



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.[MD].No.555, 556 & 586 of 2017 and 1417 of 2014
and

M.P.[MD]No.1 of 2014 and
C.M.P.(MD) No.4908 of 2017

1.R.Adaikalam ...Appellant in W.A.[MD].No.555 of 2017/
Petitioner in WP(MD)No.9080/2009

2.R.P.Shanmugam ...Appellant in W.A.[MD].No.556 of 2017/
Petitioner in WP(MD)No.9081/2009

3.The Management of T.S.Samy & Co,
Suriyan Beedi Manufacturers,
Rep.by its Managing Partner.
... Appellant in W.A.(MD) No.1417 of
2014 and 586 of 2017 / R2 in
WP(MD)No.9081 and 9080/2009

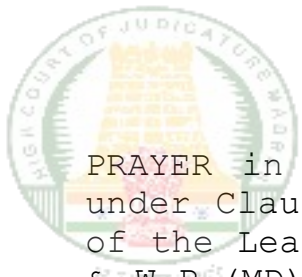
Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli ... Respondent No.1 in W.A.(MD) Nos.
555 and 556 of 2017 and
Respondent No.2/1st Respondent in
W.A.(MD) No.1417 of 2014 and 586 of 2017/
-R1 in WP(MD)No.9080 and 9081/2009

2.R.Adaikalam ... Respondent No.1 in W.A.(MD)No.
1417 of 2014 and Petitioner in
WP(MD)NO.9080/2009 and 9081/2009

3.R.P.Shanmugam ... Respondent No.1/Petitioner
in W.A.(MD) No.586 of 2017

4.The Management of T.S.Samy & Co,
Suriyan Beedi Manufacturers,
Rep.by its
Managing Partner. ... Respondent No.2 in
WA(MD).No.555 & 556 of 2017/R2 in
WP(MD)Nos.9080 and 9081 of 2009



PRAYER in W.A(MD).No.555 & 556 of 2017 : Writ Appeals are filed under Clause 15 of the Letters Patent, to to set aside the order of the Learned Judge, dated 06.06.2014 in W.P.(MD).No.9080 of 2009 & W.P.(MD).No.9081 of 2009 respectively in so far as awarding / ordering only compensation instead of allowing the writ petition as prayed by the appellants and consequently to allow the writ petition as prayed for.

PRAYER in W.A(MD).Nos.1417 of 2014 and 586 of 2017 : Writ Appeals are filed under Clause 15 of the Letters Patent, to to set aside the common order passed by this Court in W.P.(MD).No.9081 and 9080 of 2009, dated 06.06.2014 and thereby allow the writ appeals.

Prayer in WP(MD). 9080/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, after calling for the records relating to the award dated 16/03/2005 passed by the first respondent in I.D.No. 197/92 in so far as holding that the non-employment of the petitioner was justifiable and that he was not entitled to get an relief from the 2nd respondent and to quash the same and to hold that he was terminated from his services by the 2nd respondent from 21/07/1984 and the same was illegal and unjustified and to direct the second respondent to pay him back wages from the date of his termination up to the date of his superannuation and all other attendant and terminal benefits and award costs.

Prayer in WP(MD). 9081/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, after calling for the records relating to the award dated 16/03/2005 passed by the first respondent in I.D.No. 197/92 in so far as the finding holding that the termination of services of the petitioner by the 2nd respondent was legal and justified and declining him the relief of reinstatement in service with all benefits and to quash the same and to hold that the termination of his services by the 2nd respondent was illegal and unjustified and for a direction to the second resopondnet to pay him back wages from the date of his termination up to the date of his superannuation and all other attendant and terminal benefits and award costs.

For Appellants : Mr.S.Arunachalam
in WA(MD).No.555 & 556 of 2017

For Appellant : Mr.M.Siddharthan
in W.A(MD).Nos.1417 of 2014 & for Mrs.P.Kalayarasi Bharathi
586 of 2017



only arrive at a conclusion about the guilt or otherwise of the misconduct alleged against the worker.

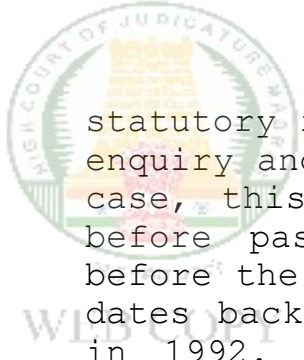
4. Even though the Management contended that R. Adaikalam had abandoned the service, a mere look at the materials on record would show memos had been issued both against Thiru. Adaikalam as well as Thiru. Shanmugam. The typed set filed by the Management contains such materials. The services of a workman working in a Beedi industry can be dispensed with by the Management only for a reasonable cause. Whether the cause is reasonable or not cannot be left to the subjective satisfaction of the Employer. Of course, the Division Bench of the Madras High Court, in the decision reported in 2003(3) CTC 275 - *Alitalia Linee Aeree Italiane, S.P.A., represented by its Deputy Administrative Officer, Talamal House, Bombay V. Iqbal Y. Munshi and Other*, held that even though the employer had not conducted any enquiry before the termination, it is open to the employer to adduce evidence and establish the misconduct on the part of the workman at the appellate stage. But, in the present case, the employer did not avail the said opportunity before the Labour Court. That is why the learned single Judge rightly observed that termination of the workmen without conducting enquiry and without giving opportunity to the workmen was bad in law.

5. Even though the termination of the workman was held to be improper and bad, considering the facts and circumstances of the case, the learned Judge did not award full backwages, but only, directed the Management to pay a sum of Rs.2,50,000/- to each of the workmen.

6. Since the backwages was not awarded in full, the workmen filed Writ Appeal Nos.555 and 556 of 2017. Though I.D.No.197 of 1992 covered both the workmen, two writ appeals were filed individually by the workman. The Management also filed two writ appeals.

7. We heard the learned counsel for the Management and Workmen. We sustain the order passed by the learned single Judge that the termination of both the workmen was not proper. The Management contended that there was no necessity to conduct any enquiry. This contention cannot be accepted, because the expression "reasonable cause" has been employed in Section 31(1) of Beedi Industrial Premises (Regulation of Conditions of work) Act, 1958. What is reasonable to the Management may be unreasonable to the workmen.

8. In this case, the Management had pleaded in the grounds of appeal that no evidence was adduced by the workmen. The burden to establish reasonable cause would always rest on the Management and it cannot be shifted to the workmen in the first instance. Merely because memo was issued and explanation was sought for, the



statutory requirement would not be met. There is something called enquiry and giving reasonable opportunity to the workmen. In this case, this exercise was not undertaken by the Management either before passing order of termination or during the proceedings before the Labour Court. The learned Judge noted that the dispute dates back to the year 1984. Industrial Dispute was raised only in 1992. Even though after remand, the award was passed on 16.03.2005, the writ petitions were filed only in September 2009. Obviously the workmen would not have been idle during the interregnum period. That is why, exercising equitable jurisdiction, the learned Judge directed the Management to pay a sum of Rs.2,50,000/- to each of the workmen.

9. We do not think the workmen would be justified in asking for anything more. The Management has chosen to criticise the order dated 20 September 2002 made in W.P.(MD) No.14513 of 1995. We do not think the said criticism is warranted. If the Management was aggrieved by the order of remand made in the said writ petition, it ought to have questioned the same by filing a writ appeal. Not having done so, it is not open to the Management to question the order of remand made in the said writ petition in these present appeal proceedings.

10. The intra court appeals filed by the Management as well as the workmen are without any merit and are accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Presiding Officer,
Labour Court, Tiruchirappalli.

+One cc to M/s.P.Kalaiyarasi Bharathi, Advocate, SR.No.64297

+One cc to Mr.S.Arunachalam, Advocate, SR.No.64233

arul/skm

RL/4C/5P/KP/SAR1/21/7/2017

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and

M.P. [MD] No.1 of 2014 and
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