

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1028 of 2016

1.Indhirani
2.R.Vasantha
3.R.Jayanthi
4.Jayavel

... Appellants

versus

1.The Presiding Officer,
Central Government Industrial Tribunal - cum Labour Court,
Chennai.
2.The Chairman,
Chennai Port Trust,
Chennai - 600 001.

... Respondents

PRAYER: Appeal filed against the order passed by this Court dated 25.09.2014 made in W.P.No.23150 of 2012.

PRAYER IN W.P.No.23150 of 2012:

Petition Under Article 226 of the Constitution of India praying for issue writ of certiorari to call for the records connected with I.D.No.3 of 2008 on the file of 1st respondent, Third Additional Labour Court, Chennai and to quash the award dated 21.7.2011 made therein.

For Appellants : Mr.D.Muthukumar

For Respondents : Mr.M.R.Dharanichander for R2

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN, J.)

The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 25.09.2014 made in W.P.No.23150 of 2012.

The respondent herein had challenged the award of the Central Industrial Tribunal cum Labour Court, Chennai dated 21st July 2011 made in Industrial Dispute No.3 of 2008. Under the said award, the Labour Court while setting aside the punishment of dismissal imposed on one N.Rajan deceased employee of the respondent Port Trust, directed payment of 50% of back wages along with a notional reinstatement into the service with continuity of service and all attendant benefits till the date of his death or superannuation whichever is earlier. The Industrial Tribunal had also directed the respondent to provide job to any one of the legal heirs on compassionate grounds.

The Industrial Dispute arose in the following background:-

2. The husband of the 1st appellant one N.Rajan who was working as a Maistry in the 2nd respondent Port Trust was charge sheeted for unauthorized absence for 84 days between 07.07.1998 to 28.09.1998, a charge memo was issued on 28.11.1998 and an enquiry Officer was also appointed. During the enquiry, the employee had admitted the absence and claimed that he could not attend duty due to a state of depression suffered by him. Finding him guilty on the basis of his admissions, the enquiry officer filed a report to that effect.

3. The Traffic Manager of the 2nd respondent Port Trust issued a second show cause notice on 27.07.1999 proposing to impose a punishment of dismissal from service. The Traffic Manager on receipt of the explanation for the second show cause notice concurred with the findings of the Enquiry Officer and also found that the said N.Rajan was absent from duty from 07.01.1998 to 20.04.1999 and from 09.08.1999 to 17.08.1999. It was also found that he has not even completed his probation because of his continued absence. The Traffic Manager also took note of the prior conduct of the employee and the punishment of censure, stoppage of increments imposed on him and decided that his continuance in the service will not be beneficial to the Port Trust. Hence the Traffic Manager by his order dated 04.10.1999 imposed a punishment of dismissal from service.

4. The deceased employee made an unsuccessful appeal to the Chairman of the Port Trust. The delinquent employee again approached the Chairman of Chennai Port Trust on 24.04.2006 requesting for a review of the penalty. The said request was rejected on 15.07.2006, in view of the rejection of the earlier

appeal on 03.10.2000. It is only thereafter the delinquent workman raised an Industrial Dispute before the Central Government Industrial Tribunal cum Labour Court, Chennai.

5. Before the Labour Court, the deceased workman had raised the issue relating to fairness of the Departmental enquiry proceedings. While the Management wanted to lead evidence on the issue of the fairness of the departmental proceedings, the workman had by then died and his legal representatives were brought on record. The legal representatives objected to evidence being let in by the Management, inasmuch as the workman had died. Therefore, the Central Government Industrial Tribunal did not decide the question relating to the fairness of the disciplinary proceedings as a preliminary issue. But the Industrial Tribunal went into the question and held that the enquiry was not fair and proper.

6. On the aforesaid findings, the learned Industrial Tribunal allowed the ID and directed notional reinstatement of the workman along with 50% back wages and continuity of service and other benefits. This award was challenged by the respondent Port Trust in the above said Writ Petition.

7. The learned Single Judge allowed the Writ Petition holding that once the employee had accepted the guilt and a punishment was imposed on the basis of such admission of guilt, the Industrial Tribunal was not right in going into the question whether the enquiry was fair and proper. The learned Single Judge further found that since the attempt made by the Management to lead evidence before the Industrial Tribunal was scuttled by the legal representatives of the deceased workman, the Industrial Tribunal was not right in holding that the enquiry was not fair and proper and setting aside the punishment on that ground. On the above conclusions, the learned Single Judge allowed the Writ Petition and set aside the award of the Industrial Tribunal. Aggrieved the legal representatives of the workman are before us by way of this intra-Court appeal.

8. We have heard Mr.D.Muthukumar, learned counsel appearing for the appellants and Mr.R.Dharanichander, learned counsel appearing for the 2nd respondent.

9. Mr.D.Muthukumar, learned counsel appearing for the appellants would contend that the learned Single Judge was not right in setting aside the award on the ground that the attempt of the Management to prove the delinquency by independent evidence before the Labour Court was scuttled by the legal representatives of the deceased employee. Though the issue relating to fairness of the Domestic enquiry was raised by the

legal representatives and the Management wanted to let in evidence on the question, the same was objected to by the legal representatives solely on the ground that any evidence let in could not be controverted on the side of the workman since the workman had died by then. Therefore, according to the learned counsel, the learned Single Judge was not right in concluding that it was the appellants herein who had scuttled the attempt of the Management to let in evidence before the Industrial Tribunal regarding the fairness of the enquiry.

10. Per contra, Mr.M.R.Dharanichander, learned counsel appearing for the 2nd respondent Port Trust would contend that the deceased workman had been a habitual absentee right from 1988. Referring to the tabular statement contained in the order of the learned Single Judge, the learned counsel would contend that the workman had been absent for more than 200 days during the years 1988, 1990, 1991, 1995 and for more than 100 days during the years 1989, 1992, 1993, 1994, 1996 to 1999. Therefore, according to the learned counsel, the deceased employee did not have any inclination to work at all, he would also point out that the deceased workman had accepted the guilt during the domestic enquiry. Referring to the questions put to him by the enquiry officer and the answers given, the learned counsel would contend that the deceased workman had no defence at all to the charge of absentism that was made against him.

11. We have considered the rival submissions. During the course of arguments in the Writ Appeal, we had required the learned counsel for the Port Trust to inform us as to what is the terminal benefits that the deceased workman would be eligible for. The learned counsel for the Port Trust had produced the proceedings dated 12.07.2018 which shows that the deceased workman is entitled to Rs.83,045/-. The said amount was payable as on 04.10.1999. It is not in dispute that the amount has not been paid till date.

12. The learned counsel for the appellants would also submit that but, for the untimely death of the workman he would have been able to establish that the domestic enquiry was not fair and proper. He would therefore require us to interfere with the punishment of removal from service imposed by the 2nd respondent Port Trust.

13. We have given our anxious consideration to the plea of the learned counsel for the appellants. Of course, the earlier conduct of the workman may be a relevant factor but in the case on hand we find that the lesser punishment of censure and stoppage of increment was imposed for unauthorized absence earlier and for unauthorized absence for 84 days during the relevant period in 1998, the workman has been visited with the

harsher punishment of removal from service. Taking into account the over all circumstances and the fact that the family of the workman is in penury as of today we are of the considered opinion that the punishment could be modified into one of compulsory retirement instead of removal from service. The appellants will be entitled to whatever benefits that will accrue to a compulsory retired employee of the Port Trust. Since it is admitted that the terminal benefits payable to the employee have not been paid, we direct the Port Trust to pay the said sum of Rs.83,045/- with interest at 10% p.a from 04.10.1999 from the date of compulsory retirement of the employee till the date of superannuation. The said payment shall be made within a period of four weeks from the date of receipt of the copy of the order.

14. In fine, the Writ Appeal is partly allowed. The punishment of dismissal from service is modified as one of compulsory retirement and the Port Trust is directed to pay the terminal benefits as stated above. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Presiding Officer,
Central Government Industrial Tribunal - cum - Labour Court,
Chennai.

2.The Chairman,
Chennai Port Trust,
Chennai - 600 001.

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+1cc to Mr.D.MUTHUKUMAR, Advocate, S.R.No. 47818

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W.A.No.1028 of 2016

VBA(CO)
TR(07/08/2018)