport Corporation*** reported in ***2013 (4) LLN 411 (SC)*** in this regard. The learned Senior Counsel would further rely upon the Judgement of the Hon'ble Supreme Court of India in ***A.P.SRTC vs Raghuda Siva Sankar Prasad*** reported in ***(2007) 1 SCC 222*** to contend that the Labour Court can interfere with the findings of the domestic enquiry, if only it is perverse and it is not open for the Labour Court to substitute its own subjective opinion. He would specifically rely upon Paragraph No. 22 of the said judgement.

12. The learned Senior Counsel would further rely upon the judgement of the Hon'ble Supreme Court of India in ***Standard Chartered Bank Vs. R.C.***



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Srivastava reported in **2021 (6) LLN 428 (SC)** for the very same proposition.

For all the above submissions, the learned senior counsel for the management would submit that this is a fit case where this Court should interfere with the Award of the Labour Court.

13. Ms V. Porkodi, the learned Counsel appearing on behalf of the workman would submit that apart from the workman, there are several other persons who also didn't give the output of 200 units per hour. She would submit that the said output was never made as a norm and therefore it cannot be a basis for a misconduct. She would submit that when the workman was in service for the past 18 years, only because he was actively involved in the trade union activities, the punishment is imposed by way of victimization to see him away from the factory. She would submit that neither there was any misconduct on the part of the workman nor it is serious enough to impose a punishment of dismissal from service. She would submit that having found that the charge itself is not proved, it is axiomatic that the Labour Court ought to have reinstated him with full back wages. She would submit that when the workman has been removed from service as early as on 16.10.2014 and when the award is being passed on 28.06.2019, the negating five years of back

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wages works adversely to the workman and therefore the writ petition filed by the workman should be allowed.

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

15. At the outset, there can be no quarrel with the proposition argued by the learned Senior Counsel on behalf the management that, in the absence of a challenge to the fairness of the enquiry, even though the Labour Court is duty bound to go into the evidence and the findings, the jurisdiction is in a narrow compass to see whether the findings of the enquiry officer are sustainable and are based on some evidence on record and should not be perverse. It cannot substitute its own alternative views/findings in the place of the enquiry officer, as if it were an Appellate Court.

16. The Charge is extracted supra. The charge pinpointedly in the first instance clearly states that the workman has not given the production output norm. Even in Tamil, it is very clearly said “நீர் ஒரு உழிப்டுக்கு கொடுக்க வேண்டிய



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உற்பத்தியை கொடுக்காமல்” Even in the tabular column it is clearly mentioned as

“கொடுக்க வேண்டிய உற்பத்தி Per Hour”. Therefore, even in an ex-parte scenario, the minimum which is expected from the management is to prove that they have fixed 200 units as the norm per hour, which evidence is completely absent in this case.

17.The learned Senior Counsel for the management would submit that the same is alleged only based on the fact that every other operator is giving. Firstly, that is not specifically made as a charge that the கொடுக்க வேண்டிய உற்பத்தி is based on what is being given by every other operator. On the other hand, the charge itself clearly states that every other operator meets the norm. Therefore, the minimum burden which is expected of the management is to prove by way of oral or documentary evidence, that there is a output norm of 200 units per hour that is fixed. The same is completely is absent in this case. The Labour Court has gone into the same in paragraph No. 17, and it has also considered the cross-examination of the management witnesses. The questions and answers are extracted in paragraph No. 17. From the same, it would be very clear that the management has not fixed any norm but what is



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given by the other operators is only being insisted upon.

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18. The departmental enquiry is quasi-criminal in nature, and the management has to stand on fall by its own charge. Therefore, the finding of the labour Court in paragraph No. 17 that it is evident that without any production target being fixed, the Management charged the Workman for going slow only on the basis of comparison cannot be held to be perverse or outside the jurisdiction. Less efficiency or comparatively lagging behind is different from misconduct of violating the production norm or going slow. The charge is violating the production norm and going slow and not being less efficient or not meeting the standards as that of the other workman. Therefore, in that regard, I do not find any error whatsoever in the Award of the Labour Court, much less any perversity so as to interfere under Article 226 of the Constitution of India.

19. Now coming to the question of backwages, it is true that the workman has put in 18 long years of service and the disputed period was from 2014 to 2019. But however, when the Labour Court has taken into



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consideration the overall facts and circumstances on the grounds on which the findings are given and the workman is ordered to be reinstated and especially considering the fact that the workman has been given back wages from the date of the Award and he has got further service to go, overall I am not inclined to interfere with the Award of the Labour Court with reference to the denial of back wages also.

20. Accordingly, finding no merits in both the writ petitions stand dismissed. Consequently, connected miscellaneous petition is closed. No costs.

22.11.2024

Neutral Citation: Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

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