

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2018

Pronounced on :

CORAM

THE HONOURABLE MR. JUSTICE **V.PARTHIBAN**

W.P.No.34664 of 2012

V.Paramasivam

.. Petitioner

Vs.

1.The Second Additional Labour Court,
Chennai, rep. By its Presiding Officer,
Chennai.

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

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of Certiorarified Mandamus after calling for the records relating to the Award dated 11.07.2012 in ID No.616 of 1997 passed by the 1st respondent II Additional Labour Court, Chennai and quash the same in so far as it held that the charges were proved and denied the service benefits due to the petitioner on account of the 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 others orders or directions to meet the ends of justice.

For Petitioner .. Mr.C.K.Chandrasekaran

For Respondents .. Mr.Sanjay Mohan for
Ms.S.Ramasunbramanian
Associates for R2
R1-Court

ORDER

The petitioner has approached this Court seeking the following relief:

"to issue a writ of Certiorarified Mandamus, after calling for the records relating to the Award dated 11.07.2012 in ID No.616 of 1997 passed by the 1st respondent II Additional Labour Court, Chennai and quash the same in so far as it held that the charges were proved and denied the service benefits due to the petitioner on account of the 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 others orders or directions to meet the ends of justice."

2. The petitioner joined the second respondent Management as Helper on 17.07.1971. Subsequently, he was posted as Tyre Builder in Quality Assurance Department in Grade B on 26.06.1985. According to the petitioner, he was very active in the trade union and was representing the interest of the workmen before the Management. In 1996, he was implicated in a criminal case in Cr. No.983 of 1995, for which he was arrested on 28.11.1986. According to him, he was granted temporary bail on 11.12.1996 and was granted conditional bail finally on 03.02.1997 and he was directed to stay in Vellore and to report to the local Court till the end of February, 1997. On 03.03.1997, the petitioner came to Chennai and reported for duty.

3. When he reported for duty on 03.03.1997, the petitioner was informed that he was dismissed from service on 15.01.1997 itself on the basis of *ex parte* enquiry conducted against him for his unauthorized absence, in terms of the Standing Orders applicable to the second respondent Management. According to the petitioner that he was completely kept in dark about the domestic enquiry and no notice was served on him regarding the charges nor the proceedings about the domestic enquiry.

4. In the above said circumstances, the petitioner raised industrial dispute in I.D.No.616 of 1997. The preliminary issue was framed by the first respondent Labour Court as to whether the enquiry conducted against the petitioner was fair and proper and ultimately, the first respondent Labour Court held that the enquiry was unsustainable. The preliminary award was passed to that effect on 21.05.2003.

5. Against the preliminary award of the first respondent/Labour Court, a writ petition was filed by the Management in W.P.No.16689 of 2003, however, the same was dismissed by this Court. As against the dismissal order, a writ appeal was filed in W.A.No.437 of 2000 filed by the Management, but the said appeal also came to be rejected on 24.01.2005. Thereafter, the Management as well as the Workman were permitted to lead evidence before the Labour Court. During the pendency of the Industrial Dispute, the petitioner attained the age of superannuation on 30.04.2010. In the mean while, the petitioner was also convicted by the trial Court and sentenced to undergo 10 years of rigorous imprisonment. Against which, it appears that a Criminal Appeal was filed in CrI.A.No.1872 of 2003 before this Court and this Court, by judgment dated 01.07.2010, acquitted the petitioner from

the criminal charges, while setting aside the conviction and sentence imposed by the trial Court.

6. The first respondent/Labour Court after adverting to the various contentions put forth on behalf of the respective parties and the materials placed on record, had framed the following issues for adjudication:-

1) Whether the charge as alleged by the respondent management said out in the charge memo Ex.M84 is proved by the management.

2) If the charge are already proved whether the punishment is liable to be interfered under section 11 A of the I.D.Act 1947.

3) Whether the petitioner is entitled to get the relief of reinstatement in service with continuity of service, backwages and all other attendant benefits?

4) To what relief the petitioner is entitled to.?

7. During the pendency of the industrial dispute, the petitioner has filed a Writ Petition in W.P.No.12393 of 1999 wherein, this Court has ordered interim payment of Rs.2,000/- p.m. with effect from 17.11.1998 that is the date of dismissal of the application for interim relief by the Labour Court and thereafter, continue to pay a sum of Rs.2,750/- every month commencing from January, 2000 and admittedly, the payments were made till the petitioner attained the age of superannuation on 30.04.2010.

8. The first respondent/Labour Court, on appreciation of contentions and the materials placed on record, came to a definite conclusion that the petitioner was indeed absent unauthorizedly for 75 days from 01.01.1996 to 27.11.1996, as contained in charge memo issued by the Management. In fact, the Labour Court had found that the petitioner himself has not denied the allegation of his absence for 75 days from 01.01.1996 to 27.11.1996. The Labour Court further held that the allegation of unauthorized absence from 28.11.1996 onwards was also said to be proved for the admitted reason that the petitioner was in jail during the time before he was enlarged on bail on 03.02.1997.

9. While holding the charge against the petitioner that he was unauthorized absence for duty for a period of 75 days, the Labour Court proceeded to give a finding in regard to the allegation set up by the petitioner/workman that he was being victimised for his trade union activities. On the basis of oral and documentary evidence, the Labour Court once again has come to the definite conclusion against the petitioner holding that the case of the petitioner that he was being victimised for trade union activities, was not at all established and hence, the same was rejected.

10. While holding all the points against the petitioner, the Labour Court proceeded to examine whether the punishment of dismissal from service was proportionate for the charge of unauthorized absence under Section 11[A] of Industrial Dispute Act, 1947. In this regard, the Labour Court, after analysing the pleadings and case laws relied on by the parties, has come to the conclusion that the punishment of dismissal from service was disproportionate and excessive and finally held that the petitioner was entitled to monetary compensation instead of reinstatement since by the time the award was passed on 11.07.2012, the petitioner had already attained the age of superannuation on 30.04.2010 itself. The Labour Court has granted

one time compensation of Rs.2 lakhs on the basis of the factum that the petitioner had attained the age of superannuation and also on the factum that the petitioner had sustained himself by the of pay drawn at Rs.2750/- p.m. from the year 2000 till the date that he is deemed to be retired in April, 2010.

11.The petitioner having aggrieved by the award of the Labour Court which merely granted compensation without reinstatement in service and other attendant benefits, approached this Court assailing the award.

12.Mr.C.K.Chandrasekaran, the learned counsel appearing for the petitioner would strenuously contend that the Labour Court has not granted reinstatement like continuity of service and other attendant benefits etc., without due and proper appreciation of the oral and documentary evidence available before it. He attempted to draw the attention of this Court to the statements made by the Management Witness wherein there was an admission of the case of the petitioner about his presence during the time of unauthorized absence. He would submit that the charge was not at all established before the Labour Court in terms of Clause 13[6] of Standing Orders of the Company.

The Clause 13[6] of Standing Order which is reproduced below:-

“Habitual absence without leave or absence without leave for more than 10 consecutive days or over staying the sanctioned leave without satisfactory explanation.”

13. According to the learned counsel for the petitioner, in the affidavit it was not at all established that the petitioner was absent for more than 10 consecutive days without leave and therefore, the finding of the Labour Court in this regard, is invalid, perverse and calls for interference.

14. However, notwithstanding the evidence which was available in favour of the petitioner/workman, the Labour Court rendered a finding against the petitioner, which finding was unsupported by any worthwhile evidence. Therefore, he would implore this Court to interfere with the findings and set aside the award of the Labour Court.

15. Upon notice, Mr.Sanjay Mohan, learned counsel entered appearance on behalf of the second respondent and made his submissions.

14. The learned counsel for the second respondent would submit that the Labour Court has taken into consideration the entire facts and circumstances of the case before ordering Rs.2 lakhs as compensation to the petitioner. The Labour Court has rightly held that the petitioner was entitled only to monetary compensation in view of the fact that he was in receipt of monthly payment for more than 10 years continuously from the Management. Therefore, the compensation which was awarded by the Labour Court was in addition to the monthly payment paid to the petitioner/workman for 12 long years. According to the learned counsel that all the findings rendered by the Labour Court against the petitioner are well founded and supported by the material evidence and the Labour Court had chosen to interfere only with the punishment, since the same has been disproportionate under Section 11 [A] of the Industrial Dispute Act. This Court, exercising its jurisdiction under Article 226 of the Constitution of India, cannot re-appreciate the evidence let in before the Labour Court and the findings rendered thereon, unless the same were legally unacceptable and perverse.

15. Upon consideration of the rival submission of the learned counsels and on perusal of the materials and pleadings placed on

record, this Court has to evaluate the factual findings of the first respondent Labour Court in regard to the charges framed against the petitioner. The Labour Court has categorically held that the absence of the petitioner for a period of 75 days i.e. from 01.01.1996 to 27.11.1996 was fully established, since the workman himself has not disputed his absence. As regards the second period of absence from 28.11.1996, it was an admitted case that the workman was confined in jail during the said period and he was enlarged on bail only on 03.02.1997 and thereafter, only on 03.03.1997, he reported for duty. Therefore, the second respondent/Labour Court held that the unauthorized absence was also established. Such finding of the Labour Court, cannot even be remotely held unacceptable nor the same found to be perverse.

16. In fact, the Labour Court has considered several documents which were marked by both the workman and the management and ultimately rendered a finding that the charges framed against the petitioner were fully established. Such finding of the fact on the basis of unimpeachable documentary evidence does not render even an iota of scope for interference by this Court exercising judicial review under Article 226 of the Constitution of India.

17. While so, it has to be evaluated as to whether the final award of the Labour Court granting Rs.2 lakhs compensation was justified without ordering reinstatement with all attendant benefits, as contended by the learned counsel for the petitioner. The Labour Court in this regard, has held that reinstatement was not possible on the date of the award passed on 11.07.2012 since admittedly the petitioner had attained the age of superannuation on 30.04.2010.

18. Be that as it may, even otherwise, the Labour Court thought fit not to grant reinstatement even notionally, since there was a finding of the fact about the bitterness between the workman and the management and also the fact that the petitioner was in receipt of monthly payment of Rs.2,750/- for nearly 12 years from the management.

19. By taking into consideration the overall circumstances of the case, the Labour Court awarded monetary compensation of Rs.2 lakhs to the petitioner by holding that the imposition of penalty of dismissal from service was disproportionate. Since the management does not choose to challenge the award, this Court is only called upon to give a

finding as to whether the compensation awarded by the Labour Court instead of reinstatement, was valid or whether compensation itself was inadequate in the facts and circumstances of the case.

20. Learned counsel for the petitioner would also rely upon two decisions of the Hon'ble Supreme Court of India reported in the case of "**Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.**", reported in 2014-III-LLJ-478 (SC) and in the case in "**Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**" reported in (2013) 10 Supreme Court Cases 324. The ratio laid down in the said decisions cannot be made applicable to the factual matrix of the present case.

21. From the contents of the award, it could be safely deduced that the Labour Court had taken into consideration the fact that the management made monthly payments to the workman from 1998 till 2010 by way of interim relief. More over the Labour Court was also guided by the principle that the reinstatement of the petitioner in the facts and circumstances of the case, would not be appropriate in the interest of the establishment and therefore, granted monetary compensation in lieu of reinstatement without attendant benefits. Such

finding of the Labour Court, in the opinion of this Court is perfectly in order and does not call for interference. In fact, the Labour Court has maintained a fine balance between the interest of the workman as well as the management while passing the award.

22. Therefore, this Court does not see any infirmity or irregularity for diluting the award. The arguments made on behalf of the petitioner by pointing out certain discrepancies in appreciating the evidence by the Labour Court are not worthy of serious consideration, particularly viewing the award in its entirety.

23. In the light of the above, this Court does not see any scope for interference and therefore, **the writ petition is dismissed as devoid of merits. No costs.**

सत्यमेव जयते

22.01.2018

Speaking Order/Non-Speaking Order

Index : Yes/No

Internet : Yes/No

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Chennai-600 019.



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V.PARTHIBAN, J.

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Pre-delivery order made in
in
W.P.No.34664 of 2012

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21.01.2018