

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.NO.18858 OF 2003

K.Sankardoss

... Petitioner

Vs.

1. The Presiding Officer
Labour Court
Pondicherry.

2. The General Manager
M/s.Cubex Tubingo Ltd.,
A-12 A, Industrial Estate,
Mettupalayam,
Pondicherry - 9.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India by with a prayer to issue a Writ of Certiorari, to call for the records from the file of the 1st respondent herein in I.D.No.10/2000 and to quash its award dated 18.12.2002.

For Petitioner : Mr.Janarthanan
For Respondent-2 : Mr.S.Jayaraman

O R D E R
सत्यमेव जयते

Sankardoss joined M/s.Cubex Tubingo Limited (hereinafter would be referred to as Management) as Helper sometime in the year 1994. Thereafter, he was promoted as Operator. Admittedly, he was a regular employee under the Management. It is his case that on 24.02.1998 he was stopped at the factory gate and was refused employment. It is his further case that he was reporting regularly to the factory, but no avail. Thereafter, he is said to have sent a letter dated 16.04.1998 to the Management requesting employment and the said letter was also returned as refused.

2. Sankardoss raised an industrial dispute before the Labour Officer and the conciliation proceedings ended in failure

resulting in the Government referring the matter to the Labour Court, Pondicherry in I.D.No.10/2000 for adjudication.

3. Before the Labour Court, the Management took the plea that Sankardoss was terminated from service on 24.02.1998, as he is said to have grievously attacked one Guman Singh, Security Guard in the company resulting in Guman Singh suffering serious injuries and ultimately succumbing to the injuries at his native place in Rajasthan.

4. The Management contended that because of the volatile situation that prevailed in the factory after the incident on 21.02.1998, the Management was not able to conduct a domestic enquiry and therefore, they terminated him from service on 24.02.1998. The Management pleaded before the Labour Court that they would adduce evidence to prove the alleged misconduct against Sankardoss.

5. On the strength of the pleadings of the parties, the Labour Court formulated the following points for consideration:-

"5.The points for consideration are:

1) Whether the petitioner indulged in violent activities in the mill including causing injuries to the security personnel Guman Singh?

2) Whether the respondent management was not able to conduct domestic enquiry in view of the tense situation prevailing in the factory?
And

3) To what relief? "

6. Sankardoss examined himself as witness and marked six exhibits. On behalf of the Management, 3 witnesses were examined and 10 exhibits were marked. After appraisal of the evidence on record, the Labour Court held that the Management had proved the alleged misconduct against Sankardoss and dismissed the petition, challenging which, Sankardoss is before this Court.

7. Heard Mr.Janarthanan, learned counsel for Sankardoss and Mr.S.Jayaraman, learned counsel for the Management.

8. Mr.Janardhanan, learned counsel placed strong reliance on the following judgments:-

(i) NAR SINGH PAL VS. UNION OF INDIA AND OTHERS [2000 (3) SCC 588]

(ii) DULU DEVI VS. STATE OF ASSAM AND OTHERS [2016 (1) SCC 622]

(iii) M.ANANTHAN VS. PRESIDING OFFICER, PRINCIPAL LABOUR COURT, CHENNAI AND ANOTHER [2010 (1) MLJ 1131]

(iv) MANAGEMENT OF T.N.S.T.C. REP. BY ITS M.D. BYE PASS ROAD, MADURAI - 1 AND OTHERS VS. PRESIDING OFFICER, LABOUR COURT, MADURAI AND OTHERS [2010 (5) MLJ 448]

9. Mr. Janarthanan, learned counsel appearing for Sankardoss submitted that the Labour Court ought not to have framed the aforesaid points and instead it should have framed the point for consideration as to whether retrenchment as defined under Section 2(o)(o) of the Industrial Disputes Act, 1947, has been satisfied in this case and whether the Court can come to the conclusion that there has been a legal retrenchment of Sankardoss. He also submitted that the Management had failed to prove the alleged assault of Guman Singh on 21.02.1998 inasmuch as the evidence of R.W.2 and R.W.3 contradict each other and they are not worthy of acceptance. He further contended that both of them are interested witnesses and therefore, their evidence should be rejected. It is his further contention that the termination order dated 24.02.1998 was fabricated subsequently for the purpose of this case and that it was never served on Sankardoss. He also contended that in the absence of a domestic enquiry, the entire termination stands vitiated.

10. Per contra, Mr. S. Jayaraman, learned counsel appearing for the Management refuted the contentions and placed strong reliance on the judgment of the Supreme Court in WORKMEN VS. FIRESTONE TYRE AND RUBBER CO. OF INDIA (P) LIMITED [1973 (1) SCC 813] and USHA BRECO MAZDOOR SANGH VS. MANAGEMENT OF USHA BRECO LIMITED AND ANOTHER [2008 (5) SCC 554]. He contended that in the situation that prevailed after the alleged incident, the Management was not in a position to conduct domestic enquiry and therefore, the Management came forward to prove the allegations against Sankardoss before the Labour Court by adducing evidence. He also contended that the quality of proof in a domestic enquiry proceedings and before the Labour Court is not that of proof beyond reasonable doubt, but by preponderance of probability. In respect of this contention, he placed reliance upon Section 11-A of the Industrial Disputes Act, 1947.

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

12. Coming to the first judgment cited by Mr. Janarthanam, namely Nar Singh Pal's case (cited supra) it is seen that the employee therein was working in the Telecom Department on temporary status and that his services were terminated on the ground that he had beaten a co-employee. In that case, no enquiry was conducted and in that context, the Central Administrative Tribunal stated that even if an employee is on temporary status, his termination on the ground of such an incident cannot be done without domestic enquiry. In the present case, the Management had submitted to the Labour Court that they were not able to conduct domestic enquiry because of the tense situation and therefore, they adduced evidence before the Labour Court to prove the charges. Under such circumstances, this case would not be of any assistance to the petitioner.

13. In Dulu Devi's case (cited supra) the petitioner was working as a Teacher for 25 years and suddenly her services were terminated and her salary was not paid. After she had passed the efficiency test 193 teachers were suddenly terminated from service by the Deputy Inspector of Schools, which termination was held to be illegal by the Supreme Court. In that context, the Supreme Court held that the Teacher should be put back into service with backwages. This case is also not of any assistance to the petitioner.

14. In M. Ananthan's case (cited supra) the employee was working as an Assistant Operator in a Rice Mill and since he was taking leave frequently, the Management issued a charge memo, which was not received by him. Thereafter, he was not permitted to join duty. In that context, a Division Bench of this Court held that the termination is illegal for want of enquiry, if it is based on misconduct of alleged absence. On facts, this case also will not help the petitioner in any event.

15. In Management of TNSSTC's case (cited supra) the employee was working as a Loader. Some workmen were working as Loaders and their services were terminated on 15.06.1990 by the oral order of the Management. Under those circumstances, this Court declared the termination as illegal. This case would be of least assistance to advance the case of the petitioner.

16. Coming to the facts of this case, admittedly, the Management did not conduct domestic enquiry. The explanation offered by the Management was that Sankardoss had very bad antecedent and that on 21.02.1998, he brutally assaulted Guman Singh along with others, resulting in Guman Singh's death a month later in Rajasthan. In order to prove the charges, three

witnesses were examined, of which, we are concerned about R.W.2 and R.W.3.

17. This Court carefully perused the evidence of R.W.2. R.W.2 in his evidence before the Labour court has stated that he is the colleague of Sankardoss and during the last week of February 1998, while both were working in the second shift, he saw Sankardoss going out of the Plant. When he heard loud noises, he came out of the Plant and found Sankardoss, Henry Bernard and two others brutally attacking Guman Singh, the Security Guard. After the attack, he found Sankardoss slipping into the factory and Henry Bernard and others were running away from the place. He stated that Guman Singh fell down with head injuries and at that time, Vadivel, a Civil Contractor - R.W.3, who came to the spot, tried to stop the bleeding and along with the Manager (RW1) took Guman Singh by an auto to the Hospital. It is the specific evidence of R.W.2 that the situation in the factory was tense. In the cross examination of R.W.2., except making suggestion to him that he was involved in a theft of Copper Wire and that he is giving false evidence to support the Management, nothing substantial was elicited that would demolish his evidence in chief.

18. Vadivel- R.W.3 in his evidence has stated that in the last week of February 1998 at around 7' 0 clock when he was in the factory, he heard sound and when he went to see what it was, he saw Guman Singh, Watchman was seriously injured and Sankardoss was found at the place of occurrence. He also stated that three others ran away. Thereafter, he took the injured Guman Singh along with the Manager (R.W.1) to Mettupalayam Police Station and from there on the directions of the Police, they took him to Rani Hospital for treatment. In the cross examination, he has stated that Rajkumar - R.W.2 who was on the second shift came behind him.

19. From this evidence of Vadivel - R.W.3 in the cross examination, learned counsel submitted that, when R.W.2 had come only after R.W.3, the possibility of R.W.2 seeing the incident is remote. They contended that R.W.2 and R.W.3 are interested witnesses and one contradicts the other.

20. In the considered opinion of this Court, the evidence of a witness should not be read in bits and pieces. The entire deposition of a witness must be read as a whole. From the evidence of Vadivel-R.W.3 when he came to the spot, on hearing the sound, he saw Sankardoss and three persons and also saw Guman Singh falling down with injuries. Thus, his evidence fixes Sankardoss at the place of occurrence. Vadivel also saw Guman Singh falling with serious injuries. Sankardoss did not take any step to attend to the injured man. Of course, this by itself will not lead to the inference that Sankardoss had assaulted

Guman Singh. But under Sections 6 and 8 of the Indian Evidence Act, the conduct of Sankardoss in not coming anywhere to help Vadivel (R.W.3) to attend to Guman Singh may be relevant. However, the evidence of Rajkumar - R.W.2 is so clear and graphic wherein he has stated that he saw Sankardoss and Henry Bernard and two others assaulting Guman Singh and Guman Singh falling. He also stated that Vadivel R.W.3 came to the spot and thereafter, Guman Singh was carried to the Hospital. He has further stated that Sankardoss went inside the factory and the other three ran away.

21. Admittedly, Vadivel had not seen the incident. He came after the incident had taken place. Just because from his perception, he had stated that Rajkumar (R.W.2) came after him, this does not necessarily mean that Rajkumar was not there as an eye witness when the incident actually took place. In other words, it is possible that Rajkumar could have seen incident and could have gone to fetch someone else and in that brief interregnum Vadivel would have come to the place and again Rajkumar would have surfaced. Therefore, the evidence of Rajkumar (R.W.2) has not been contradicted by Vadivel (R.W.3). A contradiction means, proof of a relevant fact which would make an already proved relevant fact as false. In the opinion of this Court on a complete reading of the evidence of R.W.2 and R.W.3, there is nothing to show that R.W.3's evidence had made the evidence of R.W.2 false. In fact, on several material particulars, R.W.3 corroborates R.W.2.

22. As stated above, Sankardoss was not able to demolish the evidence of Rajkumar in the cross examination. As regards the allegation of R.W.1, R.W.2 and R.W.3, being interested witnesses, when an incident takes place in the factory, only people connected with the factory will be available. For example, if a murder takes place in a house, the wife and children of the deceased only will be the eye witnesses. Just because they are related to the deceased, their evidence cannot be discarded on the ground that they are interested witnesses. The question that has to be addressed by a Court is, whether they are natural witnesses and not whether they are interested witnesses. In other words, the Court should ask a question to itself whether, is it probable for the said eye witnesses to have been present at the relevant point of time and nothing more. If that test is satisfied, the question whether the witness is a relative or a close friend pales into insignificance.

23. In this case, all the three witnesses are intimately connected with the affairs of the factory, inasmuch as R.W.1 was the Manager, who was there in the factory, R.W.2 was a co-worker with Sankardoss in Plant No.2 and was available with Sankardoss and R.W.3 was a factory contractor, who have

come to supervise the painting work.

24. The learned counsel for the petitioner submitted that the Management had failed to prove the registration of criminal cases with regard to the alleged incident of assault. In this regard, the Management had taken steps to summon the relevant records from the Police Station and the Police had reported that the records in the Police Station were not available and that they were destroyed. Therefore, this is not a case where the Management had rested their case on the ipsi dixit of the witnesses but had taken appropriate steps to summon the records from the Police Station, but no avail. The learned counsel further submitted that had an incident of this nature occurred, the Police would definitely have registered a case. According to the learned counsel for the petitioner, in the absence of the Police registering a criminal case, the contention of the Management that the alleged incident had taken place deserves to be rejected.

25. This argument may appear appealing, but on a deeper scrutiny, it is common knowledge that Police do not register cases immediately when complaints are lodged. Otherwise, there is no necessity for the Constitution Bench of the Supreme Court in LALITA KUMARI VS. STATE OF UTTAR PRADESH [2014 (2) SCC 1] to make the following observation:-

"103.It means that the number of FIRs not registered is approximately equivalent to the number of FIRs actually registered. Keeping in view the NCRB figures that show that about 60 lakh cognizable offences were registered in India during the year 2012, the burking of crime may itself be in the range of about 60 lakhs every year. Thus, it is seen that such a large number of FIRs are not registered every year, which is a clear violation of the rights of the victims of such a large number of crimes. "

Under such circumstances, this Court cannot conclude that just because the Police had not registered FIR, the incident had not taken place at all.

26. In respect of the treatment given to Guman Singh, the Management has marked Ex.B6, the veracity of which has been seriously doubted by the learned counsel for the petitioner. In the absence of any credible evidence adduced by the petitioner either in the cross examination of Management witnesses or otherwise, this Court has no reason to disbelieve the evidence of R.W.1 and R.W.3 that they carried Guman Singh to Rani Hospital on 21.02.1998 and had him treated for his injuries.

27. The learned counsel for the petitioner submitted that there are two termination orders both dated 24.02.1998 (Exs.A6 and B7) and that both of them were not served on the petitioner, but whereas, they were submitted to the Conciliation Officer by the Management vide their communication dated 22.07.1998. Admittedly, both of these documents were supplied by the Management to the Conciliation Officer without burking the truth. Had the Management wanted to play an unfair game, they would not have placed both the letters before the Conciliation Officer. On a reading of both the letters, it is seen that one letter is bereft of details and whereas the other letter contains all other details with regard to the assault of Guman Singh.

28. In the considered opinion of this Court, when the petitioner had taken a stand that he was illegally terminated, it is not really a matter as to whether the Management had issued one termination letter or two termination letters on the same day. In other words, the illegal termination has not been accepted by the petitioner and that is why, the Management had to establish before the Labour Court by adducing evidence that he is a person, who is not fit to be in employment because of his violent propensities. In the chief examination of R.W.2 - Rajkumar, he has very clearly sated that the situation in the factory was tense. The petitioner had not chosen to cross examine him on this aspect and he had not even put a suggestion denying this assertion. Therefore, there is no reason to disbelieve the contention of the Management that after the assault incident the situation was tense in the factory and that is why they were not able to hold domestic enquiry.

29. In Firestone Tyre's case (cited supra) the Supreme Court has held that if the Management had not conducted domestic enquiry, they can adduce evidence before the Labour Court to prove the charges. This is exactly what the Management in the instant case have done. The evidence adduced by the Management satisfies the judicial conscience of this Court.

30. In the result, the writ petition is devoid of merits and accordingly, is dismissed. No costs.

s/d-
Assistant Registrar (CS-IV)

//True Copy//

Sub-Assistant Registrar

To

1. The Presiding Officer
Labour Court
Pondicherry.

+1 CC to M/s. S.Jayaraman, sr 7124
+1 CC to M/s. V. Balamurugan, sr 7620

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