

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.02.2017

DELIVERED ON: 02.03.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.17735 and 17743 of 2003

Sua Explosives and Accessories Ltd.

Onnalvadi Post

Hosur 635 109

Dharmapuri District

represented by its President Mr. Ramachandran Petitioner
in both the WPs

vs.

1 The Presiding Officer
Labour Court
Salem

R1 in both WPs

2 K. Chandran

R2 in WP No.17735/2003

2 T. Muthukrishnan

R2 in WP No.17743/2003

Prayer in W.P. No.17735 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records from the file of the 1st respondent in I.D. No.765 of 1998 and to quash the award dated 24.12.2002 passed therein.

Prayer in W.P. No.17743 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records from the file of the 1st respondent in I.D. No.985 of 1998 and to quash the award dated 24.12.2002 passed therein.

For petitioner in Mr. S. Jayaraman
both the WPs

R1 in both WPs

For R2 in

both WPs

Labour Court

M/s. K. Elango and

Ms. G. Chamkiraj

COMMON ORDER

These two writ petitions have been filed by the Management of Sua Explosives and Accessories Limited [hereinafter referred to as "the Management"], challenging the common award dated 24.12.2002 passed by the Labour Court, Salem in I.D.No.765 of 1998 and 985 of 1998, whereby, the second respondents, viz., Chandran and Muthukrishnan were directed to be reinstated in service with continuity of service and other benefits, but, without backwages.

2 It is the case of the Management that they had discharged one S.Murugan from service some time in June 1995. Aggrieved by the action taken by the Management, on 15.06.1995, Chandran, Muthukrishnan, Nanjappa and some other workers barged into the office room of the Vice President [Operations] at 9.50 a.m. and demanded the immediate revocation of the discharge order passed against Murugan.

3 On 15.06.1995, around 9.15 a.m., Shanmugam, Production Manager and Manivannan, Personnel Officer, were in the cabin of the Vice President [Operations] in discussion. At that time, Chandran, Muthukrishnan, Nanjappa and other workmen forced themselves into the cabin of the Vice President [Operations] and threatened Shanmugam and Manivannan with iron pipes and exhorted them to immediately revoke the order of discharge passed against Murugan. It is also alleged that they brandished pipes and stick and used threatening words and left the cabin only after the arrival of police party at 10.45 a.m. Individual show cause notices were issued to the trio, viz., Chandran, Muthukrishnan and Nanjappa and since their explanations were found to be not satisfactory, one M.Natrajan, was appointed as Enquiry Officer to conduct domestic enquiry on the charges that they had unauthorisedly entered the cabin of the Vice President (Operations) and illegally threatened Shanmugam [Production Manager] and Manivannan [Personnel Officer] of dire consequences and also brandished iron pipe that was kept hidden in the back of their shirt and left only after the arrival of police party. In the enquiry, the workmen demanded the services of a lawyer or an outsider to defend them, which request was negated by the Enquiry Officer on the ground that neither the Enquiry Officer nor the Presenting Officer is an Advocate. The Enquiry Officer permitted the workmen to be represented by a co-worker, but, the workmen did not engage any co-worker. However, they participated in the enquiry by producing their own witnesses. Two witnesses were examined on behalf of the Management and three witnesses were examined on behalf of the workmen.

4 The Enquiry Officer, by report dated 30.12.1995, held that the charges against the workmen were proved. The

Management issued individual second notices to the three workmen calling upon them to show cause as to why they should not be dismissed from service. The workmen gave their explanations and after considering the explanations, the Management dismissed Chandran and Muthukrishnan from service and imposed a lesser penalty on Nanjappa. Chandran and Muthukrishnan raised industrial disputes and on the failure of the conciliation proceedings, the disputes were referred to the Labour Court, Salem in I.D.No.765/1998 [Chandran] and I.D.No.985/1998 [Muthukrishnan].

5 In the Labour Court, the workmen were represented by M/s Pon Ramani and Mathivanan, Advocates and the Management was represented by Mr.T.C.Suresh. Before the Labour Court, the workmen contended that they are not disputing the enquiry proceedings and findings of the Enquiry Officer. This has been clearly recorded by the Labour Court as follows:

“விசாரணை முறையையும் விசாரணை அதிகாரியின் முடிவையும் மனுதாரர்கள் தரப்பில் எதிர்க்கவில்லை. எனவே விசாரணை முறை பற்றியும் விசாரணை அதிகாரியின் முடிவு பற்றியும் முதல் நிலையாக தீர்மானிக்க வேண்டிய அவசியம் இல்லை.”

6 Before the Labour Court, no witness was examined on either side. On behalf of the Management, 56 documents were marked. On behalf of the two workmen, no documents were marked. The Labour Court, by its common award dated 24.12.2002, quashed the penalty of dismissal from service and ordered reinstatement of the two workmen with continuity of service sans backwages, challenging which, these writ petitions have been filed by the Management.

7 Heard Mr.Jayaraman, learned counsel for the Management and Ms. Chamki Raj, learned counsel for the workmen.

8 Mr.Jayaraman, learned counsel for the Management contended that the Management had established in the domestic enquiry that the two workmen, along with others, forcibly entered the cabin of the Vice President [Operations] and pulled out iron pipes which they had kept hidden on their back and threatened Shanmugam and Manivannan of dire consequences if Murugan is not reinstated. Only after the police arrived, they went out of the cabin and had the police not arrived in time, the duo would have assaulted the officers, which was evident from the menacing words they used.

9 Mr.Jayaraman contended that the award of the Labour Court is in rank violation of the law laid down by the Supreme Court in Life Insurance Corporation of India v. R.Dhandapani [(2006) 13 SCC 633], L&T Komatsu Ltd. v. N.Udaykumar [(2008) 1

SCC 224] and Christian Medical College Hospital Employees' Union and another vs. Christian Medical College Vellore Association and others [(1987) 4 SCC 691].

10 Per contra, Ms. Chamki Raj contended that though the workmen had not disputed the enquiry proceedings and the findings of the Enquiry Officer, yet, the Labour Court had gone into certain glaring contradictions in the contention of the Management and only thereafter, had interfered in the punishment and therefore, the same cannot be said to be illegal. She contended that the Labour Court had found that, had the police been summoned, there would have been an FIR registered and in the absence of any FIR being registered, the contention of the Management that only after the police came, the workmen left the cabin, becomes doubtful. She further contended that the Labour Court has also held that when Nanjappa was given a lesser penalty, there is no reason to dismiss Chandran and Muthukrishnan from service as all the three were on the same footing. It is her further contention that the Management obtained letters of apology from the two workmen, but used that letter against them in the enquiry proceedings. She also took exception to the fact that in the tail end of the enquiry report, the Enquiry Officer has not catalogued the names of witnesses who were examined and the documents marked on either side.

11 This Court gave its anxious consideration to the rival submissions.

12 It is true that before the Labour Court, the workmen had taken a categorical stand that they are questioning neither the enquiry proceedings nor the findings of the Enquiry Officer. That is why, both sides had not adduced any oral evidence. Had the workmen repudiated the enquiry proceedings, then, the Management would have sought leave to adduce evidence for proving the misconduct alleged against the workmen before the Labour Court. That having not been done, it is not open to the Labour Court to go into the findings of the domestic enquiry. Surprisingly, the Labour Court has doubted certain findings of the Enquiry Officer for the purpose of reducing the punishment.

13 For example, the Labour Court has stated that there is discrepancy between the counter filed by the Management before the Labour Court and the charge memo, with regard to the actual words that is said to have been used by the workmen for intimidating the officers. In the considered opinion of this Court, the counter filed before the Labour Court in the industrial dispute proceedings cannot form the basis of pinning the discrepancies, because, the enquiry report is not based on pleadings, but, based on the actual evidence that was given by

the Management Witnesses in the presence of the workmen. That evidence is called substantive evidence and that cannot be put to test with the counter that is filed subsequently after the matter has been referred to the Labour Court. Based on the evidence of the Management Witnesses and the witnesses for the workmen, the Enquiry Officer has returned a finding of "charges proved". The Labour Court has not stated that the finding of the Enquiry Officer is perverse, because, the workmen had conceded before the Labour Court that they were not challenging either the domestic enquiry proceedings or the findings of the Enquiry Officer. The Labour Court has further stated that the allegation of the Management that, only after the police came, the workmen left the room of the Vice President is doubtful because the Management had not proved that an FIR was registered by the police. This conclusion by the Labour Court, is, once again clearly against the evidence that was adduced before the Enquiry Officer.

14 This Court perused the enquiry proceedings and found that all the witnesses who were examined by the Management and the workmen uniformly agreed that the police came to the factory at the relevant point of time. For example, Gopalakrishnan (WW 1), Edwin Paul (WW 2), Subramanyam (WW 3) and John (WW 4), have all admitted in the cross-examination by the representative of the Management that policemen came to the factory during that time. In the teeth of such unequivocal admission even by the witnesses examined by the workmen, the Labour Court has disbelieved this vital aspect on the ground that no criminal case was registered by the police. The registration or non-registration of FIR was not the issue before the Labour Court. The issue was whether the officers were confined in the Vice President's room and only after seeing the police, the workmen left. Therefore, the doubt raised by the Labour Court with regard to the arrival of the police is indubitably fanciful.

15 According to the Labour Court, the workmen had only handed out an "empty threat" and not a "real threat" and further, the Management had not stated correctly the nature of weapon, i.e., whether iron pipe or stick that was brandished by the two workmen. As stated above, when the workmen had not chosen to challenge the findings of the Enquiry Officer, it is not open to the Labour Court to give a contra finding on this aspect.

16 However, this Court carefully perused the evidence of Manivannan (MW 1), wherein, he has clearly stated that Chandran, Muthukrishnan, Nanjappa, Ravikumar, Balasubramanyam and Murugan entered the room of the Vice President and Murugan bolted the room from inside. Murugan demanded Shanmugam to withdraw the

dismissal order passed against him in half an hour's time, failing which, he threatened Shanmugam that his life will be in peril. At that time, Muthukrishnan, Nanjappa and Chandran pulled out iron pipes from inside their shirt and Balasubramanyam took out a wooden stick. Thereafter, Manivannan has stated in his evidence, the threatening words used by the workmen. Manivannan has further deposed that a phone call came from the General Manager from the Head Office at Bangalore, which was attended to by the Personnel Manager. At that time, there was a reference to police in their conversation. On hearing that, Nanjappa, Balasubramanyam and Chandran handed over their weapons to Muthukrishnan who took them out of the room. Around 10.45 a.m., there was a knock on the door and on opening it, he saw policemen. The police advised the workmen to disperse from the room. This evidence of Manivannan has not been controverted by the workmen during the enquiry.

17 In the light of such overwhelming materials, the finding of the Labour Court that the Management has not established the nature of weapons held by the workmen, is indeed perverse.

18 Lastly, the Labour Court has interfered with the punishment on the ground that Nanjappa who was similarly placed as that of the workmen herein was given a lesser punishment. In the counter filed by the Management before the Labour Court, they have clearly stated that the punishment of dismissal from service was given to Chandran and Muthukrishnan taking into account their previous track record, whereas, Nanjappa was not dismissed from service because he had a blemishless record. Even in the second show cause notice that was issued to Chandran and Muthukrishnan on the proposed penalty, the Management had catalogued their previous misconducts. Therefore, the contention of the Management that since Nanjappa had a clean track record, he was not visited with the penalty of dismissal, whereas, the antecedents of Chandran and Muthukrishnan were otherwise, cannot be said to be unreasonable or illegal. The following passage from the judgment of the Supreme Court in L & T Komatsu Ltd. vs. N. Udayakumar [(2008) 1 SCC 224] expounds the law on the subject very succinctly:

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"Again, in M.P. Electricity Board v. Jagdish Chandra Sharma, this Court dealt with the matter as follows:

"8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In U.P. SRTC v. Subhash Chandra Sharma [(2000) 3 SCC 324 : 2000 SCC (L&S) 349] this Court, after referring to the scope of interference with punishment under Section 11-A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In Krishnakali Tea Estate

v. Akhil Bharatiya Chah Mazdoor Sangh[(2004) 8 SCC 200 : 2004 SCC (L&S) 1067] this Court after referring to the decision in State of Rajasthan v. B.K. Meena [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-à-vis the establishment, interference with punishment of dismissal could not be justified. In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate [(2005) 2 SCC 489 : 2005 SCC (L&S) 298] this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in Mahindra and Mahindra Ltd.v. N.B. Narawade [(2005) 3 SCC 134 : 2005 SCC (L&S) 361]. This Court summed up the position thus: (SCC p. 141, para 20)

'20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under

Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.'

It may also be noticed that in *Orissa Cement Ltd. v. Adikanda Sahu* [*Orissa Cement Ltd. v. Adikanda Sahu*, (1960) 1 LLJ 518 (SC)] and in *New Shorrock Mills v. Maheshbhai T. Rao* [*New Shorrock Mills v. Maheshbhai T. Rao*, (1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated 'punishment of dismissal for using abusive language cannot be held to be disproportionate'. If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Muriadih Colliery of Bharat Coking Coal Ltd. v. Bihar Colliery Kamgar Union* [(2005) 3 SCC 331 : 2005 SCC (L&S) 412] this Court after referring to and quoting the relevant passages from *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh* [(2004) 8 SCC 200 : 2004 SCC (L&S) 1067] and *Tournamulla Estate v. Workmen* [(1973) 2 SCC 502 : 1973 SCC (L&S) 510] held: (SCC p. 336, para 17)

'The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal.' "

19 In the case at hand, the two workmen came to the room of the Vice President (Operations) armed with iron pipes and menacingly threatened the officials to revoke the order of discharge passed against their colleague Murugan. If not for the timely intervention of the police, there was an imminent possibility of attack on the officers. In a case of this nature, there is no question of justifying their act as an "empty threat" for the purpose of reducing the punishment.

20 It is also reported that the Management has been

regularly paying the last drawn wages to the two workmen under Section 17-B of the Industrial Disputes Act.

In the result, these writ petitions are allowed and the common award dated 24.12.2002 passed by the Labour Court, Salem in I.D.Nos.765 and 985 of 1998 is hereby set aside and the order of dismissal passed by the Disciplinary Authority is sustained. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
Labour Court
Salem

+2 cc to Mr.S. Jayaraman, Advocate, S.R.No.13890 & 13489
+2cc to Mr.K. Elango, Advocate, S.R.No.13446 & 13445

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W.P. Nos.17735 and 17743 of 2003

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