

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28279 of 2017
and
W.M.P.No.30394 of 2017

Hamsaveni Spinners Pvt. Ltd.,
Rep. By its Authorized Signatory - C.Balakrishnan
Regd. Office
Govt. of India Press Colony Post,
Coimbatore - 641 019.

..Petitioner

Vs

1. The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

2. P.Anandakumar

.. Respondents

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in Approval Petition No.16 of 2013 and quash its order dated 24.05.2016.

For Petitioner : Mr.S.Ravindran, Senior Counsel
For Mr.S.Bazeer Ahamed

For Respondents : Tribunal [For R1]
No appearance [For R2]

O R D E R

The award passed by the first respondent in Approval Petition No.16 of 2013 dated 24.05.2016, is sought to quash in the present writ petition.

2. The learned Senior Counsel appearing on behalf of the writ petitioner/management, made a submission that the second respondent/workman was employed in the petitioner's mill and had committed certain misconducts, while performing his duties and responsibilities in the writ petitioner's mill. The allegations against the petitioner was that he had deliberately committed

certain misconducts and thereby, caused financial loss and damage to the management. Further, the workman refused to obey the lawful orders of his superior, who instructed him to carryout the works carefully. A charge memo had been issued to the second respondent/workman on 05.04.2003 and on 08.05.2003, the second respondent/workman submitted his explanation denying the charges framed against him. Thus, the management ordered for domestic enquiry and the said enquiry was held on 31.05.2003. The second respondent/workman participated in the enquiry along with the co-workmen and pleaded guilty in the respect of the charges levelled against him on 12.06.2003. The enquiry officer submitted his final report. The copy of the findings of the enquiry officer is enclosed in Page No.11 of the typed-set of papers and it is recorded as under:

" On questioning, Anandakumar admitted the charges by answering me in the affirmative.

Anandakumar further stated that he admitted the charges as contained in the show cause notice issued to him, that it was true that the incidents as referred to in the show cause notice are true and that he would avoid such incidents in future. Therefore, the enquiry may be closed.

Anandkumar admitted charges levelled against him through his statement made in the enquiry as aforesaid. When this was referred to the management representative and asked for his comments, he stated that he has nothing to offer in this regard since Anandkumar has admitted the charges. He also agreed that the enquiry may be closed. Therefore, the enquiry was concluded as desired by both the parties and endorsements to this effect obtained from all the concerned."

3.Plain reading of the above findings of the enquiry officer, the Court is of an opinion that the second respondent/workman had not defended the allegations levelled against him, contrarily, he admitted the charges voluntarily and in clear terms before the enquiry officer. Whenever an employee admits the charges, further enquiry may not be required in all circumstances. Only, in the event of establishing coercion or force on the part of the management then alone further enquiry is to be conducted otherwise the admission made by the workman is to be taken as an final one and appropriate orders are to be

passed by the competent authorities.

4. However, in the present case on hand, the domestic enquiry was conducted and also the enquiry officer had submitted his report holding that the second respondent/workman admitted charges in an unambiguous terms. Based on the enquiry report a second show cause notice has been issued by the management to the second respondent/workman on 10.09.2003. The second respondent/workman submitted his reply on 25.09.2003, the said reply is not clear and ambiguous.

5. Considering the nature of the allegations and based on the admission of the charges by the second respondent/workman before the enquiry officer the writ petitioner/management issued the final order in the disciplinary proceedings on 02.12.2003 imposing the punishment of termination from the service. Pursuant to the final order passed in the disciplinary proceedings, the writ petitioner/management filed an approval petition before the first respondent. The approval petition had been adjudicated by the first respondent.

6. The learned Senior Counsel appearing on behalf of the writ petitioner/management, made a submission that while considering the grounds raised in the approval petition, the first respondent admitted the charges before the enquiry officer and furnished a statement to that effect. However, the approval petition had been rejected mainly on the ground that the charge sheet did not contain the relevant clause of the standing orders. In the absence of mentioning the exact clause stipulated in the standing orders the approval as prayed for cannot be granted.

7. The question arise whether wrong quoting or mis-quoting of the provisions of the statute or standing orders will vitiate the entire proceedings. There is no dispute in respect of the procedures followed by the management for conducting the disciplinary proceedings. The charge sheet has been issued to the workman and he has submitted an explanation to the charges and the domestic enquiry had been conducted and the workman participated in the domestic enquiry along with the co-workmen and pleaded guilty before the enquiry officer and the same had been recorded by the enquiry officer in his findings as stated supra.

8. Thus, there is no procedural irregularities in respect of the disciplinary proceedings conducted by the writ petitioner management. However, the clause stipulated in the standing orders has not mentioned in the charge sheet. This alone is the lapse committed by the writ petitioner while issuing the charge

sheet against the second respondent workman. On this ground, the first respondent has rejected the approval petition filed by the writ petitioner/management.

9.The learned Senior Counsel for the writ petitioner management placed the reliance on the decision of the order of the Hon'ble Supreme Court of India in the case of Union of India (UOI) and another vs. S.C.Parashar reported in 2006 (3) SCC 167 held in Paragraph No.9 as follows:

"9. Before advertng to the said question we may record that wrong concession of a counsel on a pure question of law is not binding upon a party. It is furthermore trite that non-mentioning or wrong mentioning of a provision in an order may be held to be irrelevant if it is found that the requisite ingredients thereof were available on records for passing the same. We may further notice that the High Court proceeded on the basis that the penalty imposed upon him was a major penalty."

and the Constitution Bench of the Hon'ble Supreme Court of India in the case of Union of India and another vs. Tulsiram Patel reported in 1985 AIR 1416, held in paragraph No.127 as follows:

"127. Further, even the mention the provision which contains the source of power will not invalidate an order where the source of such power exists. See Dr.Ram Manohar Lohia vs. State of Bihar (AIR 1966 SC40) and Municipal Corporation of City of Ahmedabad vs. Ben Hiraben Manilal ((1983) 2 SCR 676). The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Art. 311(2) read with the relevant service rule. It may be mentioned that in non of the matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so."

10.In view of the fact that the Apex Court in clear terms opined that wrong quoting or misquoting of the provisions of Statute or Standing Orders will not vitiate the entire disciplinary proceedings and the rejection of the approval

petition by the first respondent on this ground is unsustainable. In view of the legal principles settled by the Apex Court in this regard.

11. Accordingly, the impugned order passed by the first respondent in Approval Petition No.16 of 2013 dated 24.05.2016 is quashed.

12. The next question is to be considered in this writ petition is that whether the matter can be remanded back for re-consideration on the file of the first respondent in respect of the approval petition filed in this regard.

13. The learned Senior Counsel appearing on behalf of the writ petitioner cited the Judgment of the three Judges Bench of the Hon'ble Supreme Court of India, in the case of the Gujarat Steel Tubes Ltd., vs. Gujarat Steel Tubes Mazdoor Sabha reported in 1980 (1) LLJ B 137 held in paragraphs 79 and 80 are relevant and the same are extracted as follows:

"79. Dual jurisdictional issues arise here which have been argued at some length before us. The position taken up by Sri Sen was that the High court could not, under Art.226, direct reinstatement, and even if it felt that the Arbitrator had gone wrong in refusing reinstatement, the Court could only demolish the order and direct the Arbitrator to reconsider the issue. What belonged, as a discretionary power, to a Tribunal or other adjudicatory body, could not be wrested by the writ Court. To put it pithily, regarding the relief of reinstatement the Arbitrator could but would not, and the High Court would but could not. (We will deal later with the point that the Arbitrator had himself no power under S.11 A of the Act but did have it in view of the wide terms of reference.)

80. The basis of this submission, as we conceive it, is the traditional limitations woven around high prerogative writs. Without examining the correctness of this limitation, we disregard it because while art. 226 has been inspired by the royal writs, its sweep and scope exceed hide-bound British processes of yore. We are what we are because our Constitution-framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our

conditions. Heritage used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Art. 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power."

14.This Court had already gone through the procedures adopted by the writ petitioner/management for conducting the disciplinary proceedings against the second respondent/workman. In view of the fact that there was no irregularity in respect of conducting the disciplinary proceedings and the same also had been recorded by the first respondent in the order. There is no reason to remand the matter back to the Labour Court. Thus, the disciplinary proceedings were conducted in accordance with the established procedures and the approval petition was rejected only on the ground of misquoting of the standing orders. Thus, it is unnecessary to send the matter back to the Labour Court for re-consideration. Accordingly, the approval petition filed by the writ petitioner stands allowed.

15.Accordingly, this writ petition stands allowed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

may a

To

1. The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.41153

W.P.No.28279 of 2017

CS/09/07/18