

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.02.2017

DELIVERED ON: 03.03.2017

CORAM:

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

W.P.No. 17744 of 2003

Sua Explosives and Accessories Ltd.

"SUA HOUSE"

No.26/1, Kasturba Cross Road

Bangalore 560 001

represented by its President Mr. Ramachandran

Petitioner

vs.

1 The Presiding Officer
Labour Court
Salem

2 P. Nagarajan

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records from the file of the first respondent in I.D. No.337 of 1998 and to quash the award dated 07.10.2002 passed therein.

For petitioner Mr. S. Jayaraman

R1 Labour Court

For R2 Ms. G. Chamkiraj

ORDER

This writ petition has been filed challenging the award dated 07.10.2002 passed by the first respondent-Labour Court (for brevity "the Labour Court") in I.D. No.337 of 1998.

2 The brief facts leading to the filing of this writ petition are as under:

2.1 P. Nagarajan, the second respondent herein, was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for brevity "the ID Act") in Sua Explosives and Accessories Ltd., the petitioner herein (for brevity "the Management").

2.2 The Management issued a show cause notice dated 17.09.1992 to Nagarajan, alleging that he did not carry out the instructions of the Production Manager to start the crushing machine for checking and inspection and also prevented P.S.Murali, Maintenance Foreman, from attending to the fault in the machine and threatened him with dire consequences. Nagarajan denied the charges and therefore, the Management

appointed one R. Sukumar as the Enquiry Officer to enquire into the charges.

2.3 In the enquiry conducted by Sukumar, Nagarajan was represented by Mr. Nehru, a practising advocate. Apart from examining himself, Nagarajan examined three witnesses on his behalf. On behalf of the Management, Shanmugam, Production Manager and P.S.Murali, Maintenance Foreman, were examined as witnesses and they were cross-examined by Mr. Nehru, advocate for Nagarajan.

2.4 Sukumar, Enquiry Officer, submitted a report dated 07.06.1993 holding that the charges against Nagarajan stood proved.

2.5 The Management issued another show cause notice dated 23.11.1992 to Nagarajan, Chandran and Rajappa, in which, it is alleged that Chandran and Rajappa prevented one Joy Victor, Accounts Assistant from entering into the factory and abused him and in the course of the same incident, Nagarajan abused and assaulted Joy Victor. Nagarajan denied the charges and one Kamalanathan was appointed as the Enquiry Officer to enquire into the charges.

2.6 In the enquiry proceedings conducted by Kamalanathan in respect of charge of assault on Joy Victor, Nagarajan insisted that he should be represented by the Union's office bearers to assist him, but, the Enquiry Officer took the stand that he may be assisted only by a co-worker or an advocate and not by an outsider. The enquiry was posted to 22.03.1993, 29.03.1993 and 19.04.1993, but, Nagarajan refused to participate, even though he was present.

2.7 The Enquiry Officer examined one Shanmugam, Production Manager, who is said to have seen the incident, in which, Rajappa and Chandran abused Joy Victor and Nagarajan abused and assaulted Joy Victor. The Management examined one Sampath Kumar as witness no.2.

2.8 Ultimately, Kamalanathan, Enquiry Officer, submitted a report dated 26.09.1993 holding that the charges against the trio, viz., Nagarajan, Chandran and Rajappa have been proved.

2.9 After receiving the two domestic enquiry reports, the Management issued a second show cause notice dated 10.12.2001 in respect of both the enquiry reports and proposed the extreme penalty of dismissal from service for Nagarajan. Thereafter, the Management, by order dated 22.06.1993, dismissed Nagarajan from service and imposed lesser penalty on Chandran and Rajappa.

2.10 Aggrieved by the order of dismissal, Nagarajan raised an industrial dispute under Section 2-A(2) of the ID Act and on the failure of the conciliation proceedings, the matter was referred by the Government to the Labour Court, Vellore, in I.D. No.434 of 1994 and after the constitution of the Labour Court in Salem, the case was transferred to the Labour Court, Salem and was taken on file as I.D. No.337 of 1998. Nagarajan filed his claim statement before the Labour Court challenging the order of termination passed by the Management and also contended that the enquiry was not properly conducted. The Management entered appearance and filed their counter refuting the allegations.

2.11 In the trial, the Labour Court framed the following issues:

- i. Was the domestic enquiry conducted in accordance with the principles of natural justice?
- ii Were the findings of the Enquiry Officer proper?
- iii Was the punishment of dismissal from service justified?
- iv What relief is Nagarajan entitled to?

2.12 Though issue no.(i) was framed with regard to the validity of the domestic enquiry proceedings, it appears that Nagarajan gave up the challenge and therefore, he did not choose to examine himself as a witness and instead, sought adjudication of his claim based on records. However, the Labour Court went into the records and has given a finding that there is no infirmity in the domestic enquiry proceedings.

2.13 As regards issue no.(ii), viz., whether there is any perversity in the findings of the two Enquiry Officers, the Labour Court held in favour of the Management.

2.14 As regards the contention that was raised on behalf of Nagarajan that the second show cause notice was issued in respect of two incidents, the Labour Court held that Nagarajan did not suffer any prejudice on account of that. Ultimately, the Labour Court interfered with the punishment by holding that the punishment of dismissal from service was disproportionate and altered it to reinstatement without backwages and other benefits, but, with continuity of service, challenging which, the Management has filed the present writ petition.

3 Heard Mr. S. Jayaraman, learned counsel for the Management and Ms. Chamki Raj, learned counsel for Nagarajan.

4 At the outset, Mr. Jayaraman, contended that the Labour Court ought not to have interfered with the punishment under Section 11-A of the ID Act, especially when it had returned a finding that the charges against Nagarajan were proved. He further contended that in one incident, Nagarajan has disobeyed his superiors and abused them and in the other incident, he had assaulted a colleague. He placed strong reliance on the judgment of the Supreme Court in L & T Komatsu Ltd. vs. N.Udayakumar [(2008) 1 SCC 224] in support of his submission that the Labour Court ought not to have interfered with the order of dismissal, especially in a case of this nature where it has been established in the domestic enquiry that Nagarajan had assaulted a colleague.

5 Per contra, Ms. Chamki Raj, learned counsel for Nagarajan submitted that before the Enquiry Officer, Joy Victor, the person who suffered the assault was not examined and therefore, there is no perversity in the order of the Labour Court. She also contended that along with Nagarajan, Chandran and Rajappa were also charged for preventing Joy Victor from going to office, but, they were given a lesser penalty, whereas, Nagarajan has been singled out. She further contended that the second show cause notice relate to both the enquiry proceedings and that should not have been done by the Management.

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

7 On a scrutiny of the original records from the Labour Court, it is seen that two incidents had taken place in succession, viz., on 10.09.1992, Nagarajan did not carry out the instructions of Shanmugam, Production Manager and abused him; and on 19.11.1992, Nagarajan, Chandran and Rajappa prevented Joy Victor from entering into the factory and Nagarajan assaulted Joy Victor. This was witnessed by Shanmugam, Production Manager. For both the incidents, two different Enquiry Officers were appointed by the Management. In one enquiry relating to the incident that took place on 10.09.1992, which was conducted by Sukumar, Nagarajan was assisted by an advocate by name Nehru.

8 As regards the contention of Ms. Chamki Raj that the non examination of Joy Victor was fatal, this Court is of the view that an incident of assault can be proved, either by examining the person who suffered the assault or by examining a person who saw the assault. In the enquiry report of Kamalanathan, it is stated as follows:

"Joy Victor in his letter dated 25.04.1993, has stated that he was unable to attend the enquiry as he was threatened by a few asking him not to attend the enquiry. Therefore, he has expressed his inability to attend the enquiry on 29.04.1993 and later also.

Howoever, he has said in that letter that he stands by the complaint given to the Management narrating the incident which took place on 19.11.1992."

9 When a witness has been threatened against giving evidence, his non examination before the Enquiry Officer cannot be said to be fatal, especially in the light of the fact that another witness to the incident had boldly given evidence of the assault. Therefore, I am of the considered view that non examination of Joy Victor in the domestic enquiry proceedings cannot be said to be fatal.

10 As regards the contention of Ms.Chamki Raj that Chandran and Rajappa were given a lesser penalty, this Court is of the view that the allegation against them was that they prevented Joy Victor from entering into the factory, whereas, the allegation against Nagarajan was that he had assaulted Joy Victor. Such goondaism is anathema to industrial work culture. The following passage from the judgment of the Supreme Court in L & T Komatsu Ltd. (supra) expounds the law on the subject very succinctly:

"11. . . . 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.' " (emphasis supplied)

11 Therefore, in the light of the law laid down by the Supreme Court in the judgment referred to above, the Labour Court ought not to have interfered with the punishment of dismissal from service imposed by the Management on Nagarajan.

12 As regards the second show cause notice containing both the incidents, it cannot be said to be fatal because two enquiry reports came to the Disciplinary Authority in close succession, i.e., on 02.06.1993 and 07.06.1993. Therefore, the Disciplinary Authority thought it fit to give a single second show cause notice in respect of two enquiries wherein charges framed were held to be proved. In the absence of any prejudice to Nagarajan, the same cannot be said to be vitiated.

13 In view of the foregoing discussion, the award dated 07.10.2002 passed by the Labour Court in I.D. No.337 of 1998 is set aside and the order of dismissal from service passed by the Management against Nagarajan stands restored.

In the result, this writ petition is allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cad

To

1.The Presiding Officers
Labour Court
Salem

+1 cc to M/s.K.Elango Advocate sr 13772
+1 cc to M/s.S.Jayaraman Advocate sr 13833

W.P.No.17744 of 2003

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