

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.07.2017

Delivered on: 19.09.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.7927 & 20422 of 2012

W.P.No.7927 of 2012:

National Institute of Tech.Teachers Training
and Research, rep. by its Director
(Formerly Technical Teachers Training Institute),
TITI Campus,
Taramani, Chennai-600 113. ... Petitioner

versus

1. The Presiding Officer,
I Additional Labour Court,
Chennai.

2. Mr.M.Rajakumar
3. K.S.Raju ... Respondents

Prayer in W.P.No.7927 of 2012: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records connected with the award dated 22.11.2011 made in I.D.No.18 of 2004 on the file of the first respondent/I Addl.Labour Court, Chennai and quash the same.

For petitioner : Mr.Sai Prasad for
M/s.Sai Raaj Associates

For respondent : No appearance for R2
R3 Dismissed vide Order
dated: 04.02.2014

W.P.No.20422 of 2012:

M.Rajakumar ... Petitioner

versus

1. The Presiding Officer,
I Additional Labour Court,
Chennai-600 104.

2. The Chairman,
Board of Governors,
Technical Teachers Training Institute Chennai Society,
Tharamani,
Chennai-600 113.

3. The Principal,
(Now Director),
Technical Teachers Training Institute Chennai Society,
(Now N.I.T.T.T.R Society),
Tharamani,
Chennai-600 113.

.. Respondents

Prayer in W.P.No.20422 of 2012: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records from the file of 1st respondent Award in I.D.No.18 of 2004, dated 22.11.2011 and quash the same and consequently, direct the 2nd and 3rd respondents to reinstate the petitioner with full back wages and all attendant benefits, including promotion etc.

For petitioner : Mr.L.Chandra Kumar

For Respondents: Mr.Sai Prasad for
M/s.Sai Raaj Associates for R3

For respondent : No appearance for R2

COMMON ORDER

The petitioner in W.P.No.7927 of 2012 has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, to call for the records connected with the award dated 22.11.2011 made in I.D.No.18 of 2004 on the file of the first respondent/I Addl.Labour Court, Chennai and quash the same."

2. The petitioner in W.P.No.20422 of 2012, who is none other than the 2nd respondent in the above writ petition, has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records from the file of 1st respondent Award in I.D.No.18 of 2004, dated 22.11.2011 quash the same and consequently, direct the 2nd and 3rd respondents to reinstate the petitioner with full back wages and all attendant benefits, including promotion etc."

3. The circumstances which led to the filing of the above Writ Petitions can be briefly culled out from the facts narrated in the writ petition in W.P.No.7927 of 2012.

4. For the sake of convenience, the parties can be referred to as per their respective nomenclature assigned in the above said writ petition, viz., petitioner/management and second respondent/workman.

5. The second respondent joined the petitioner Institute on 30.4.1986 as Technician Grade III (AC Mechanic) and as per terms of his employment, his services would be governed by the Central Services (Conduct) Rules, 1964. The second respondent was thrice issued with charge sheets dated 14.2.2002, 23.7.2002 and 22.10.2002 respectively for certain acts of misconduct alleged to have been committed by him. Thereafter, enquiry was conducted into the charges and the 2nd respondent was afforded opportunities. The Enquiry Officer, on conclusion of the enquiry, gave his report, holding that the charges framed against the 2nd respondent were proved. On consideration of the enquiry report, the Disciplinary Authority, vide order dated 25.2.2003 imposed major punishment of removal from service. Aggrieved by the same, the 2nd respondent raised an industrial dispute and upon the failure of conciliation, the matter was taken up on the file of the I Additional Labour Court vide I.D.No.18 of 2004. Upon consideration of both oral and documentary evidence, the Labour Court, vide award dated 09.09.2004, while dismissing the I.D., confirmed the punishment of removal from service. Challenging the award, the 2nd respondent approached this Court by way of a Writ Petition in W.P.No.41539 of 2005, which also came to be dismissed by this Court, confirming the award of the Labour Court. Aggrieved by the same, the 2nd respondent preferred an appeal in W.A.No.724 of 2009 before this Court. The Division Bench, upon consideration of rival submissions, by a detailed order, while setting aside the award of the Labour Court insofar as it confirmed the maximum punishment of removal from service, remanded the matter to the Labour Court, to reconsider the issue regarding imposition of punishment in terms of Section 11 A of the Industrial Disputes Act. Pursuant to the same, the Labour Court reconsidered the issue as regards the imposition of punishment and vide award dated 22.11.2011 granted compensation of Rs.6 lakhs in lieu of reinstatement. Challenging the same, the petitioner Institute has come forward with the present Writ Petition.

6. While so, the 2nd respondent/workman has also come forward with the writ petition in W.P.No.20422 of 2012 praying to quash the same award and grant reinstatement with all consequential attendant benefits. According to the 2nd respondent, the charge sheets issued against him, are all false and baseless he was targeted with ulterior motive by the petitioner management and that he was falsely implicated in a

criminal case also. It is stated that there was no clinching evidence against the 2nd respondent to establish the charges framed against him since the petitioner management produced false/fake documents and let in untrustworthy evidence during the enquiry and the findings given based on such evidence, cannot be sustained and therefore, no punishment can be awarded, much less punishment of removal from service, which was rightly set aside by the Division Bench of this Court. Therefore, the order of the Labour Court, awarding compensation of Rs.6,00,000/- in lieu of reinstatement cannot be sustained and it is liable to be set aside. With these averments, the 2nd respondent sought for reinstatement with all attendant benefits including back wages.

7. In the backdrop of the above facts, the issue which has come up for consideration before this Court is only with regard to punishment to be imposed on the second respondent/workman since the learned Division Bench of this Court, vide its order dated 17.8.2011 in W.A.No.724 of 2009, has observed in more than one place that the Disciplinary Authority is biased against the workman and he was pre-determined to be imposed maximum punishment of removal from service. In the said circumstances, this Court is called upon to evaluate the final award passed by the first respondent/Labour Court, as to whether ordering compensation of lump sum of Rs.6 lakhs is sufficient enough in lieu of reinstatement of the second respondent/workman or whether ordering lump sum compensation by itself is warranted from the perspective of the petitioner/management?

8. Shri S.Sai Prasad, learned counsel appearing for the petitioner/management would submit that the punishment of removal from service has been imposed against the second respondent/workman for his repeated acts of misconduct as three sets of charge sheets were issued against him and the said charges were also established. In the said circumstances, ordering compensation of Rs.6 lakhs will send a wrong signal to other staff working in the petitioner/management and the discipline of the existing staff will also get affected as one of the erring staff members of the petitioner/management has been rewarded with lump sum compensation. He would, therefore, submit that the compensation ordered by the Labour Court, is liable to be interfered with as the punishment was imposed on the second respondent/workman was on the basis of proved misconduct and exercise of discretionary jurisdiction under Section 11-A of the Industrial Disputes Act, is unfair and not proper and the same is nothing but a colourable exercise of power.

9. As regards the challenge made by the petitioner/management to the award passed by the Labour Court, it has to be seen that the learned Division Bench of this Court has, in fact, set aside the award of the Labour Court dated

9.9.2004 passed in I.D.No.18 of 2004 insofar it confirmed the maximum punishment of dismissal from service and directed the Labour Court to reconsider the question of punishment under Section 11-A of the Act in the light of the back ground of the facts of the case. Therefore, the Labour Court had no choice except to take a call on the ultimate punishment to be imposed on the second respondent/workman, which, of-course, cannot be a maximum punishment either removal or dismissal from service. The proceedings before the Labour Court, after it was remanded, fell on a narrow compass only with regard to the punishment to be imposed on the second respondent/workman. In the circumstances, the Labour Court, while reconsidering the entire issue on the basis of the order passed by the learned Division Bench, has come to the conclusion that in view of the strained relationship between the second respondent/workman and petitioner/management for all the years pursuant to the issuance of various charge sheets which culminated in the order of removal from service, the Labour Court felt as a matter of equitable consideration, that awarding a lump sum compensation is a just solution for the industrial dispute as between the second respondent/workman and petitioner/management. Therefore, it is not open to the management to once again contend before this Court that the award of lump sum compensation is liable to be interfered with and that it is appropriate to reopen the case for further adjudication. Moreover, this Court is also of the view that the award of compensation of Rs.6 lakhs is not higher side or unreasonable and therefore, the case of the petitioner/management has to necessarily fall.

10. Be that as it may, as regards the Writ Petition filed by the second respondent/workman, praying for reinstatement with full back wages, this Court is called upon to adjudicate as to whether, in the facts and circumstances of the case, the ultimate award passed by the Labour Court, is liable to be interfered with or not?

11. This Court is entirely in agreement with the view expressed by the Labour Court while ordering lump sum compensation that there was a strained relationship between the petitioner/management and the second respondent/workman and therefore, any punishment which will result in reinstatement of the workman, will certainly, not advance the cause of industrial peace, but it may indirectly result in undermining overall discipline among the staff of the petitioner/management. However, taking into consideration from strong observations made by the learned Division Bench in its order dated 17.8.2011 in W.A.No.324 of 2009 that the Disciplinary Authority was biased against the second respondent/workman and that many of the charges were framed against him were not proved, imposition of harsh penalty from removing from service was passed only based on the 3rd charge in respect of which, the Disciplinary Authority itself was a complainant. In the said circumstances, the learned Division Bench has observed that the said factum

should have been taken into consideration while deciding the proportionality of punishment imposed on the second respondent/workman.

12. Shri L.Chandra Kumar, learned counsel appearing for the second respondent/workman would strongly contend that in view of observations made against the petitioner/management by the learned Division Bench of this Court and also the manner in which the punishment came to be imposed by the biased Disciplinary Authority, the Labour Court ought to have substituted some other less punishment instead ordering lump sum compensation since the second respondent/workman had many years left for his retirement and the lump sum compensation which was awarded by the Labour Court, was not a reasonable compensation for the services rendered by the second respondent/workman with the petitioner/management and also for the service which was left behind for retirement after the removal from service. The learned counsel would, therefore, submit that the learned Division Bench while making strong observation against the petitioner/management, has set aside the award and directed the Labour Court to reconsider the punishment aspect. However, the Labour Court has not appreciated the order passed by the learned Division Bench in a proper perspective and overlooking strong objections, had ordered lump sum payment without substituting any other lesser punishment under Section 11-A of the Industrial Disputes Act.

13. This Court has considered the submissions made by the learned counsel appearing for the second respondent/workman and finds that there is considerable force in the contention put forth by the learned counsel for the second respondent/workman that under Section 11-A of the Act, the Labour Court ought to have substituted some other punishment in lieu of removal from service and not ordering lump sum. In fact, the learned counsel would submit that by ordering a lump sum compensation, the workman stands to lose the entire service and retirement benefits for his life time. Therefore, the compensation awarded can hardly be a reasonable and fair compensation.

14. By considering the detailed submissions made by the learned counsel appearing for the second respondent/workman and also taking into consideration the fact that there was a strained relationship between the workman and the management, this Court has to adopt a fine balance between the interest of the management and also the interest of the workman for finding an equitable solution.

15. Therefore, in the peculiar facts and circumstances of the case, this Court modifies the award passed by the Labour Court in I.D.No.18 of 2004 dated 22.11.2011 and substitute the punishment of compulsory retirement on the second

respondent/workman with effect from the date of award of the Labour Court. The award of the Labour Court is modified accordingly. The petitioner shall be entitled to all the benefits notionally as corollary to the imposition of the penalty of compulsory retirement with effect from 22.11.2011. However, it is made clear that the petitioner is not entitled to back wages for the period during his non-employment as consequence of the present modified penalty on the ground of 'no work, no pay'. In case any amount paid to the second respondent/workman after the award of compensation ordered by the Labour Court, the same shall be deducted from the retirement benefits payable to the second respondent/workman. The petitioner/management is directed to pass consequential order on the above terms, within a period of three months from the date of receipt of a copy of this order.

With the above observation, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Director,
National Institute of Tech. Teachers Training and Research,
(Formerly Technical Teachers Training Institute),
TITI Campus, Taramani, Chennai-600 113.
2. The Presiding Officer,
I Additional Labour Court,
Chennai.
3. The Chairman,
Board of Governor,
Technical Teacher Training Institute,
Chennai-600 11

+2cc to Mr.L.Chandra Kumar, Advocate SR.No.68398

+1cc to Mr.Sai Prasad, Advocate SR.No.68102

W.P.Nos.7927 & 20422 of 2012

GMR (CO)
GN (22/11/2017)