

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.01.2018

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.20758 & 31455 of 2012

M.P.No.1 of 2012

&

M.P.NO.1 of 2014

The Management of
Kartik Steels Ltd.,
Plot No.52 & 53, Sipcot's
Industrial Complex,
Ranipet, Vellore District-632 403. ... Petitioner in both WPs

Vs.

1.The Presiding Officer,
Labour Court,
Vellore District. ...1st Respondent in both WPs

2.P.Duraisamy ...2nd Respondent in both WPs

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of Certiorari calling for the records in I.D.Nos.39 of 2006 and 72 of 2010 on the file of the Presiding Labour Officer, Principal Labour Court, Vellore, the first respondent herein and the Award dated 04.11.2009 and 31.10.2011 and quash the same.

For Petitioner .. Mr.N.Manoharan

For Respondents.. Mr.V.Prakash, Senior Counsel,
for M/s.K.Sudalaikannu for R2
R1-Court

COMMON ORDER

Both the writ petitions are arising out of the award passed by the first Respondent Labour Court in I.D.Nos.39 of 2006 and 72 of 2010 dated 4.11.2009 and 30.10.2011 respectively.

2.The second respondent workman was placed under suspension on 01.11.2003 and a charge memo was served on 14.05.2004. A domestic enquiry was initiated against him, but the domestic enquiry was not completed and it was kept pending for indefinite period of time. While the domestic enquiry was kept pending indefinitely, the second respondent workman was also not paid

subsistence allowance from 02.09.2004 and he was also not allowed to work. In the said circumstances, the second respondent workman had approached Industrial Dispute Authority under the provisions of the Industrial Disputes Act, alleging termination of service without following due process of law. Thereafter, he approached the first respondent Labour Court, by raising individual dispute alleging that the termination of service was without proper enquiry and he has also alleged that payment of subsistence allowance was not paid from 02.09.2004, however, suspension continued for indefinite period.

3.The dispute was resisted by the management/ the petitioner herein stating that there is no termination of service since the domestic enquiry against the second respondent workman was still pending finalisation. Without conclusion of domestic enquiry, the second respondent workman had approached the first respondent Labour Court and therefore, the Industrial Dispute itself was not maintainable in law. According to the management, the second respondent workman was also employed during the relevant time and therefore, no subsistence allowance was paid.

4.The first respondent Labour Court after going through the various materials placed on record, came to the conclusion that the second respondent workman was illegally terminated and also found that the dispute was maintainable as held in para-34 of the impugned award, which is extracted herein below:-

"34.The above position has been reaffirmed by Hon'ble High Court, Madras in M/s.John and Mani Agencies, madras - Third Additional Labour Court, Madras and another reported in 1999 (81) FLR 737. It has been held therein with respect to the above provision that "A plain reading of the above said sub-section makes it clear that if no settlement is arrived at in the conciliation proceedings in the Act with reference to the matter provided in sub-section (1) of Section 2-A, it is open to the aggrieved individual workman to approach the Labour in the prescribed manner for adjudication of such dispute If any such dispute is made, a duty is case on the Labour Court to proceed to adjudicate and pass an award as if such dispute has been referred to it for adjudication and all the provisions of the Act relating to adjudication of industrial disputes are applicable."

5. Thereafter, the Labour Court proceeded and finally held that the workman is entitled for reinstatement with backwages after negating all the contentions raised on behalf of the Management. The Labour Court vide detailed reasons has held in favour of the workman on factual and legal aspects of the matter, as found in its conclusion in paragraphs 39 to 47, which are reproduced herein below:-

39. In 2001 CDJ SC 310, Karnataka State Road Transport Corporation -Vs.- Lakshmiddevamma, a Constitutional Bench of Hon'ble Supreme Court of India held that where the employer had not reserved his rights at the earliest point of time to lead evidence to substantiate the charges, he loses his right subsequently. It had been held that "keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this court in Shambhu Nath Goyal's case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plan and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workman in as much as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal's case is just and fair.

40. In Shambu Nath -Vs.- Bank of Baroda 1983 (2) LLJ 415, referred by the Constitution Bench, it had been held that when the domestic enquiry itself was found to be defective or unfair, it will amount to no enquiry at all.

41. In this case, both MW1 and MW2 did not speak about the charges or about the enquiry proceedings. The enquiry proceedings were kept pending by the respondent. They have not given any reasonable explanation for the same.

42. Neither in the written statement, not in the proof affidavits of both MW1 and MW2 have the respondent sought liberty to lead evidence before this court with respect to the charge framed against the petitioner. The progress of the case had been mentioned earlier in para (6) above to show that more than sufficient opportunity had been given to the respondent during the entire proceedings.

43. It is thus seen that the show cause notice had been issued after considered unexplained delay after placing the petitioner under suspension thereafter the subsistence allowance was not paid, and the domestic enquiry was kept pending, and further neither the complaint nor the charges have been proved in accordance with law and finally the respondent also did not raise any objections when industrial dispute was raised before the labour officer. All the above clearly show that the petitioner had been victimised and the respondent had acted with malafide intentions and their acts certainly constituted unfair labour practice.

44. In view of the facts and in view of the law laid down as enunciated above, I hold that there has been illegal and unjustified retrenchment of the petitioner. Issue No.1 is answered accordingly in favour of the petitioner and against the respondent.

46. Issue No.2:- It had been conclusively decided on facts and on application of law that issue No.1 is answered against the respondent. The question now to be addressed the relief to which the petitioner is entitled to. The show case notice issued to him has been held to be illegal. Documents and statements of witnesses were not furnished to him or even annexed to the

show cause notice. No reason has been given for not proceeding against MW1 who admittedly also quarrelled with the petitioner. The petitioner has been kept under indefinite suspension. This has been held to be illegal. He has to be reinstated to status quo and as on 31.10.2003. He has not been paid even subsistence allowance from 2.11.2004. This again has been held as illegal. He has been clearly prejudiced by the acts of the respondent. Placed in such a situation, there is no possibility of the petitioner having been alternatively employed, though the same had been suggested by both MW1 and MW2 and not substantiated by either of them.

46. In such a situation, I have no hesitation in holding that the petitioner is entitled for reinstatement, with continuity of service, payment of backwages and all other attendant benefits. Issue No.2 is answered accordingly.

47. Finally, Award is passed and the petitioner is directed to be reinstated with continuity of service, payment of full backwages and all other attendant benefits."

6. From the above award passed by the Labour Court, it could be seen that all the contentions raised on behalf of the management was considered threadbare and answered. The Management was given ample opportunities to lead evidence in order to establish the allegations against the workman as found in the charge memo dated 14.05.2004. However, the Management having failed to utilise the opportunity cannot turn around and assail the award before this Court.

7. The learned counsel appearing for the petitioner Management made an attempt to impress upon this Court that the dispute was not maintainable and the findings of the Labour Court cannot be sustainable both in law and on facts. However, as relied on above, the dispute was found perfectly maintainable by the Labour Court on the basis of the legal principle which came up for consideration before it and therefore, this Court does not find any infirmity on such findings rendered by the Labour Court. More over, in regard to the factual aspects, the findings of the Labour Court are well supported by the sound reasoning and materials and this Court, while exercising its

judicial review under Article 226 of Constitution of India, cannot re-appreciate the evidence let in before the Labour Court, unless the same was found to be questionable and perverse.

8. Although, the learned counsel appearing for the petitioner Management had drawn the attention of this Court to the evidence let in before the Labour Court, however, this Court does not appreciate as to how the well considered view of the Labour Court can be construed as one of perverse finding.

9. It appears that during the pendency of the dispute, the workman had also retired from service as he attained the age of retirement on 15.06.2011. It appears that the workman had also approached before the Labour Court by filing a petition in C.P.No.72 of 2013 for payment of backwages and the same was ordered by the Labour Court.

10. In C.P.No.72 of 2013, the Labour Court vide order dated 31.10.2011, directed the Management to pay a sum of Rs.4,69,408/- to the second respondent workman. According to the learned counsel appearing for the petitioner Management, a sum of Rs.3,00,000/- had already been paid. The writ petition viz., W.P.No.31455 of 2012 has been filed as against the order passed by the first respondent Labour Court. This Court does not find any iota of infirmity in the award passed by the Labour Court, the same does not call for any interference by this Court. The contentions raised on behalf of the petitioner Management, are therefore, devoid of merits and the same have to be rejected.

11. In the above said circumstances, both the writ petitions lack merits and the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
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Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Vellore District.

+ 1 cc to Mr. K. Sudalaikannu, Advocate Sr.634

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M.P.No.1 of 2012

VGII (CO)
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