

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1077 of 2014

The Management,
M/s.Bharat Heavy Electricals Ltd.,
Indira Gandhi Industrial Complex,
Ranipet-632 406. .. Appellant

Vs.

1.P.Selvakumar
2.The Presiding Officer,
Labour Court, Vellore. .. Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 01.04.2014 passed in W.P.No.9316 of 2004. Prayer in W.P.9316 of 2004: Writ petition filed under Article 226 to of the constitution of India, for issuance of a writ of certiorari to call for the records of the second respondent, Labour Court, Vellore and quash the award dt.20.1.2004 made in I.D.NO.341/1998.

For Appellant : Mr.V.Karthic
for M/s.T.S.Gopalan and Co.

For Respondents: Mr.S.T.Varadarajulu for R-1

JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 1st April, 2014 made in W.P.No.9316 of 2004. Feeling aggrieved by the Award dated 20th January, 2004 made in I.D.No.341 of 1998 passed by the Labour Court, Vellore, where under the termination order dated 9th October, 1993 was set aside and the respondent employee was directed to be reinstated with continuity of service, the appellant management has filed the writ petition.

2 The learned Single Judge dismissed the writ petition, holding that the removal of the employee from service in view of the nature of misconduct alleged was too harsh and disproportionate to

the proved charge and as such, no interference was warranted with the Award passed by the labour court.

3 Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

4 The Labour Court, after having discussed the charge levelled against the first respondent employee and also the conduct of the enquiry, set aside the dismissal order, primarily on the basis that the employee was acquitted in the criminal case in respect of the same charges. Thus, there is no reason to find the first respondent employee as guilty in the domestic enquiry.

5 The charge levelled against the first respondent employee was as under :

"On 14.8.92 at about 15.45 Hrs. you forcibly entered into the chamber of the Chief Security Officer pushing aside the Security staff and while you were brought out of the CSO's room, you behaved in intemperate manner and started shouting at the Security Officer Shri R.Jayaraman, who was standing in front of the CSO's room and you made filthy utterance towards the Security Officer as follows :-

* * * * *

When the security staff on duty tried to contain you, you also kicked with your right knee on Security Officer's groin and also on his left leg. Thus you have indulged in riotous violent and disorderly behaviour by preventing Security Officer in discharging his official duty.

You were in the habit of indulging this type of unruly riotous and disorderly behaviour on many occasions, in the past for which you have been warned and even punished after disciplinary proceedings. You have not improved your behaviour despite the above but have been continuing in such indulgence in misbehaving, with the executives and security personnel intimidating and threatening them with dire consequences."

6 It is well settled proposition of law that the domestic enquiry and criminal proceedings stand on different footing. When the criminal proceedings requires strict proof and the alleged accused is entitled to benefit of doubt, in the domestic enquiry, the finding may be achieved on the basis of preponderance of probabilities on various factors. Even if the accused is acquitted in the criminal case arising from the same incident, the employee is liable to be examined under domestic enquiry / disciplinary proceedings to

establish allegation of charges, and as a sequel to find out the suitability of the said employee for continuation of employment or for any other appropriate punishment. The Labour Court failed to distinguish both enquiries on the same set of facts and took the decision of setting aside the dismissal order only on the basis that the first respondent employee was acquitted in the criminal case.

7 In the given facts and circumstances of the case, without expressing any opinion on the merits of the case, we are of the considered view that the Award dated 20th January, 2004 and the order passed by the learned Single Judge dated 1st April, 2014 deserve to be set aside. Accordingly, the said orders are quashed. The matter is remitted back to the Labour Court, Vellore for re-examining the entire case on its own merit and in accordance with law. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order, after affording an opportunity of hearing to all parties concerned.

8 Resultantly, the writ appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

The Presiding Officer,
Labour Court, Vellore.

+ 1 cc to MR.T.S. Gopalan & Co., Advocate Sr.46424
+ 1 cc to Mr.S.T. Varadarajulu, Advocate Sr.46904

Copy to:1. The Section Officer,
Writ Section, High Court, Madras.

2. The Section Officer,
V.R. Section, High Court, Madras.

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SVI (CO)
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