

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-06-2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.2010 of 2012
against
Writ Petition No.4462 of 2005

S. Vijayaraghavan ..Appellant
Vs.

1. The Presiding Officer
Principal Labour Court
Chennai
2. The Management of Dura Metalic
Sarmar Ltd., now taken over
by Flowserve Sanmar Ltd.,
Cathedral Road
Chennai - 86 ..Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.4462 of 2005 dated 28-07-2011 on the file of this Court. Petition filed under Art.226 of the Constitution of India to issue a writ of certiorarified Mandamus to call for the records relating to the award passed by the first respondent in I.D.NO.664/97 dt. 3.8.2004 quash the same and to direct the second respondent to reinstate the petitioner with backwages, continuity of service and all attendance benefits;

For Appellant : M/s. Akbar Row

For Respondent-2 : Mr. Vijay Narayan, Senior Counsel
for Mr. Sai Prasad for
Sairaa Associates
R-1 : Lower

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J)

Challenge in this writ appeal is to the order dated 28-07-2011 passed in W.P.No.4462 of 2005 by the learned Single Judge of this Court.

2. The appellant herein, as petitioner has filed I.D.No.664 of 1997 on the file of the Principal Labour Court, Chennai praying to pass an award under Section 11-A of the Industrial Disputes Act, 1947 with regard to reinstatement of service.

3. The material averments made in the petition are as follows:

The petitioner has joined as an Assistant in Accounts Department of the respondent on 09-07-1986. The petitioner has completed the period of probation satisfactorily and a confirmation order has been passed on 20-01-1987. The petitioner has discharged his duties honestly and sincerely. The respondent has used to give periodical increments to the petitioner. The petitioner has been promoted to the post of Senior Assistant on 01-10-1995, by virtue of the letter dated 11-01-1996. Even though the petitioner has been given a new designation, he has done his usual clerical work. On 08-01-1997, after completing his work he handed over relevant papers to one Ramasamy as instructed by one G. Vaidyanathan. From 09-01-1997, the petitioner has taken leave. To the shock and surprise of the petitioner, he has been served with a Charge-memo on 23-01-1997 wherein it is stated that the petitioner has deleted 62 files from Computer. The petitioner has denied the allegations levelled against him. The petitioner has served nearly ten and a half years. The respondent has conducted a domestic enquiry. The Enquiry Officer has not conducted proper enquiry and virtually supported the Management. The Enquiry Officer has not prepared Enquiry Report and the same has been done by one Sriram, Manager of the respondent. In the domestic enquiry, no proper evidence is available with regard to the deletion of 62 files alleged to have been done by the petitioner. On the basis of the Enquiry Report, the petitioner has been terminated from service. The punishment imposed upon the petitioner is totally disproportionate to the charge levelled against him. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, certain averments made in the petition are admitted. But it has been specifically stated that the petitioner has deleted 62 files from Computer and thereby, caused inconvenience to the Management and hence, lost confidence of the Management. On the basis of misdeeds done by the petitioner, necessary charge has been framed and after giving proper opportunity, Enquiry Officer has been appointed and a full-fledged enquiry has been conducted wherein it is found that the charge framed against the petitioner is proved and on the basis of Enquiry Report, the petitioner has been dismissed and ultimately, prayed to dismiss the petition.

5. The Principal Labour Court, Chennai after considering the rival evidence put forth on either side has dismissed I.D.No.664 of 1997 and ultimately directed the respondent to pay 40 months' salary to the petitioner. Against the order passed by the Principal Labour Judge, Chennai, writ petition, W.P.No.4462 of 2005 has been preferred on the file of this Court.

6. The learned Single Judge after making elaborate discussion has partly allowed the writ petition to the effect that the petitioner is entitled to get 60 months' salary. Against the order passed by the learned Single Judge, the present writ appeal has been preferred at the instance of the petitioner, as appellant.

7. The sum and substance of the contentions put forth on the side of the petitioner is that on 09-07-1986, the petitioner has been appointed as an Assistant in Accounts Department of the respondent and he has completed the period of probation on 20-01-1987 and subsequently, he has been given promotion and also periodical increments. On 08-01-1997, he has handed over the relevant papers to one Ramasamy as per instructions given by Vaidyanathan and from 09-01-1997, he enjoyed leave and all of a sudden, he has received a Charge-memo dated 23-01-1997 wherein it has been falsely stated that he made deletion of 62 files from Computer and he has given proper explanation. Even after giving proper explanation, a domestic enquiry has been conducted and the same is nothing, but partial and the Enquiry Officer without considering the fact that the charge levelled against the petitioner is totally bereft of evidence, has erroneously found him guilty and on the basis of the Enquiry Report, the Management has terminated the service of the petitioner and the same has been challenged in I.D.No.664 of 1997 before the Principal Labour Court, Chennai. But the Principal Labour Court, Chennai has erroneously refused to grant the relief of reinstatement and the same has been challenged in W.P.No.4462 of 2005.

8. The learned counsel appearing for the appellant/petitioner has repeatedly contended that in the Memorandum dated 23-01-1997, it has been mentioned to the effect that the petitioner has deliberately deleted the above-mentioned 62 files causing great amount of inconvenience and disruption in the functioning of Accounts Department. Under the said circumstances, before conducting domestic enquiry, the Management has found fault against the petitioner and therefore, the Management has pre-determined to dismiss the petitioner and both the Labour Court as well as learned Single Judge of this Court have not at all looked into the contentions put forth on the side of the appellant/ petitioner and therefore, the orders passed by the Labour Court as well as the learned Single Judge of this Court are liable to be set aside.

9. It is an admitted fact that a Charge-memo dated 23-01-1997 for misconduct has been issued to the petitioner on 25-01-1997 wherein it is stated as follows:

"You had deliberately deleted the above-mentioned 62 files causing great amount of inconvenience and disruption in the functioning of the Accounts Department."

It is a settled principle of law that a Charge-memo should contain all details of misconduct/ offences alleged to have been committed by the delinquent. Otherwise, the same is totally bereft of all particulars.

10. In the instant case as mentioned supra, the specific case of the Management is that the appellant/ petitioner has schemingly deleted 62 files from Computer, thereby caused inconvenience to the Accounts Department. Since the Management has levelled allegation against the petitioner to that extent, the same has been rightly mentioned in the Charge-memo and the same itself is not at all sufficient for coming to a conclusion that, the Management, at the time of giving the said Charge-memo, has pre-determined to dismiss the petitioner.

11. Further, it is seen from the records that the petitioner has been given proper opportunity to put-forth his explanation. Since his explanation is not satisfactory and not accepted a domestic enquiry has been conducted. Even in the domestic enquiry, sufficient opportunity has been given to the petitioner. The Enquiry Officer after conducting full-fledged enquiry has given his report. On the basis of his report, the petitioner has been dismissed from service. Therefore, the arguments advanced on the side of the appellant/ petitioner to the effect that even in the Charge-memo without having evidence, the Management has had revealed pre-conclusion so as to dismiss the petitioner, cannot be accepted.

12. The learned Senior Counsel appearing for the second respondent/ Management has laconically contended that the specific charge made against the appellant/ petitioner is that he has deleted / removed 62 files from Computer and thereby, lost confidence of the Management. Under the said circumstances, proper opportunities have been given to him and since his explanation is not satisfactory and not accepted, a full-fledged enquiry has been conducted and the Enquiry Officer has given his report and thereby, found the appellant/ petitioner guilty as per charge levelled against him. Under the said circumstances, both the Labour Court as well as the learned Single Judge of this Court have rightly found that the dismissal of the appellant/ petitioner is proper. However, the Labour Court has granted 40 months' salary to the petitioner and the learned

Single Judge of this Court has raised the same to an extent of 60 months and therefore, the orders passed by the Labour Court as well as learned Single Judge of this Court are not liable to be interfered with.

13. As adverted to earlier, the specific charge framed against the appellant/ petitioner is that he schemingly and also with oblique motive has deleted 62 files from Computer. It is an admitted fact that a full-fledged domestic enquiry has been conducted and on the basis of enquiry report, the appellant/ petitioner has been dismissed from service. The main contention put forth on the side of the second respondent/ Management is that the appellant/ petitioner has lost confidence of the Management / second respondent herein.

14. At this juncture, the Court has to look into as to whether on the basis of loss of confidence an employee can be terminated from service by the Management ?

15. The learned Senior Counsel appearing for the second respondent has accited following decisions:

(a) In 1971 (2) LLJ 615 (Francis Klein & Co. (P) Ltd., Vs. Their Workmen and Anr.), the Honourable Supreme Court has observed as follows:

"In our view when an employer loses confidence in his employee particularly in respect of a person who is discharging an office of trust and confidence there can be no justification for directing his reinstatement. The post of a Durwan in an industrial concern where valuable property both manufactured goods and assets require to be guarded, is such a post and when one of his colleagues calls on him to assist him in apprehending a thief the refusal to do so is certainly an act which justified the employer in loosing confidence in him. Even the Tribunal in its Order recognised that the employer has lost confidence in Nayan Singh because while directing the Company to reinstate him, it says:

"If the management considers that Nayan Singh should not be given guard duty because of the 'Company's loss of confidence in him, as claimed by them, he may be allotted some other job of similar nature as found suitable."

(b) In 1972 (I) LLJ 501, (Air-India Corporation, Bombay Vs. V.A. Rebellow and anr.) the Honourable Supreme Court has observed thus:

"17. The decision in the case of Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co. (1962 Supp.2 SCR 822) relied upon by the complainant's learned counsel is of no assistance to him. There one employed by the management as a cross cutter in the saw mill was asked to show cause why his services should not be terminated on account of grave indiscipline and misconduct and he denied the allegations of fact. He was thereafter informed about a departmental enquiry to be held against him and was suspended pending enquiry. Purporting to act under r. 18 (a) of the Standing Orders, the appellant terminated the services of S without holding any departmental enquiry. On reference of the dispute to the Industrial Tribunal this action was held not to be bona fide but a colourable exercise of the power conferred under r. 13(a) of the Standing Order and since no attempt was made before it to defend such action by proving the alleged misconduct, it passed an order for reinstatement of S. Quite clearly the facts there are not parallel to the facts before us. The facts there are materially different.

18. We have proceeded on the assumption that the reason stated in the further written statement filed without prejudice pursuant to the direction of the Labour Court could be taken into account. We, however, must not be understood to express any opinion on its propriety either way."

(c) In 2005 (2) SCC 481 (Bharat Heavy Electricals Ltd., Vs. M. Chandrasekhar Reddy and Ors.), the Honourable Supreme Court has held that, "the reasons given by the Labour Court to reduce the penalty are reasons which are not sufficient for the purpose of reducing the sentence by using its discretionary power. The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent, no finding has been given by the courts-below including Labour Court that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records interference with the award of punishment in a domestic inquiry is impermissible."

16. From a cumulative reading of the decisions referred to supra, it is made clear that if an employee has lost confidence of the Management, the Management can very well dismiss him. In the instant case, it has already been pointed out that the specific case of the second respondent/ Management is that the appellant/ petitioner has deliberately removed 62 files from

Computer. Since the appellant/ petitioner has deliberately removed 62 files from the Computer, this Court is of the view that he has lost confidence of the Management. Both the Labour Court as well as the learned Single Judge of this Court have consistently found that the dismissal order passed by the Management is perfectly correct. However, the Labour Court has granted 40 months' monthly salary to the appellant/ petitioner and the same has been raised by the learned Single Judge to an extent of 60 months. Therefore, viewing from any angle, this Court is of the view that the appellant/ petitioner is not entitled to get reinstatement and hence, the present writ appeal deserves to be dismissed.

17. In fine, this writ appeal is dismissed without costs.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

glp

To

The Presiding Officer
Principal Labour Court
Chennai

+1cc to M/s. Sai Raaj Associates, Advocate, S.R.No.34853
+2cc to Mr.Akbar Row, Advocate, S.R.No.35032

RSY(CO)
EU(30/06/2016)

W.A. No.2010 of 2012

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