

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2018

Pronounced on : 02.07.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Writ Appeal No.188 of 2013
& M.P.No.1 of 2013 & CMP No.6096 of 2017

The Management of: Greaves Cotton Ltd.,
Light Engines Unit II,
Plot No.72 SIPCOT Industrial Complex,
Ranipet 632 403, Vellore District
Rep. by its General Manager ... Appellant / Petitioner

versus

1. G.Srinivasan
2. The Presiding Officer,
Labour Court, Vellore ... Respondents.

Writ Appeal filed under Clause 15 of the Letters Patent, against the order, dated 20.07.2012 passed in Writ Petition No.19377 of 2006.

Prayer Writ Petition No.19377 of 2006:

Writ Petitions under Article 226 of the Constitution of India call for the records connected with the Award dt. 03.02.2006 passed by the 2nd Respondent in I.D.No.131 of 2004 and to quash the same and thereby render justice.

For Appellant : Mr. Anand Gopalan, for,
M/s. T.S.Gopalan & Co.,

For Respondents: Mr. N.G.R.Prasad, for,
Mr. R.Rajaram, Caveator, for R-1,
Court, R-2.

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The Management is the appellant herein.

1.1. This writ appeal has been filed challenging the order, dated 20.07.2012, passed in Writ Petition No.19377 of 2006, confirming the order of the Labour Court holding that the non-employment of the first respondent herein is not justified and that he is entitled to reinstatement with 50% back-wages.

Brief facts:-

2. The appellant is engaged in the manufacture of engines and this manufacturing takes place in several stages in the department called Engine Assembly. In each stage, the concerned workman has to carryout his part of the assignment. The engine would move automatically from one stage to another stage through the conveyor belt.

2.1. The first respondent was working in the first stage of the engine assesmbly, where the conveyor belt starts its movement. In the seventh stage, one Mr.Sampankiraj, Sr. Executive, was working where his duty was to inspect the engine after completion of six stages of assembly work. He used to keep an instrument called "torque meter". On 22.11.2002, during the second shift when the said Sampankiraj has left the place of work to attend some other work, i.e., away from the Department at about 09.25 pm, the conveyor belt suddenly stopped and when he came to the place he found the torque meter damaged as it was struck in the conveyor belt. There was loss of production for six hours, resulting in loss of Rs.14 lakhs. None of the six operators could reveal how the torque meter which was kept in a box by Sampankiraj could be found entangled into the wheel of the conveyor belt.

2.2. This torque meter, which was found inserted between wheels of the conveyor belt, was found near to the first respondent, which would not have been found except by the act of the first respondent herein or it would not have been there without the knowledge of the first respondent. The Department decided to take disciplinary proceedings against the first respondent on the charges of sabotage.

2.3. When charges were framed, the first respondent pleaded innocence and thereafter the enquiry was held. In the enquiry, the charges remained proved against the first respondent and by the order, dated 12.07.2003, he was dismissed from service.

2.4. The workmen challenged the non-employment in I.D.No.131 of 2004.

3. It is the case of the Management that the first respondent herein was guilty of sabotage that took place on 22.11.2002 at about 09.25 pm, who was found nearest to the occurrence of sabotage and therefore, the appellant cannot repose confidence on him.

3.1. It is the claim of the Management that the charges levelled against the first respondent stood proved and therefore, the findings rendered by the Management should not have been set-aside by the Labour Court. However, by the order, dated 03.02.2006, the Labour Court held that the charges have not been proved and that the

workman should be reinstated with 50% back-wages, along with continuity of service and attendant benefits.

3.2. Challenging this award, writ petition was filed in W.P.No.19377 of 2006. The learned Single Judge confirmed the interim award of the second respondent and rejected the plea of loss of confidence raised by the appellant.

3.3. Challenging this, the writ appeal has been filed by the Management.

4. The first contention of the learned counsel appearing for the appellant / management is that, in domestic enquiries the standard of proof required is preponderance of probability and not proof beyond reasonable doubt and therefore, it must be held that the Management has proved the charges levelled against the first respondent. In support of the contentions, the following decisions are relied upon:-

(i) 1977 (2) SCC 491 (State of Haryana and another v. Rattan Singh):-

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist

on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of an ending is certainty available for the court to look into because it amounts to an error of law apparent on the record."

(ii) 2005 (3) SCC 241 (Cholan Roadways Limited v. G.Thirugnanasambandam):-

"In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, further more, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."

(iii) (2008) 3 SCC 729 (West Bokaro Colliery (Tisco Ltd.,) v Ram Pravesh Singh):-

"20. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a

delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities."

From the perusal of these three decisions what transpires is that even though Evidence Act does not apply, the basic principles underlying the Evidence Act would be applicable and it is the quality of evidence and not the quantity of evidence, which cannot be disputed. The only question is whether the order of the Labour Court is based on no evidence or it is based on insufficient evidence.

4.1. On the other hand, the learned counsel appearing for the first respondent / workman relied upon the decision reported in (1973) 1 SCC 813 (The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd., v. Firestone Tyre and Rubber Co.) to support the contention that the Labour Court in exercise of the jurisdiction under Section 11A of the Industrial Disputes Act, can come to a different conclusion and that where two views are possible on the evidence on record, then the Labour Court / Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at, by the domestic Tribunal by substituting its opinion in the place of the opinion of the domestic Tribunal.

4.2. This Court is of the opinion that even though the legal position enunciated is correct, the applicability to the facts of the case is doubtful. A perusal of the award of the Labour Court would go to show that the Labour Court did not substitute its view in the place of the view taken by the Enquiry Officer, but has taken an independent conclusion based on evidence. Therefore, the award of the Labour Court cannot be faulted with.

5. The second contention of the learned counsel appearing for the appellant / Management is that, in domestic enquiry, the method of weighing the probabilities of the case is not by looking into evaluating the materials in the light of the requirement of the Evidence Act and that approach is an unreal or impracticable approach, which should be avoided and in support of the said proposition, the decision reported in 1996 (9) SCC 439 (Food Corporation of India Workers' Union v. Food Corporation of India and another) is relied upon.

5.1. The circumstances under which the writ Court would be justified in interfering with the conclusions arrived at by the Tribunal has been highlighted in the decision reported in AIR 1966 SC 875 (Board of High School

v. Bagleshwar Prasad):-

"But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves and in holding such enquiries, the Tribunal, must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the present case, no animus is suggested and no malafides have been pleaded."

5.2. Contenting that, while exercising jurisdiction under Section 11A of the Industrial Disputes Act, 1947, the Labour Court should advert itself to the question of necessity or desirability of interfering with the punishment imposed by the Management, the decision reported in 1991 (1) LLJ 372 (Engine Valves Ltd., Madras v. Labour Court, Madras and another) is relied upon, whereunder it has been held thus:-

"18.The Court exercising powers under Section 11(A) of the Act after finding the misconduct to have been proved is first obliged to advert itself to the question of necessity or desirability to interfere with the punishment imposed by the management and, if the management could not justify the punishment imposed thereafter it must consider the question as to the relief that is to be granted to the employee. In so considering the relief to be granted, the Court has an obligation to consider whether the punishment imposed is disproportionate or shockingly severe to the charges held proved and if so whether a reinstatement has to be ordered or whether any other lesser punishment has to be imposed. A specific finding must be recorded whether it was expedient and proper to reinstate the employee or whether award of compensation in lieu of reinstatement will meet the requirements and ends of justice of the case concerned. Absence of reasons to invoke the power and interfere under provisions of Section 11(A) in a particular case would render the very exercise of powers arbitrary and perverse and the order consequently would stand vitiated."

6. Yet another contention of the learned counsel appearing for the appellant / Management is that when the management has taken the plea of loss of confidence, the Labour Court should not have ordered reinstatement and in support of the same, the following three decisions are relied upon:-

(i) 1969 (3) SCC 513 (M/s. Hindustan Steels Ltd., Rourkela v. A.K.Roy and others):-

"14. The question, however, still is whether the Tribunal was, in the circumstances of the case, justified in directing reinstatement. It is true that some of the decisions of this Court have laid down that where the discharge or dismissal of a workman is not legal or justified, the relief which would ordinarily follow would be reinstatement. The Tribunal however, has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. The Tribunal has, therefore, to exercise its discretion judicially and in accordance with well recognized principles in that regard and has to examine carefully the circumstances of each case and decide whether such a case is one of those exceptions to the general rule. If the Tribunal were to exercise its discretion in disregard of such circumstances or the principles laid down by this Court it would be a case either of no exercise of discretion or of one riot legally exercised. In either case the High Court in exercise of its writ jurisdiction can interfere and cannot be content by simply saying that since the Tribunal has exercised its discretion it will not examine the circumstances of the case to ascertain whether or not such exercise was properly and in accordance with the well-settled principles made. If the High Court were to do so, it would be a refusal on its part to exercise jurisdiction."

(ii) (1972) 4 SCC 569 (M/s. Francis Klein & Co. Ltd., v. Their Workmen and another):-

"In our view when an employer loses confidence in his employee particularly in respect of a person who is discharging an office of trust and confidence there can be no justification for directing his reinstatement. The post of a Durwan in an industrial concern where valuable property both manufactured goods

and assets require to be guarded, is such a post and when one of his colleagues calls on him to assist him in apprehending a thief the refusal to do so is certainly an act which justified the employer in losing confidence in him. Even the Tribunal in its Order recognized that the employer has lost confidence in Nayan Singh because while directing the Company to reinstate him, it says:

If the management considers that Nayan Singh should not be given guard duty because of the 'Company's loss of confidence in him, as claimed by them, he may be allotted some other job of similar nature as found suitable."

(iii) 2007 (4) LLN 485 (T.Thothathri and another v. Management of Sundaram Textiles Ltd., and another):-

"42. the assessment of the first respondent, Management, with regard to the conduct of the appellants and the other workmen, which disclosed that there was likelihood of the appellants causing serious damage to the machineries and also endanger the life of the co-workmen and such apprehension was based on the relevant materials, which assessment of the first respondent was found to be a genuine one and bona fide in the judicial review undertaken by the second respondent, Labour Court, with which finding and conclusion of the Labour Court, the learned Single Judge as well as this Court could not find any error apparent on the face of the record."

6.1. Even though the employer claims that the Management has lost confidence in the act of the first respondent and in the absence of proof for the same, the contention that there was sabotage and therefore, there should not be an order of reinstatement cannot be accepted. If the claim of no confidence is accepted without any basic material to substantiate the same, then it is easy for the management in every case to say that it has no confidence and to escape from the rule of law. The essence of no confidence is whether the act of the worker was proved and whether the proved act was so grave to the extent of management losing confidence in the work of the worker.

7. To be more precise, while embarking upon the availability of tangible material to hold the workman guilty of charges and also the justifiability of the punishment of dismissal from service, it is necessary to consider the circumstances under which a person can be terminated from service on account of loss of confidence. The relevant questions would be: (i) Whether the workman

was holding a position of trust and confidence? (ii) Whether he/she abused such position and committed acts which resulted in forfeiture of confidence? (iii) Whether continuance in service would cause embarrassment and inconvenience to the employer or it would be detrimental to the discipline or security of the establishment? (iv) Whether loss of confidence is a new armour for the management to terminate the employee? In other words, whether the finding that an employee proved to be an evil to be eliminated is based on tangible material or the management has relied upon some unreliable materials, in order to cover up the inability to establish the charges in the enquiry but ingeniously passed an order of termination claiming that there are tangible materials.

8. These questions have to be satisfactorily answered by the management before asking the court to confirm the order of termination.

9. The learned counsel appearing for the workman / first respondent relied upon the decision reported in (2015) 9 SCC 345 (Rajkumar Dixit v. Vijay Kumar Gauri Shanker, Kanpur Nagar), in order to highlight the circumstances under which the writ of certiorari can be issued by this Court:-

"22.a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, Nagendra Nath Bora v. Commr. of Hills Division and Kaushalya Devi v. Bachittar Singh)."

10. Now the point for consideration is, whether the

award passed by the Labour Court, setting-aside the findings of the enquiry officer, is legally valid or not, in the light of the legal principles relied upon by both sides. In other words, the more specific question would be, whether the findings of the enquiry officer were based on no evidence or based on some evidence. According to the Labour Court and the writ Court, the findings of the enquiry officer is based on no evidence.

11. It is settled law that the nature of evidence required is only preponderance of probability and not proof beyond reasonable doubt. But, in this case, the contention of the workman is that, there is no proof at all to show that the workman is responsible for the alleged mischief committed. The main contention raised is that there is absolutely no evidence and therefore, the findings of the enquiry officer are perverse and it has been rightly set-aside by the Labour Court and it is rightly confirmed by the Writ Court.

12. A perusal of the award passed by the Labour Court would disclose the following factors:-

(a) The petitioner was working in the second shift at 09.25 pm, in the first stage.

(b) The engine component placed in each stage in the conveyor belt would be fixed by the worker in each stage and in the 12th stage a full fledged component will come out.

(c) Conveyor belt is placed in such a manner and it halt for sometime in each stage and then proceed automatically on its own. Within that short duration, the worker therein should fix the component immediately, as otherwise the belt will move automatically.

(d) Torque meter has to be used only by the Quality Supervisor in the seventh stage; Quality Control Supervisor was in-charge of the instrument; when the instrument is not in use, the Quality Control Supervisor should lock it in a safety box.

(e) M.W.2 has stated that Torque Meter is not handled by the workman; there is no direct evidence in the enquiry as to how the Torque Meter which was left in the seventh stage went to the conveyor belt in the first stage and as to how it got struck; there is an admission that there is no necessity for the workman to use the Torque Meter in the first stage.

(f) It is the case of the workman that the time given to carryout his work was too short and that he had no time to concentrate on any other activity excepting his work.

(g) Mr.Sanpankiraj, M.W.3, has admitted in his evidence that he used the Torque Meter on 22.11.2002, in the seventh stage; when it is his duty to keep it under lock and key, how the Torque Meter came out from the safe

custody is not explained.

(h) The time given to carryout the work in the Conveyor system is 2 minutes 20 seconds; any delay in the first stage would cause chain reaction and there would be delay; therefore, the petitioner cannot be expected to concentrate on anything else excepting to his work.

(i) It is the case of the workman that there are several other workmen and supervisors working along with him in that stage; under that circumstances, it is not known how the responsibility would be fixed only on the workman / the first respondent herein.

13. From the nature of admitted facts, it is evident that the findings of the enquiry officer are based on no evidence and as such they are perverse findings and rightly, the same had been set-aside by the Labour Court as well as by the Writ Court.

14. In the result, the grounds raised in the writ appeal are merit-less and therefore, the same is dismissed. No costs. Consequently, the connected CMP and MP are closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Presiding Officer,
Labour Court, Vellore

+1cc to Mr.T.S.GOPALAN , Advocate SR.No. 42184

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Writ Appeal No.188 of 2013
& M.P.No.1 of 2013 & CMP No.6096 of 2017

ASK(25/10/2018)

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