

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

W.P.No.15096 of 2013

The Management of
M/s.Addissions Paints and Chemicals Ltd.,
Sembiam,
Chennai - 600 011.

... Petitioner

versus

1. The Presiding Officer,
Second Additional Labour Court,
Chennai.

2. R.Rajamani

... Respondents

Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorari, to call for the records on the file of the first respondent herein, viz., the Presiding Officer, Second Additional Labour Court, Chennai, in I.D.No.256 of 2002 and quash the award dated 08.11.2012 which was received on 06.03.2013.

For Petitioner : Mr.N.Balasubramanian
For Respondents : Mr.S.T.Varadarajulu for R1

ORDER

Whether the contention of the Management that why should the Management pay a sum of Rs.5,00,000/- to the workman, when there is a finding that the dismissal from service is justified, can be appreciated, when the factual matrix are different and when industrial jurisprudence in India is value oriented and seeks to attain a very just and social order, is the issue to be considered.

2. This writ petition has been filed, challenging the award of the Labour Court passed in I.D.No.256 of 2002 dated 08.11.2012, directing the management to pay a sum of Rs.5,00,000/- as compensation, though holding that the charge against the workman has been proved and therefore, the punishment of dismissal from service is also justified.

3. The Labour Court, in para-28 of the award, has recorded that during the course of argument, the counsel for the Management had referred an offer by the management itself to pay a sum of Rs.5,00,000/- which was refused by the workman. The Labour Court has considered the fact that the workman has served from 03.11.1969 to 23.11.2001 for a period of 32 years without any blemish. After pointing out the same, the Labour Court has ordered the respondent to pay a sum of Rs.5,00,000/- to the petitioner as a matter of gesture. This order is under challenge in this writ petition.

4. The learned counsel appearing for the workman submits that the enquiry is an ex parte enquiry and that though the order of dismissal is on 23.11.2001, it has been made retrospective, i.e. from 16.02.2000, (i.e. the date of suspension pending enquiry) and that it is illegal and hence, the Labour Court should have given a finding that the punishment is disproportionate. However, it is pointed out by the learned counsel appearing for the Management that it is not open to the workman to argue on the disproportionality of the punishment, challenging the award of the Labour Court, without filing an appeal.

5. Admittedly, no appeal has been filed by the workman challenging the confirmation of the dismissal by the Labour Court.

6. The only issue to be decided is, whether the Labour Court is justified in ordering payment of Rs.5,00,000/- to the workman, in the light of the positive finding that the charge against the workman is proved and that the dismissal by the Management is justified.

7. The learned counsel appearing for the Management contends that ordering payment of compensation when the dismissal is justified would run adverse to the interest of the administration and that it is against the fundamental principles of law. In other words, the submission is that wrong doer alone has to pay compensation and the person exercising statutory authority, who punished a wrong doer, cannot be ordered to pay compensation, especially when there is a finding that the punishment is not disproportionate to the proved misconduct.

7.1. No doubt, this contention is correct on a legal plane. But, the factual matrix are slightly different in this case. The Labour Court has mentioned that the offer of Rs.5,00,000/- was made before the High Court and that the workman who was appearing in person to argue his case, refused to receive the same. The learned counsel for the Management would submit that this finding of the Labour Court is incorrect and that no such

offer was made either before the High Court or before the Labour Court. It is pointed out that in paragraph-14 of the writ petition, it is specifically stated that the counsel Mr.N.Balasubramanian did not make any offer on behalf of the Management to the second respondent and that at no point of time, offer of Rs.5,00,000/- was made either before the Division Bench or before the Labour Court. In the same paragraph, it is stated that when the proceedings are pending before the Division Bench at the writ appeal stage, the Hon'ble Division Bench suggested for some compromise, but, the second respondent (Workman) straight away rejected the suggestion put forth by the Division Bench.

7.2. However, in the order of the Division Bench, it is stated that persons who were similarly placed like that of the petitioner were taken back in service without any punishment and some others who were charge-sheeted were not inflected with any punishment and those aspects were not taken note of by the Labour Court and thus, the Labour Court failed to exercise its jurisdiction under Section 11 of the Act.

7.3. It is an admitted fact that the petitioner had been in service for 32 years with effect from 03.11.1969, out of which, apart from two years of suspension, the rest of 30 years of service is unblemished service. The date of retirement was on 23.11.2006.

7.4. The workman had not participated in the enquiry conducted and he has also not chosen to answer the second show cause notice issued with regard to quantum of punishment, and thus, he has invited the punishment of dismissal from service. Pointing out this, the learned counsel for the workman contended that the very purpose of remand was not satisfied as the Labour Court did not consider the implication of treatment given to similarly placed workmen either not being charge sheeted or charge sheeted workmen not being punished.

7.5. However, the learned counsel for the Management submitted that the similarly charge sheeted workmen offered apology realizing their mistake and therefore, they were given admonition. It is also submitted that some of them were not even charge sheeted as they realized their mistake at the initial stage itself. It is relevant to point out that this explanation has not been offered before the concerned Labour Court. Records also are not available to find out whether such statement is correct or not. In any event, when the act complained of so serious to the extent of warranting dismissal, whether somebody can be pardoned and somebody else should be dismissed from service. For reasons which are not made explicit, the workman has not chosen to participate in the enquiry and also did not challenge the order of termination.

However, when facts are placed showing that persons similarly placed have been given admonition, the punishment of dismissal from service would be disproportionate. Under the circumstances, this Court is of the view that the award of Rs.5,00,000/- as compensation is justified.

8. The manner of dealing with erring workman by the Management is on two extremes. If participation in the strike is considered as so serious to the extent of terminating an employee from service, whether for the same conduct, the other workman could be pardoned, would be operating in the mind of the punished workman.

9. The employees are expected to be treated with reasonable fairness. Perhaps, realizing this, the Management could have offered to pay a sum of Rs.5,00,000/- as compensation.

10. The Court has recorded that there was an admitted offer by the Management. All judicial proceedings are presumed to be genuine. No doubt, this presumption is a rebuttable presumption. If there is no offer by the Management, the Management should have filed review application before the Court concerned. That has not been done. So far as this case is concerned, in all fairness, the Management should have filed the review on the ground that no such offer was made before the High Court or Labour Court. The court concerned would be in a better position to appreciate this stand. Leaving that the filing of this writ petition is unwarranted and hence, it is liable to be dismissed.

11. Even before the Supreme Court, even in cases of justified dismissal from service, the offer by the management has been accepted and the Hon'ble Supreme Court has permitted the offer to be given to the workman. The relevant observation made by the Supreme Court in the case of U.B.Gadhe and others, etc. vs. G.M.Gujarat Ambuja Cement Pvt. Ltd., reported in JT 2007 (11) SC 425, which reads as under:

"..... considering the long passage of time, it would not be proper to do so since the employer seems to be a public utility service and the workmens' continued utility to the employer is gravely doubtful in view of their conduct. After such a long period, it would not be in the interest of parties to direct the High Court to consider parameters of Section 11-A of the Act. Therefore, we have considered the matter, taking into account the background facts. The proved misconduct is definitely serious. The respondent has, as a matter of good gesture, offered to pay each of the appellant rupees one lakh, in view of the fact that they have received payment upto December, 2004."

12. Needless to say that, the industrial jurisprudence in India is value oriented and seeks to attain a very just and social order. The Industrial Dispute Act, 1947 is a piece of welfare legislation desired in achieving social as well as economic justice which is the aim of industrial jurisprudence. Therefore, considering the totality of circumstances, this Court is of the view that the order passed by the Labour Court does not require any interference. Hence, the writ petition is dismissed. No costs. The amount shall be paid within a period of two weeks from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Presiding Officer,
Second Additional Labour Court,
Chennai.

+1 CC to Mr.N. Balasubramanian, Advocate sr 58699

+1 CC to Mr.S.T. Varadarajulu, Advocate sr 58998.

W.P.No.15096 of 2013

SP(26/09/2018)

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