

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-04-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.38522 OF 2003 & 1149 OF 2004

W.P.No.38522/2003 :

M.Soundarapandian

Petitioner

...
-vs-

1.The Management,
TANSI Tannery,
Vinnamangalam Village,
Minnur (Post),
Ambur Taluk,
Vellore District.

2.TALCO Tannery,
Vinnamangalam Village,
Minnur (Post),
Ambur Taluk,
Vellore District.

3.The Managing Director,
Tamil Nadu Small Industries Corporation Limited,
No.1, Whites Road,
Chennai - 14.

4.The Presiding Officer,
Labour Court,
Vellore.

Respondents

W.P.No.1149/2004 :

TANSI, rep.by its Managing Director,
Thiru Vi.Ka.Industrial Estate,
Guindy,
Chennai-600 032.

Petitioner

...
-vs-

1.Soundarapandian

2.The Presiding Officer,
Labour Court,
Vellore.

Respondents

W.P.No.38522 of 2003 has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records of the Award in I.D.No.315/1994, dated 27.01.2003, on the file of Labour Court, Vellore, and quash the same, and direct the respondents 1 to 3 to grant all monetary benefits from 17.03.1971, when the petitioner was wrongfully sent out of job.

W.P.No.1149 of 2004 has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records relating to the Award, dated 27.01.2003, passed by the second respondent, in I.D.No.315/1994, raised by the first respondent, under which the second respondent has directed the petitioner to pay a sum of Rs.75,000/- as compensation together with interest @ 6% p.a., from the date of award till the date of realisation and to quash the same.

For petitioner in W.P.No.38522/2003 &
respondent 1 in W.P.No.1149/2004 : Mr.J.Saravanel

For respondents 2 and 3 in W.P.No.38522/2003 &
petitioner in W.P.No.1149 of 2004 : Mr.R.Mani Bharathi

O R D E R

The challenge in both these Writ Petitions is to the award passed by the Labour Court, Vellore, in I.D.No.315 of 1994. While petitioner in W.P.No.38522 of 2003 is the workman, petitioner in W.P.No.1149 of 2004 is the management.

2. Management has challenged the award in its entirety, by which, the Labour Court awarded compensation of Rs.75,000/- in full quit, as the workman had attained the age of superannuation on the date when the award was passed. Workman has filed W.P.No.38522 of 2003, seeking for additional compensation, stating that the amount of Rs.75,000/-, fixed by the Labour Court, is ridiculously low.

3. Heard Mr.J.Saranavel, learned counsel for the workman; and Mr.R.Mani Bharathi, learned counsel for the management.

4. The undisputed facts are that the workman was employed as a Helper in TANSI Tannery since 1958. After nearly about 10 years, in July,1969, he was brought to the time scale of pay on monthly wages. On the fateful day, i.e., on 17.03.1971, the workman was instructed by the Production Assistant to do the job of Operator in the embossing machine. Another Helper, by name, Kasinathan, was directed to provide necessary tools, required to use, for fitting the plates. The

workman's case is that his duty is to fit the plates in the machine, as Kasinathan, had to handle the tools under the direct supervision of the Production Assistant. After fitting the plate, the Production Assistant insisted the workman to switch on the machine, however, the spanner, which was inadvertently left on the machine, went unnoticed, thereby causing damage to the plate. It appears that the plate is a very expensive part of the embossing machine. This resulted in the suspension of the workman on the same day i.e., 17.03.1971. Notice of Inquiry was issued on 29.03.1971, directing the workman to appear for inquiry on 31.03.1971, and the inquiry was held on the said date. For nearly two months, nothing happened and on 10.05.1971, a Charge Memo was served on the workman and he was dismissed by an order, dated 09.10.1971. Thereafter, the workman has been loitering in the corridors of different legal forums, including this Court, for all these years, till today. The conciliation proceedings prolonged for almost two years and failure report was submitted on 05.02.1973. The Government took their own sweet time and slept over the matter for 11 years. The workman, out of frustration, once again approached the Labour Officer on 10.04.1984. On 13.08.1984, the Labour Officer submitted another failure report to the Government, but, the Government declined to refer the matter for adjudication before the Labour Court, by an order, dated 27.11.1984. Necessarily, the workman had to challenge the same and he filed W.P.No.989 of 1985. The said Writ Petition was allowed on 27.07.1994 with a direction to the Government to refer the dispute to the Labour Court within one week and the Labour Court to dispose of the matter within three months. The management did not accept the said order, but chose to file a writ appeal in W.A.No.1334 of 1994. During the pendency of the Writ Appeal, the Government referred the matter to the Labour Court, Vellore, by an order, dated 29.09.1994. Immediately, the workman filed his claim statement, after which, the Writ Appeal filed by the management was dismissed on 07.08.1997, as the matter had already been referred to the Labour Court. It is after the dismissal of the said Writ Appeal only, the management filed counter before the Labour Court on 11.11.1997.

5. Before the Labour Court, the workman examined himself as W.W.1 and marked 10 documents. On the side of management, one witness was examined as M.W.1, but, there was no documentary evidence. The Labour Court held that the necessity to conduct a domestic inquiry did not arise, since the workman had admitted the charge. Further, taking note that Tannery Division of Tansi, in which the workman was employed, had been closed down and also taking note that the workman had attained the age of superannuation during the pendency of the dispute, the Labour Court awarded compensation of Rs.75,000/- to the workman. Correctness of the said award is being tested in these Writ Petitions.

6. First and foremost, it is to be pointed out, that the admission of guilt, which is said to be the basis of the award passed by the Labour Court, is, in fact, not an unconditional admission. Indeed, learned counsel for the management elaborately referred to the findings rendered by the Labour Court and a perusal of the said findings, more particularly, the findings in paragraphs 10 and 11 of the award, clearly shows that the workman stated that embossing plate of the machine was severely damaged on account of the spanner being left on the machine, but, he specifically pleaded that it was due to inadvertence, and requested that he may be pardoned and he also regretted for such mistake. Therefore, the Labour Court ought not to have mistaken the admission of the workman in the sense that the workman admitted the offence. The fact that the embossing plate was damaged on account of the spanner being left on the machine is not in dispute. There could have been no other defence taken by the workman except probably blaming the Helper Kasinathan, which he thought fit not to do, but accepted the mistake to himself, stating that it was due to inadvertence, and sought for pardon. Hence, this cannot be taken to be an admission in the strict sense of admission of guilt. If that is the interpretation that should be given to the admission made by the workman, it has to be seen, whether the management disputed the same and contended that the action of the workman was deliberate, intentional and mala fide intended to cause loss to the management. However, this was not the case of the management and they did not make such an allegation, which has been clearly brought out in the impugned award.

7. In such circumstances, the finding rendered by the labour Court that the workman should have been punished for the delinquency committed by him is an incorrect finding (this finding is found in para 15 of the award). This Court is inclined to say so, because, the management did not state that the workman committed delinquency, but, their case was that a very expensive machine was damaged. Therefore, the workman could have been imposed with some other punishment, rather than dismissal, for the inadvertent action, which he had admitted, and not only that, he also expressed remorse for the accident. He could have merely blamed the co-worker, stating that the co-worker was in-charge of the tools and, therefore, he could have taken care to remove the tool. Though the workman was educated only up to V Standard, he took the blame for himself. As such, the manner in which the Labour Court proceeded to hold the workman guilty is incorrect. Though ultimately the finding of guilt may be correct, the Labour Court was not called upon to go into the aspect whether the inadvertence was a bona fide plea, since the management did not contest that aspect. In such circumstances, the Labour Court ought to have moulded the relief in an appropriate manner.

8. In the preceding paragraphs, the dates and events have been set out, only to demonstrate that the workman has been languishing before various legal forums, for several years. It is not known as to why the Government did not take any action on the first failure report submitted on 05.02.1973. The workman had to wait for nearly 11 years for the conciliation to be initiated afresh and fresh failure report to be submitted. However, the Government declined to refer the matter. The workman challenged the order before this Court and the Writ Petition, which was filed in the year 1985, was pending till 1994 and he was able to succeed only on 27.07.1994. Even thereafter, the management did not spare him, but filed a writ appeal against the order passed in the writ petition. In the meantime, probably because there was no interim order passed by the Hon'ble Division Bench in the writ appeal, the dispute was referred to the Labour Court. The dispute was pending before the Labour Court from 1994 to 2003. The finding rendered by the Labour Court did not address the issue as to why the workman should be put in a disadvantageous position, when the delay has been caused due to pendency of the matter before the legal forums. Hence, attaining of the age of superannuation during pendency of the dispute could have hardly been a reason for the Labour Court to restrict the relief and grant a meagre compensation of Rs.75,000/-.

9. As pointed out earlier, the Labour Court erroneously came to the conclusion that the said compensation alone would be sufficient, since the workman had committed delinquency. This finding is erroneous for the reasons set out in the preceding paragraphs.

10. Thus, considering the facts and circumstances of the case, this Court is of the view that the compensation fixed by the Labour Court is ridiculously low and the workman is entitled to a reasonable compensation, which, this Court fixes at Rs.5,00,000/-.

11. In the result, W.P.No.38522 of 2003 is allowed in part and W.P.No.1149 of 2004 is dismissed. The management is directed to pay the workman the compensation of Rs.5,00,000/- within a period of three weeks from the date of receipt of a copy of this order. Of the amount of Rs.5,00,000/-, the amount already withdrawn by the workman pursuant to the interim direction granted in the writ petition, shall be deducted and the balance paid within the aforesaid period. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

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To

1.The Management,
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Vinnamangalam Village,
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Labour Court,
Vellore.

+2 ccs to Mr.R.ManiBharathi, Advocate, sr.20778 & 20779.
+1 cc to Mr.J.Saravanavel, Advocate, sr.20752

W.P.Nos.38522/2003&1149/2004

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