

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2018

DELIVERED ON : 20.12.2018

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.1247 of 2018

V.Paramasivam .. Appellant/Petitioner

Vs.

1.The II Additional Labour Court, Chennai
Rep. by its Presiding Officer,
Chennai.

2.The Management of MRF Ltd.,
Rep. by its General Manager,
Tiruvottiyur, Chennai-600 019.

..

Respondents/Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.01.2018 made in W.P.No.34664 of 2012, which was filed for the relief of a Writ of Certiorarified Mandamus calling for the records relating to the award dated 11.07.2012 in I.D.No.616 of 1997 passed by the 1st respondent - II Additional Labour Court, Chennai and quash the same insofar as it held that the charges were proved and denied the service benefits due to the petitioner on account of setting aside of the termination dated 15.01.1997 imposed by the second respondent, as being illegal, perverse, unjust and unconstitutional and consequently issue a direction to the 2nd respondent to grant the benefit of backwages and all other attendant service benefits including terminal benefits due to the petitioner with interest, award costs and pass such other orders.

For Appellant : Mr.K.V.Ananthakrishnan

For Respondents: Mr. Mohan for
M/s.Ramasubramanian & Assocs.
For R2
R1-Court

JUDGMENT

M.SATHYANARAYANAN, J.

The appellant is the writ petitioner. The appellant/writ petitioner made a challenge to the award of the first respondent / II Additional Labour Court, Chennai dated 11.07.2012 made in I.D.No.616 of 1997, in and by which the second respondent was directed to pay compensation of Rs.2,00,000/- to the petitioner on the ground that he retired from service on 16.04.2010 and as such, the order of reinstatement cannot be passed, by filing W.P.No.34664 of 2012 and the learned Judge, vide impugned order dated 22.01.2018, has dismissed the writ petition and aggrieved by the same, the appellant/writ petitioner has filed this Writ Appeal.

2. Facts leading to the present litigation have been narrated in detail and in extenso in the impugned order passed in the writ petition, which is the subject matter of challenge in this writ appeal and therefore, it is unnecessary to restate the entire facts once again, except to cull out the relevant facts necessary for the disposal of this writ appeal:

2.1. The petitioner was employed as a Workman in the services of the second respondent and he joined in service on 17.07.1971 and by order dated 26.06.1985, he was promoted as Type Builder in the Quality Assurance Department. It is the admitted case of the appellant/writ petitioner that he has been the President of INTUC and Vice President of MRF Employees Coop. Thrift and Credit Societies and in that capacity, he used to solve the disputes of the workmen and he is a "Workman" within the definition of Section 2(s) of the Industrial Disputes Act, 1947 [in short "I.D. Act"]

2.2. The appellant/writ petitioner was falsely implicated in a criminal case in Crime No.983 of 1995 and in connection with the same, he was arrested on 28.11.1996 and he was granted interim bail on 11.12.1996 and a condition bail was granted on 03.12.1997 with certain conditions. The appellant/writ petitioner, after complying with the conditions, came to Chennai for reporting duty and however, to his shock and surprise, he was informed that he was dismissed from service on 15.01.1997, after holding an exparte disciplinary enquiry on the alleged ground of unauthorized absence.

2.3. The appellant/writ petitioner raised an industrial dispute in I.D.No.616 of 1997 and a preliminary issue was framed by the jurisdictional Labour Court as to whether the enquiry conducted against him was fair and proper? The Labour Court,

viz., II Additional Labour Court at Chennai held that no fair and proper procedure was adopted and therefore the enquiry was unsustainable and accordingly, passed a Preliminary Award dated 21.05.2003.

2.4. The second respondent/Management aggrieved by the same, filed W.P.No.16689 of 2003 and it was dismissed and the second respondent/Management as well as the appellant/writ petitioner/workman were directed to let in evidence before the first respondent/Labour Court and pendency of the same, the appellant/writ petitioner attained the age of superannuation on 30.04.2010. In the interregnum, the appellant/writ petitioner was convicted by the Trial Court and on appeal in CrI.A.No.1782 of 2003, he was acquitted, vide judgment dated 01.07.2010.

2.5. The first respondent/Labour Court framed necessary issues and pendency of the same, the appellant/writ petitioner filed W.P.No.12393 of 1999 and this Court passed an order dated 12.02.2000 ordering payment of Rs.2,000/- per month with effect from 17.11.1998 that is the date of dismissal of the application for interim relief with a further direction to pay Rs.2,750/- every month commencing from January, 2000 and the said payment shall be made by the second respondent/Management till the writ petitioner attain the age of superannuation.

2.6. The Labour Court, on a thorough consideration and appreciation of oral and documentary evidence and other materials on record, arrived at a conclusion that the appellant/writ petitioner was unauthorizedly absent for a period of 75 days between 01.01.1996 and 27.11.1996 and however, it was held by the first respondent/Labour Court that the absence of the writ petitioner from 28.11.1996 till the date of dismissal on 15.01.1997 have not been proved for the reason that he was in jail during that time and was released on bail on 03.02.1997. The first respondent/Labour Court, in the light of the findings reached, also found that the punishment of dismissal from service was disproportionate to the proved charge and therefore, taking into consideration of the fact that the appellant/writ petitioner had attained the age of superannuation, thought fit to award monetary compensation of Rs.2,00,000/- and in that process, also taken into account that he was in receipt of last drawn pay @ Rs.2,750/- per month from the year 2000 till the date of his retirement on 30.04.2010.

3. Mr.K.V.Ananthakrishnan, learned counsel appearing for the appellant/writ petitioner has drawn the attention of this Court to the typed of documents and would submit that the appellant was arrested on 28.11.1996 and he moved a bail application and it was strongly resisted by the second respondent/Management as intervenor and ultimately, he was enlarged on bail on 03.12.1997

and despite knowing the fact that he was incarcerated in connection with the criminal case, framed charges, conducted exparte enquiry and passed the order of dismissal from service and such an act on the part of the second respondent/Management is per se illegal and against all canons of the principles of natural justice, fair play and good conscience. It is the further submission of the learned counsel appearing for the appellant that the Labour Court, despite reaching the conclusion that the punishment awarded to him is disproportionate to the charge of misconduct, under normal circumstances should have reinstated him without backwages, but merely ordered compensation of Rs.2 Lakhs in lieu of reinstatement and other consequential benefits and would further submit that if he could have been reinstated either from the date of preliminary award dated 21.05.2003 or atleast after the dismissal of the writ appeal filed by the second respondent/Management against the said Award, he could have earned increments, consequent promotions and other benefits, but he has been unjustly denied of the same and in terms of monetary entitlement, would have got Rs.11 lakhs and odd.

4. It is the further submission of the learned counsel appearing for the appellant that in the light of the preliminary award dated 21.05.2003, the second respondent/Management was under obligation to comply with Section 17-B of I.D. Act and they have not done so and since he is deemed to be in service from 19.01.1997, all consequential monetary and other benefits should be conferred on him and therefore, prays for interference. The learned counsel appearing for the appellant, in support of his submissions, has placed reliance on the following decisions:

- (i) B.Choudhury v. Presiding Officer, Labour Court, Jamshedpur and another [1983 LIC 1755 Patna (DB)]
- (ii) Talwara Co-operative Credit Service Society Ltd. v. Sushil Kumar [2008 (5) CTC 377]
- (iii) Rajasthan Lalit Kala Academy v. Radhey Shyam [(2008) 7 MLJ 94 (SC)]
- (iv) Ashok Kumar Sharma v. Oberoi Flight Services [AIR 2010 SC 502] and
- (v) O.P. Bhandari v. Indian Tourism Development Corpn. Ltd. and Others [(1986) 4 SCC 337].

5. Mr. Sanjay Mohan, learned counsel appearing for the second respondent/Management would submit that admittedly the appellant/writ petitioner was a Trade Union Activist and during the period in which he was out of service, he was the proprietor of Southern Cargo Carrier and therefore, it cannot be said that he was not gainfully employed and in that event, he is not entitled to the benevolent provisions of Section 17-B of the I.D. Act. It is the further submission of the learned counsel appearing for the second respondent/Management that in pursuant

to the interim order passed by this Court, a sum of Rs.4,39,421/- has already been paid to him and after passing of the Award by the Labour Court, Rs.2,00,000/- was sent to him, but he refused to receive the same and as such, it cannot be said that the appellant/writ petitioner was really aggrieved in the absence of reinstatement and would further add that the Labour Court as well as the learned Single Judge on a thorough consideration and appreciation of the entire materials has reached the conclusion that the compensation ordered to be paid is perfectly justifiable and sustainable and therefore, the said findings may not be disturbed by this Court in exercise of it's appellate jurisdiction under Clause 15 of the Letters Patent and prays for dismissal of this Writ Appeal.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. It is not in dispute and also admitted by the appellant/writ petitioner that he was an active Trade Unionist. On 28.11.1996, the appellant/writ petitioner was arrested in connection with Crime No.983 of 1995 and remanded to judicial custody on 03.12.1996. During the period of incarceration, he was temporarily let on bail to attend his brother-in-law's marriage on 11.12.1996. The appellant/writ petitioner has also informed of his arrest and incarceration to the second respondent/Management and made a request to pay him salary for the month of November, 1996, but it was refused and when he came out on bail on 03.12.1997, he approached the second respondent/Management about the job and he has informed about the framing of charges, conducting of exparte disciplinary enquiry and consequent dismissal from service.

8. It is also not in dispute that while the appellant/writ petitioner applied for bail, it was opposed by the second respondent/Management as intervenor and therefore, it is not open to them now to say that they were unaware of his incarceration. However, charges came to be framed and it is the claim of the second respondent/Management that notices and summons have been sent to his last known address and since he did not appear, exparte enquiry was conducted and after strictly adhering to the required formalities, he was dismissed from service, vide order dated 15.01.1997.

9. It is to be noted at this juncture that a perusal of the charge memo marked as Ex.M84 before the Labour Court would reveal that prior to his incarceration, he was unauthorizedly absent and that the appellant/writ petitioner did not deny the allegation as regards his unauthorized absence for a period of 75 days between 01.01.1996 and 27.11.1996 and therefore, the first respondent/Labour Court, in the impugned award, has recorded a finding that the evidence of MW1 and the admission of

the WW1/appellant/writ petitioner coupled with Exs.M86 and 87 clearly establish that he was unauthorizedly absent for 75 days without obtaining any kind of leave. In the considered opinion of the Court, the said finding has been reached based on appreciation of oral and documentary evidence.

10. Insofar as the unauthorized absence from 28.11.1996 till the date of dismissal from service on 15.01.1997, the first respondent/Labour Court has recorded a finding that on account of his incarceration, he could not able to attend the work and therefore, it cannot be considered as unauthorized absence. The appellant/writ petitioner also took a plea before the Labour Court that he was victimized and after taking into consideration the evidence of WW1, the Labour Court has reached the conclusion that he was targeted/victimized on account of Trade Union activities and the said fact has also not been proved. It is also to be noted at this juncture that in the criminal case, initially the appellant was convicted and on appeal, vide judgment dated 01.07.2010 in Crl.A.No.1782 of 2003, he was acquitted.

11. The Preliminary Award which came to be passed on 21.05.2003 has dealt with the aspect between the date of arrest and the order of dismissal, but did not dealt with the earlier period of unauthorized absence. Before the Labour Court, oral and documentary evidences were adduced both by the appellant/writ petitioner/workman as well as the second respondent/Management and the Labour Court has reached the conclusion to award monetary compensation of Rs.2 Lakhs.

12. In B.Choudhury v. Presiding Officer, Labour Court, Jamshedpur and another [1983 LIC 1755 Patna (DB)], a Division Bench of Patna High Court, following the various decisions of the Hon'ble Apex Court, held that the Industrial Tribunal would also have to take into account the present value of the salary benefits etc., till the workman attain the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

13. In Talwara Co-operative Credit Service Society Ltd. v. Sushil Kumar [2008 (5) CTC 377 (SC)], it has been held that the grant of a relief of reinstatement is not automatic and the Industrial Courts while exercising their power under Section 11-A of the I.D. Act are required to strike a balance in a situation of this nature and for the said purpose, certain relevant factors such as nature of service, the mode and manner of recruitment viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc., should be taken into consideration and for the purpose of grant of back wages, one of

the relevant factors would indisputably be as to whether the workman had been able to discharge his burden that he had not been gainfully employed after termination of his service.

14. The other decisions relied on by the learned counsel appearing for the appellant also reiterate the very same principle.

15. As already pointed out, the first respondent/Labour Court has considered the admission of the appellant/writ petitioner as MW1, his oral evidence and Ex.M99 visiting card evidencing that he is the proprietor of Southern Cargo Carrier and therefore, it cannot be said that the appellant/writ petitioner was not gainfully employed. It is also the submission of the learned counsel appearing for the second respondent/Management that in compliance of the interim orders, the appellant was paid a sum of Rs.4,39,421/- prior to the award and after passing of the award, a sum of Rs.2,00,000/- was sent to him, but he refused to receive the same. It is also to be pointed out at this juncture that in the light of the fact as to the proving of charge of unauthorized absence at the first instance, it cannot be said that the appellant is entitled to reinstatement with full consequential benefits.

16. The ratio laid down in the above cited judgments would disclose that reinstatement with backwages is not automatic and the Labour Court has also considered the said aspect and also relied upon the judgment reported in 2009 (2) MLJ 355 [The Management, The Divisional Forest Officer, Social Forestry Division v. K.Arockiadass and others]. The Labour Court taking into consideration the second charge and on appreciation of materials, oral and documentary evidence, reached the conclusion that the punishment of dismissal from service is disproportionate to the charge of misconduct and taking into consideration that the appellant/writ petitioner had attained the age of superannuation on 16.04.2010, thought fit to award monetary compensation of Rs.2 Lakhs.

17. The learned Judge found that the Labour Court has taken into consideration the fact that the management made monthly payments to the workman from 1998 till 2010 by way of interim relief, opined that the findings of the Labour Court are perfectly in order and therefore, dismissed the writ petition, confirming the award of the Labour Court.

18. It is a settled position of law that power of judicial review is not akin to consideration and appreciation by the Appellate Forum and unless the findings recorded by the Labour Court are based on no evidence or perverse, interference is not warranted and this Court, on re-appreciation of the evidence/materials placed, cannot altogether reach a different

conclusion and thereby, disturb the findings recorded by the Labour Court.

19. This Court, on an independent application of mind to the entire materials including the award of the Labour Court as well as the impugned order passed in the writ petition, is of the considered view that there is no error apparent on the face of the record or infirmity or any jurisdictional error in the reasons assigned by the learned Judge in the impugned order dismissing the writ petition.

20. In the result, this Writ Appeal is dismissed, confirming the order dated 22.01.2018 made in W.P.No.34664 of 2012. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Jvm

To

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

+1cc to Mr.K.V.Ananthakrishnan, Advocate sr.no.88603
+1cc to M/s.Ramasubramanian & Associates sr.no.88834

W.A.No.1247 of 2018

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