

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2018

Delivered on : 19.06.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.8326 of 2011

R.Shanmugam

.. Petitioner

versus

1. The Presiding Officer,
The Principal Labour Court,
Vellore.

2. The Management of
M/s.Tamil Nadu Industrial Explosive Ltd.,
Tel Post, Vellore-59.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Award dated 12.05.2009 passed in I.D.No.251 of 2004, quash the same and consequently, direct the 2nd respondent to reinstate the petitioner with continuity of service with back wages and other attendant benefits and award costs.

For Petitioner : Mr.S.T.Varadharajulu

For Respondents: Mr.R.Jagadeesan for
M/s.K.V.Subramanian Associates
for R2

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the Award dated 12.05.2009 passed in I.D.No.251 of 2004, quash the same and consequently, direct the 2nd respondent to reinstate the petitioner with continuity of service with back wages and other attendant benefits and award costs."

2. The case of the petitioner is that he was appointed as casual employee on 14.5.1988 and thereafter, he was confirmed in

service on 29.8.1991 and posted as Danger area worker to work as Detonator and Detonating Fuse Production Division. The second respondent herein is a public sector undertaking of the Government of Tamil Nadu. According to the petitioner, in view of his posting in danger area, he had developed periodical health problems for which, he was forced to take leave on certain occasions. In view of his frequent absence from duty, disciplinary action was initiated and a domestic enquiry was conducted and eventually he was terminated from service on 16.10.2002. The petitioner challenged his termination by raising an industrial dispute before the first respondent Labour Court in I.D.No.251 of 2004. The first respondent Labour Court, after adverting to all the materials placed on record and after appreciating the arguments and submissions made on behalf of both the workman and Management, by award dated 12.5.2009, dismissed the industrial dispute. The award passed by the Labour Court, dismissing the claim of the petitioner, is put to challenge in the present Writ Petition.

3. Shri S.T.Varadarajulu, learned counsel appearing for the petitioner, at the out set, would submit that the Labour Court has not considered the crucial fact that the petitioner was posted in danger area and he suffered from occupational hazard and developed severe health problem. Therefore, he had taken leave on several occasions which forced him to remain absent from duty and that cannot be the basis for termination of service.

4. The learned counsel for the petitioner would submit that the Labour Court has erred in holding that the termination was justified without appreciating the circumstances in which the petitioner was employed. According to him, there was no proper consideration of Section 11(A) of the Industrial Disputes Act and therefore, the award of the Labour Court is liable to be interfered with. In support of his contentions, the learned counsel would rely upon a decision of Division Bench of this Court, reported in "1989 (II) LLJ 233 (The President, Cholan Pokkuvarathu Kazhagam, Madras versus The Presiding Officer, Industrial Tribunal, Madras and another)" and submit that under Section 11(A) of the Industrial Disputes Act, the Labour Court can also differ from the finding of the Management and even if the employee is found guilty, can interfere on the quantum of penalty. He would draw the attention of this Court to paragraph-3, which reads as under:

"3. The question put in issue before the first respondent related to the justification or otherwise of the non-employment of the workman T. Sambandam by the second respondent. After the introduction of Section 11-A into the Industrial Disputes Act, 1947, the Tribunal can not only consider whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding, if a proper case is

made out. What was once in the realm of the satisfaction of the employer, has now come within the purview of the powers of the Tribunal. There is a power to interfere with the punishment and alter the same, conferred on the Tribunal. Section 11-A was brought in because of the felt needs of the time and this benevolent power must be exercised in the spirit in which the provision has been enacted. The above is the sum and substance of the principles to be gleaned from the pronouncement of the highest court in the land. The powers vested in the Tribunal are concrete and the Tribunal must be conscious of the same and must endeavour to exercise the powers with sincerity. The scope and amplitude of the exercise of the powers will depend upon the facts and circumstances of the case. Here again, ample guidance has been provided by the pronouncements of Courts, including the highest in the land. The first respondent as well could see from the extracts of the relevant portion of the impugned award made above has obviously lost sight of the above principles and we must say that he has failed to exercise the power in its true perspective and has made a mockery of such exercise of power. It is true the first respondent was obliged to discuss the cases of other workmen along with the case of the workman T. Sambandam. But, on this account, there is no justification either to omit to discuss or gloss over the relevant materials on record on the moot questions, concerning the said workman. There has got to be an independent advertence to all the relevant materials and aspects exposed in the case to find out the justification or otherwise for the non-employment of the workman, T. Sambandam, and further more, there has got to be a consideration of the question as to whether the punishment imposed is proper on the facts and circumstances of the case. There is a complaint that the past record or service of the workman was not at all looked into on the question of punishment. No room for such complaint ought to have been given. We find that the first respondent did not adhere to the well-accepted principles of adjudication of questions like the present one and this feature obliges us to interfere in writ appeal. We are not able to subscribe our support to the reasonings expressed by the learned single Judge that the discussion by the first respondent having taken in cases of a number of other workmen, would absolve the first respondent from his obligation to discuss

the case of the workman. T. Sambandam with reference to the materials relating to him. Accordingly, this writ appeal is allowed, setting aside the order of the learned single Judge, and allowing W.P. 609 of 1979, thereby quashing the award the award in I.D. 21 of 1977 in so far as it related to the workman, T. Sambandam and the matter will stand remitted to the file of the first respondent for him to consider the same afresh, avoiding the infirmities noted by us above and which alone obliged us to interfere. We make no order as to costs."

5. The learned counsel for the petitioner would also rely on the decision of this Court reported in 1998 (I) LLJ 694 (Colour-Chem Ltd. versus Alaspurkar A.L. & Others)" wherein, the Hon'ble Supreme court has held that any punishment imposed is found to be shockingly disproportionate, it would be unfair labour practice and the same is instance of legal victimization. In this case, the learned counsel would contend that for the absence of few days, the termination per se is shockingly disproportionate and the Labour Court has failed to consider the same in proper perspective and confirmed the order of penalty. Therefore, he would submit that on this ground alone, the award of the Labour Court is liable to be interfered with.

6. The learned counsel would further rely on a decision of the Bombay High Court, reported in "2003 (1) LLN 705 (Rajendra B.Oza versus Air India, Bombay)" in regard to the punishment of dismissal imposed on the employee for absence of 38 days. The Bombay High Court has held that the said punishment is shockingly disproportionate and harsh. Therefore, the learned counsel for the petitioner would submit that the Labour Court erred in confirming the order of termination both on merits as well as improper application of Section 11(A) of the Industrial Disputes Act. The learned counsel would contend that there was no proper consideration by the Learned Court on the scope and applicability of Section 11(A) on the factual matrix of the present case and therefore, the award of the Labour Court stands vitiated.

7. Per contra, learned counsel appearing for the second respondent would submit that there was not one instance, the petitioner was found to be absence unauthorizedly, but on several occasions, he was found to be unauthorizedly absent and much less on six occasions, punishment of stoppage increments were imposed for the same misconduct. Those punishments were imposed between years 1994 and 2001. However, in spite of the same, the petitioner did not improve his attendance and once again remained unauthorizedly absent for 46 days during months of June 2001 to November, 2001 on various spells for which, he was issued four charge sheets, dated 25.9.2001, 29.10.2001 and

29.11.2001 respectively. He, having failed to respond the charge memorandum, an enquiry was conducted and on the basis of unimpeachable documentary evidence, the charges were held proved. Since the petitioner was an habitual absentee, his retention in service was not in the interest of industry and the same was against the public interest and therefore, his services came to be terminated.

8. The learned counsel for the second respondent would submit that the award of the Labour Court is well founded since the Labour Court found that no material whatsoever were placed by the petitioner/workman either in the domestic enquiry or before the Labour Court to substantiate his claim that he had taken leave on several occasions, on medical grounds. No service record was produced and no attempt was made on behalf of the petitioner to establish his claim for his absence. Therefore, the Labour Court had no other option except to conclude against the petitioner and in regard to imposition of penalty, the Labour Court felt that the previous punishments imposed on the petitioner did not have any effect since his conduct did not see any improvement and therefore, the Labour Court felt that the imposition of penalty of dismissal from service was valid and justified. Moreover, the learned counsel would also submit that the second respondent factory itself was closed on 30.09.2017 and all the workers employed by them, were settled.

9. In support of his contentions, the learned counsel for the second respondent would draw the attention of this Court to a decision reported in "2014(2) MLJ 369 (SC) (Chennai Metropolitan Water Supply and Sewerage Board and others versus T.T.Murali Babu)", wherein, the Hon'ble Supreme Court has held that remaining absent for a long period of time creates concavity in work culture and ushers indiscipline in organization and therefore, doctrine of proportionality was not attracted. He would also rely upon a decision of this Court reported in "2006(1) SCC 589 (State of Rajasthan and another versus Mohd.Ayub Naz)", wherein, he would particularly draw the attention of this Court to paragraph 10 which is reproduced herein below:

"10. This Court in Om Kumar and Ors. v. Union of India, [2001] 2 SCC 386 while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was

shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant material and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for. "

10. According to the learned counsel, the proportionality has to be decided on the basis of Wednesbury principle and in the instant case, the award of the Labour Court does not suffer from any infirmity and cannot be sought to be vitiated on any of the principles as laid down by the Hon'ble Supreme Court. The learned counsel would also rely on a decision of this Court reported in "CDJ 1982 MHC 162 (Kanyakumari Automobiliies Private Limited versus P.Natarajan and another)" wherein the learned Judge of this Court has observed as under:

"Thus, it is clear from the fact of this that the workman has been properly dismissed from service and the Labour Court has found categorically that dismissal from service is justified. Form the facts of the case, it is clear that the Labour Court, in the absence of a finding to the effect that the discharge or dismissal was not justified, has no power to award a compensation as it has done in this case, treating it as a case of retrenchment. As the order is clearly in violation of S.11-A of the Act, the management has rightly questioned the power of the Labour Court in giving such an award in spite of the fact that the Labour Court has come to the conclusion that the dismissal was justified."

11. The learned counsel would also draw the attention of this Court to paragraph-7 of yet another decision of this Court reported in "CDJ 2006 MHC 918 (The Management of Tamil Nadu State versus Presiding Officer Labour Court & Another)", wherein, in paragraph-7, this Court has held as under:

"7. The power of the Labour Court exercising the discretion vested in Section 11-A of the Act came up for consideration before a learned single Judge of this Court in the judgment reported in ANNA TRANSPORT CORPORATION VS LABOUR COURT (1998 (1) LLN 710). This Court has found that the discretion under Section 11-A of the Act is not meant to be equated to charity. In my opinion, exercise of discretion by the Labour Court is without any basis and material evidence. Such exercise of discretion is unsustainable as the same is without any basis or reason. On the above grounds, the award of the Labour Court is unsustainable."

12. The learned counsel would also rely upon a decision of this Court reported in "CDJ 2017 MHC 748 (The Management of Tamil Nadu State Transport Corporation (Kumbakonam Div-II) Ltd., Tiruchirapalli versus The Presiding Officer, Labour Court, Tiruchirapalli & others)", wherein, this Court has held in paragraphs 14 and 15 as under:

"14. It is only when the labour court is satisfied and records that the dismissal was not justified, the question of imposing a lesser punishment other than dismissal will arise. But in this case, the labour court had found that the dismissal was justified. Then, the question of invoking section 11-A for interfering with the imposed punishment may not arise.

15. A division bench of this court in its judgment in Kanyakumari Automobiles (P) Ltd. vs P. Natarajan And Anr. (1983) ILLJ 323 Mad = (1982) 2 MLJ 303, held as follows:-

"to grant relief under S. 11-A there must be a finding that the discharge or dismissal is not justified. Unless the Labour Court gives such a finding, it has absolutely no power to grant any other relief contemplated under S. 11-A of the Act such as award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require or any other relief. Thus the finding regarding the non-justification of discharge or dismissal is condition precedent for granting the other reliefs condition precedent for granting the other reliefs contemplated under S. 11-A. As far as the facts of the present case are concerned, there is a clear finding by the Labour Court that the misconduct is proved and that the punishment of dismissal from service for such a misconduct is also justified."

The learned counsel would submit that unless the Labour Court finds the order of dismissal is unjustified, the question of intervening with the quantum of punishment does not arise at all. Therefore, he would submit that the award of the Labour Court does not call for any interference.

13. From the materials and the pleadings placed on record and the legal submissions made on behalf of the learned counsels, it emerges that the Labour Court was right in coming to the conclusion that there was absolutely no material placed by the petitioner workman either before the domestic enquiry or before the Labour Court, justifying the absence on so many

occasions. Admittedly, the petitioner was imposed with penalty on six occasions for the same act of misconduct and the despite of the same, the petitioner has not shown any improvement in his conduct. That being the case, this Court does not see any wrong in the action taken by the second respondent in dismissing the petitioner from service. His further retention would be not in the interest of the industry and that would also usher indiscipline among the work force that was employed by the industry. In fact, the Labour Court has given a clear finding that there was absolutely no material placed for consideration in support of the explanation offered by the petitioner. After holding so, the Labour Court has also found in the circumstances of the case that the dismissal was justified and did not call for any interference. It is needless to mention that unless the award of the Labour Court is vitiated on the ground of perversity, the same does not call for interference by this Court. In this case, the Labour Court was right in holding against the petitioner and this Court does not see any iota of infirmity in the award passed by the Labour Court. Moreover, the decisions relied upon by the learned counsel for the second respondent would fully support the case of the second respondent and can be aptly applied to the factual matrix of the present case. On the other hand, the decisions relied upon by the learned counsel for the petitioner cannot be applied since the petitioner/workman was admittedly an habitual absentee and cannot be shown indulgence by this Court under Section 11-A of the Act.

For the foregoing reasons, this Court does not find any merit in the Writ Petition. Accordingly, the Writ Petition fails and it is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
The Principal Labour Court, Vellore.

2. The Management of

M/s. Tamil Nadu Industrial Explosive Ltd.,

Tel Post, Vellore-59.

+ 1 cc to Mr. S.T. Varadarajulu, Advocate Sr.38855

+ 1 cc to Mr.K. N. Subramanian, Advocate Sr.38649

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PVS (CO)

EU (06/07/2018)

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