

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.3.2016 & Pronounced on: 31.3.2016

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal Nos.1481 of 2013 & 185 of 2014

The Chief Executive Officer
Perambalur Sugar Mills Limited
Eraiur Post
Perambalur District.

The Managing Director
Perambalur Sugar Mills Limited
No.474, Anna Salai
Nandanam
Chennai 600 035.

Appellants in WA
1481/13 & R1 & R2
in WA 185/14

..

Vs.

The Labour Court
Tiruchirappalli.

R1 in WA 1481/13
& R3 in WA 185/14

..

S.Krishnasamy

R2 in WA 1481/13
& Appellant in WA
185/14

..

Appeals under Clause 15 of the Letters Patent against the order dated
19.3.2013 made in W.P.No.36666 of 2003 on the file of this Court.

For Appellants in WA
No.1481/13 & R1 &
R2 in WA 185/14

: Mr.R.Parthiban

For R2 in WA No.1481/
13 & Appellant in WA
No.185/14

Mr.NGR Prasad
: For M/s. Row and Reddy

J U D G M E N T**V.RAMASUBRAMANIAN,J**

While one writ appeal is by the Management, the other writ appeal is by the workman. Both arise out of an order passed by a learned Judge in a writ petition filed by the workman challenging an award of the Labour Court upholding the penalty of dismissal from service.

2. Heard Mr.R.Parthiban, learned counsel for the Management and Mr.NGR Prasad, learned counsel for the workman.

3. Since the ranking of parties in both the writ appeals are interchanged, we shall refer to the parties only by their status, such as workman and Management.

4. The workman was appointed in the Sugar Mill belonging to the Management way back in the year 1978 as Mazdoor. He was appointed as Laboratory Boy by way of selection on 04.7.1984 and was promoted as Lab Assistant on 29.7.1985.

5. His next avenue of promotion was to the post of Cane Assistant. But, he was deprived of promotion, on the ground that the qualification prescribed for the post had been changed. Therefore, the workman filed a writ petition in W.P.No.4915 of 1989. By an order dated 04.01.1991, the writ petition was allowed, directing the Management to give special training to the workman and to promote him as Cane Assistant.

6. Thereafter, the Management gave training to the workman and appointed him temporarily as Cane Assistant by order dated 16.12.1991. The

workman joined the promoted post on 18.12.1991, but he was unhappy about the stringent conditions imposed in his order of promotion.

7. It appears that the workman went on medical leave on different occasions in the year 1992. A couple of cane growers also gave a complaint against the workman. The absence of the workman for different spells of period, coupled with the complaints given by the cane growers, compelled the Management to issue a charge memo dated 12.9.1992. The gravamen of the charges was (i) unauthorised absence, and (ii) demand and acceptance of illegal gratification.

8. Disciplinary proceedings were held and an order of dismissal from service was passed on 21.01.1998. The workman raised an industrial dispute in I.D.No.23 of 1999. By a preliminary award dated 18.5.2000, the Labour Court held that the domestic enquiry was not conducted in a fair and proper manner. Accepting the preliminary award, the Management chose to let in evidence before the Labour Court.

9. Accordingly, both parties let in oral evidence and also filed additional documents. On the basis of the oral and documentary evidence, the Labour Court came to the conclusion that the charges were proved and that the order of dismissal was justified. Consequently, the Labour Court passed an award dated 30.9.2002, dismissing the Industrial Dispute.

10. The workman filed a writ petition in W.P.No.36666 of 2003 challenging an award of the Labour Court. By an order dated 19.3.2013, a learned Judge of this Court allowed the writ petition, directing the

Management to pay subsistence allowance for the entire period from the date of dismissal up to the date of superannuation, treating the entire period as duty period with consequential benefits of continuity of service, etc. The learned Judge granted these reliefs to the workman after coming to an independent conclusion that the charges framed against the workman were not proved.

11. Aggrieved by the interference made by the learned Judge to the award of the Labour Court, the Management has come up with W.A.No.1481 of 2013. Contending that the learned Judge ought to have granted full backwages from the date of dismissal up to the date of superannuation, the workman has come up with W.A.No.185 of 2015.

12. As rightly contended by Mr.R.Parthiban, learned counsel for the Management, the scope of judicial review under Article 226 of the Constitution, over the award of the Labour Court, is extremely circumscribed. Without multiplying authorities, we can usefully quote paragraphs 11 and 12 of the decision of the Supreme Court in ***Management of Mathuranthakam Co-operative Sugar Mills Ltd. v. S.Viswanathan [(2005) 3 SCC 193]***, which read as follows:

"11. This ding-dong battle on facts between the Management and the workman has reached this Court by way of this appeal and leave having been granted, it is for us now to decide which of the four views is justifiable and is to be upheld. Is it the view of the Management taken in the domestic enquiry? Or is it the view of the Labour Court ? Or is it the view of the learned

Single Judge of the High Court ? Or is it the view of the Division Bench of the High Court ?

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

13. Having summarised the legal position as above, if we come back to the order of the learned Judge, which is under appeal before us, it can be seen that the order of the learned Judge comprises of 11 paragraphs. Paragraph Nos.1 to 5 contain the history and the contentions. Paragraphs 6

and 7 contain the service particulars of the workman. Paragraph 8 deals with the charge of corruption made against the workman. Paragraph 9 deals with the charge of unauthorised absence. In paragraph 10, the learned Judge comes to the conclusion that the charge of unauthorised absence cannot be held proved. Therefore, in paragraph 11, the learned Judge sets aside the order of the Labour Court.

14. Mere extract of paragraphs 8 to 11 of the order of the learned Judge would show that the well established principles governing the scope of judicial review under Article 226 of the Constitution over an award of the Labour Court have not been followed. Paragraphs 8 to 11 of the order of the learned Judge impugned in these writ appeals, read as follows:

"8. It is to be seen that the order of dismissal has been passed mainly based on the two allegations viz. (i) the demand of bribe of Rs.200/- from one Rajamanickam and (ii) for unauthorised absence. With regard to the charge of demand of bribe, it is to be noted that the said Rajamanickam was examined as M.W.3 and on that basis the Labour Court, arrived at the conclusion that the charge of bribe has been proved. However, on going through the evidence of M.W.3, which is the trump card in this case, he has categorically stated that the present Writ Petitioner is only a Cane Assistant and he is not an authorised person to issue any cutting orders. In this regard, one Chellamuthu also has been examined as M.W.2 and the said witness stated that he was also one of the cane grower and he has approached only the Cane Inspector in the office and got the order and not the petitioner. Under such circumstances, I am of the view

that the findings given by the Labour Court regarding the alleged bribe of Rs.200/- received by the petitioner cannot be a correct one and the finding is perverse. Hence, I hereby set aside the finding of the Labour Court to that extent.

9. The second allegation is with regard to the unauthorised absence. From the perusal of the evidence of the Management witness viz. M.W.1, it is seen that the workman unauthorisedly absented from duty only for 15 days, whereas the Labour Court has taken into consideration of his previous absence for a period of 86 days and the submission of the leave applications on medical ground belatedly, and subsequently, also he took unauthorised leave for a period of 15 days.

10. Simply because the petitioner/workman has not submitted the leave applications for medical leave with reasons, the Management has treated his absence for a period of 15 days as unauthorised absence and ultimately passed the order. Therefore, without scrutinising all those records and the depositions, the Labour Court erred in dismissing the claim made by the petitioner/workman as unreasonable and disproportionate.

11. Hence, I am of the view that the Award of the Labour Court has to be set aside only with regard to that portion of the Award and accordingly set aside. Considering the long lapse of time and the fact that the petitioner was thrown out of employment, the respondent/Management is directed to pay subsistence allowance to the petitioner only from the date of Award to till date, with continuity of service and other terminal benefits."

15. As seen from the portions extracted above, the learned Judge independently dealt with the charge of corruption and came to the conclusion

that it was not proved. The learned Judge never even recorded any finding as to how the appreciation of facts and evidence by the Labour Court could be held to be perverse. Without even finding that the award of the Labour Court was vitiated by perversity of finding, the learned Judge has set aside a finding of fact into a very serious allegation of corruption, in just one paragraph.

16. It is seen from the award of the Labour Court that the Management examined six farmers to establish the charge of corruption. MW3 was a farmer (cane grower) who gave a complaint in writing about the demand and acceptance of bribe by the workman. The complaint was marked as Ex.M2. The complaints given by other farmers were filed as Exx.M68 to M75.

17. Before the Labour Court, all the farmers, examined as MWs 2 to 7, not only identified their complaints, but also stuck to their stand that the workman demanded money for issuing orders for cutting sugarcane. In the course of cross examination of these witnesses, more details, which were left out in the charge memo, came out. This is why, the Labour Court was constrained to come to the conclusion that the charge of corruption stood proved.

18. It is strenuously contended by Mr.NGR Prasad, learned counsel for the workman (i) that the charges were motivated on account of the writ petition previously filed by the workman seeking promotion, and (ii) that the charge of corruption was completely bereft of details.

19. We are not impressed with both the contentions. No suggestion was put to any of the witnesses MWs 2 to 7, who were third parties, to the effect that they were tutored or enticed to give a false complaint against the workman, so as to wreak vengeance on him for filing writ petition in 1989 and obtaining favourable orders for promotion. Even if the action of the Management is presumed to be motivated, there is nothing on record to show that the cane growers (farmers) had any score to settle with the workman. There was no need for these farmers, in the absence of any contra material, to give a false complaint against the workman, especially relating to corruption. Hence, the first contention revolving around the previous writ petition is liable to be rejected.

20. The contention regarding vagueness of charge hardly merits acceptance. According to Mr.NGR Prasad, learned counsel for the workman, the charge memo did not contain the date, time and place where the bribe amount was given.

21. But, unfortunately for the workman, MW3 specified the date and time of payment, when a question was put to him in the cross examination. Therefore, in a domestic enquiry, the workman cannot expect the standard of proof required in a criminal Court to establish the charge of corruption.

22. It is contended by Mr.NGR Prasad, learned counsel for the workman that the Labour Court committed a grave error in upholding the finding of guilt recorded in the domestic enquiry, despite having set aside the enquiry as not fair and proper, by the preliminary award passed on

18.5.2000. In this regard, he invited our attention to the findings recorded in paragraph 24 of the award of the Labour Court.

23. We have gone through paragraph 24 of the award of the Labour Court dated 30.9.2012. It is stated in paragraph 24 that the conclusion reached by the Enquiry Officer in his enquiry report, marked as Ex.M54 dated 29.12.1997, was correct and that it did not call for any interference. But, this is the very same enquiry report that was set aside by the Labour Court, on the ground that the enquiry was not fair and proper.

24. But, unfortunately for the workman, paragraph 24 of the award of the Labour Court cannot be looked at in isolation. In paragraphs 17 to 20 of its award, the Labour Court analysed the oral and documentary evidence let in before the Court and independently came to the conclusion that both imputations of misconduct, namely unauthorised absence and corrupt practice, stood proved. Especially in paragraph 19, the Labour Court recorded the oral evidence tendered by MW2, MW3, MW4 and MW5 to the effect that all of them attempted in vain to meet the workman to get orders for cutting the sugarcane and that as per the evidence of MW3, the workman demanded and accepted money. The evidence of MWs 2 to 7 was not available before the Domestic Enquiry Officer. These witnesses were examined only after the preliminary award. It is on the basis of their evidence that the Tribunal held the charge of corruption proved, in paragraph 20. Therefore, it is not as though the Labour Court merely accepted the finding of the Domestic Enquiry Report, after having been set it aside.

25. Relying upon the observations of the Supreme Court in paragraphs 34 and 35 of its decision in ***Union of India v. Gyan Chand Chattar [(2009) 12 SCC 78]***, it is contended by Mr.NGR Prasad, learned counsel that even in a domestic enquiry, the charges must be clear, definite and specific, as otherwise it would be difficult for the delinquent to meet vague charges.

26. But, as we have pointed out earlier, the failure of MW3 to mention in his compliant Ex.M72, the date, time and place of payment of bribe, cannot be said to have made the charge vague. At least six farmers have given written complaints about the unavailability of the workman when meetings were held with the farmers for the issue of orders for cutting sugarcane. There is a time limit within which the sugarcane has to be cut and removed to the Sugar Mill. If this time limit is not adhered to, the sugarcane will become unworthy of being consumed in the sugar mill. Therefore, the absence of the workman during the meetings held with the farmers, coupled with the written complaints given by them that he took money to issue cutting orders, is sufficient to throw clarity on the charge of corruption.

27. Once the Labour Court had set aside the domestic enquiry as not fair and proper, but came to its own conclusion on the basis of further evidence (both oral and documentary) let in before it, the finding so reached cannot be very lightly interfered with under Article 226. But, unfortunately, the learned Judge, without even recording a finding that the Labour Court findings were perverse, independently came to the conclusion that the

charges were not proved. This approach is contrary to law and hence, cannot be approved.

28. In view of the above, the writ appeal filed by the Management is allowed and the order of the learned Judge is set aside. The award of the Labour Court stands restored. The writ appeal filed by the workman shall stand dismissed. No costs. Consequently, M.P.Nos.1 to 3 of 2013 in W.A.No.1481 of 2013 are also dismissed.

Index : Yes/No
Internet : Yes/No

(V.R.S.J.) (N.K.K.J.)
31.3.2016

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V.RAMASUBRAMANIAN,J,
and
N.KIRUBAKARAN,J.

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Pre-delivery judgment in
W.A.Nos.1481 of 2013 & 185 of 2014.

31.3.2016.