

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.1.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.2094 of 2011
and
M.P.Nos.1 and 2 of 2011

The Management of the Kallakurichi
Co-op.Sugar Mills Ltd.,
rep.by its Special Officer,
Moongilthuraipattu, Sankarapuram Taluk,
Villupuram District -605702.
... Petitioner

vs.

1.M.Sahadevan
2.The Presiding Officer,
Labour Court, Cuddalore.
... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Ceriorari calling upon the records of the second respondent relating to the Award dated 28.6.2010 made in I.D.No.129 of 2002 and quash the same.

For petitioner : Mr.A.S.Thambuswamy

For first respondent : Mr.J.Muthukumaran

ORDER

This Writ Petition has been filed by the petitioner management to quash the award dated 28.6.2010 made in I.D.No.129 of 2002 passed by the second respondent.

2. The learned counsel for the petitioner submitted that the first respondent was working as Fitter Assistant in the petitioner's Mill as a seasonal worker. He is not a permanent worker as contemplated by Sec.25(b)(2) of the I.D.Act. The first respondent is a habitual offender. On 10.10.2000, the first respondent prevented the other workers from entering the mill's premises. He stood near the main entrance of the mill compelling the other employees to sign in Trade Union Resolution Book and obtained signature of the employees under threat and

coercion. He allowed the employees inside the mill only if they sign in the said book. When some employees refused to sign the book, he threatened to assault him and did not allow them to enter the Mill premises. Therefore, a charge memo dated 12.10.2000 was issued to him. He submitted his explanation. Since his explanation was not satisfactory a domestic enquiry was ordered. The petitioner management conducted the said enquiry in a fair and proper manner. The first respondent participated in the enquiry and ample opportunity was given to him to defend himself. The petitioner examined witnesses and marked documents. The first respondent did not examine any witness. The domestic enquiry officer considered all the evidence and documents submitted his report dated 29.11.2000 holding that the charges levelled against the first respondent were proved. A copy of the enquiry report was furnished to the first respondent and he was called upon to submit his explanation. In his explanation, he alleged that sufficient opportunity was not given. Therefore, the Special Officer of the petitioner gave a personal hearing and asked the first respondent to meet him on 8.1.2001 in person and give his explanation. He did not meet the Special Officer on 8.1.2001. Again, another opportunity was given to meet the Special Officer on 17.1.2001. Even though the first respondent received the said letter did not meet the Special Officer on that day also. But, he met the Special Officer on 18.1.2001 and promised not to commit any misconduct in future. The Special Officer of the petitioner considered all the materials on record and held that the charges were proved against the first respondent and they were serious in nature and heavy loss was caused to the petitioner and he has committed various misconduct on earlier occasions as mentioned in show cause notice issued to him and that the first respondent does not deserve any leniency. Therefore, by order dated 19.1.2001, the first respondent was dismissed from service. Thereafter, the first respondent raised an Industrial Dispute in I.D.No.129 of 2002 before the 2nd respondent. The first respondent raised the preliminary issue that the domestic enquiry conducted against him was not fair and proper and not according to the principles of natural justice. The petitioner filed counter statement denying all the allegations and setting out the true and correct facts substantiating the order of dismissal. The petitioner also raised a plea that the first respondent is not a workman as contemplated by I.D.Act and therefore, the Industrial Dispute is not maintainable. The second respondent on considering the material facts came to the conclusion that the domestic enquiry was conducted in a fair and proper manner and is not vitiated and ordered the preliminary issue. After preliminary issue was decided, the first respondent did not file any document except Conciliation Report. The petitioner marked 12 documents marked as Exs.M1 to M.12 to substantiate the charges levelled against the first respondent. The second

respondent on considering the materials on record came to the conclusion that the charges levelled against the first respondent were proved. However, without assigning any reason, the second respondent has held that the punishment of dismissal from service is disproportionate to the proved misconduct. The 2nd respondent on erroneous consideration of facts and law passed an Award dated 28.6.2010 setting aside the order of dismissal dated 19.1.2001 passed by the petitioner and ordered reinstatement of the first respondent with continuity of service but without back wages. While setting aside the impugned order of the petitioner management, the Labour Court has not given reasons as to how the punishment imposed on the first respondent herein is disproportionate. Hence, aggrieved by the impugned Award of the 2nd respondent dated 28.6.2010 made in I.D.No.129 of 2002, the petitioner has filed the present Writ Petition before this Court.

3. Assailing the allegations of the petitioner, the first respondent filed a Counter affidavit. The learned counsel for the first respondent reiterating the averments made in the counter affidavit submitted that it was only a Recreation Club meeting of the Labourers in which the employees participated voluntarily. Though charge memo was issued to the first respondent on 12.10.2000, he submitted his explanation. No enquiry was conducted and no report was furnished to him. While so, he was dismissed from service by order dated 19.1.2001 of the petitioner management. It is further submitted by the learned counsel for the first respondent that the Labour Court has exercised its discretionary power in a fair and judicious manner and interfered with the punishment imposed on the first respondent. The Labour Court has given clear and categorical findings that the punishment of dismissal from service is harsh and disproportionate to the trivial nature of the charge and denial of salary for the period of unemployment. Hence, the Writ Petition deserves to be dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the impugned award of the Labour Court.

5. The charge on the first respondent is that on 10.10.2000, the first respondent prevented the other workers from entering the mill's premises. He stood near the main entrance of the mill compelling the other employees to sign in Trade Union Resolution Book and obtained signature of the employees under threat and coercion. He allowed the employees inside the mill only if they sign in the said book. When some employees refused to sign the book, he threatened to assault him and did not allow them to enter the Mill premises. Therefore, a charge memo dated 12.10.2000 was issued to him. Subsequently, the petitioner was dismissed from service by the

petitioner management after holding domestic enquiry. The dispute was referred to the Labour Court. Before the Labour Court, the first respondent herein himself was examined as W.W.1 and marked Ex.W1. The petitioner management herein marked Exs.M1 to M12. After considering the oral and documentary evidence, the Labour Court held that the charge levelled against the petitioner was proved but the punishment imposed is disproportionate to the misconduct committed by the first respondent herein. Hence, the first respondent was directed to be reinstated but without back wages. While setting aside the impugned order of the petitioner management, the Labour Court has not given reasons as to how the punishment imposed on the first respondent herein is disproportionate.

6. Considering the facts of the case and the submissions made, this Court is of the view that remanding the matter would meet the ends of justice as no reason was given as to how the dismissal of the first respondent from service is disproportionate to the charge levelled against him. Accordingly, the impugned Award dated 28.6.2010 passed in I.D.No.129 of 2002 is set aside and the Writ Petition is allowed. The aforesaid I.D is remanded to the Labour Court solely on the ground that no reason was given with regard to the aspect of holding that the punishment of dismissal from service was disproportionate. Therefore, the Labour Court shall consider the matter afresh without being influenced by the findings or observations made by this Court herein and decide I.D.No.129 of 2002 in accordance with law, within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asvm

To
The Presiding Officer,
Labour Court, Cuddalore.
+1 cc to M/s.A.S.Thambuswamy Advocate sr5115

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aa23/02/2017