

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1080 and 1081 of 2016
and CMP Nos. 14059 and 14060 of 2016

WA No.1080 of 2016

The Managing Director,
Tamil Nadu Small Industries Corporation Ltd.,
No.1, Whites Road, Chennai 600 014.
Now at Thiru.vi.ka Industrial Estate,
Guindy, Chennai 600 032.

... Appellant/
3rd Respondent in (WP.38522/03)

versus

1. M.Soundarapandian .. Respondent/Petitioner
2. The Management, TANSI Tannery,
Vinnamangalam Village,
Minnur (Post),
Ambur Taluk, Vellore District. .. Respondent/1st Respondent
3. TALCO Tannery
Vinnamangalam Village,
Minnur (Post)
Ambur Taluk, Vellore District. .. Respondent/2nd Respondent
4. The Presiding Officer,
Labour Court, Vellore. .. Respondent/4th Respondent

Appeal filed against the order passed by this Court dated
01.04.2016 passed in W.P.No. 38522 of 2003.

W.P.No. 38522 of 2003:-

Writ Petition praying for issuance of a Writ of
certiorarified Mandamus, to call for the records of the award in
ID.No.315 of 1994, dated 27.01.2003, on the file of the Labour
Court, Vellore, and quash the same, and direct the respondents 1
to 3 to grant all monetary benefits from 17.03.1971, when the
petitioner was wrongfully sent out of job.

WA No.1081 of 2016

The Managing Director,
Tamil Nadu Small Industries Corporation Ltd.,
No.1, Whites Road, Chennai 600 014.
Now at Thiru.vi.ka Industrial Estate,
Guindy, Chennai 600 032.

... Appellant/Petitioner in
WP.No.1149/2004

versus

1. M.Soundarapandian
2. The Presiding Officer,
Labour Court, Vellore. Respondents/Respondents

Appeal filed against the order passed by this Court dated
01.04.2016 passed in W.P.No. 1149 of 2004.

WP.No.1149 of 2004:-

This Writ Petition praying for issuance of a Writ of certiorari, to call for the records relating to the award dated 27.01.2003 passed by the Second respondent, in I.D.No.315 of 1994, raised by the 1st respondent, under which the Second respondent has directed the petitioner to pay a sum of Rs.75,000/- as compensation together with interest @ 6% p.a. from the date of award till the date of realisation and to quash the same.

For appellant : Mr.V.R.Kamalanathan
(in both the Writ Appeals)

For Respondents : Mr. J.Saravanavel
(for 1st Respondent in both the Writ Appeals)

RR 2 to 4 in WA No.1080 of 2016 & R2 in
WA No.1081 of 2016 are given up

COMMON JUDGMENT
(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These Intra Court Appeals have been filed by the Managing Director, Tamil Nadu Small Industries Corporation Ltd., the petitioner in WP No.1149 of 2004 and the 3rd respondent in WP No.38522 of 2003, challenging the common order made in the said Writ petitions dated 01.04.2016. The subject matter of challenge in the Writ Petitions was the award of the Labour Court, in and

by which, the Labour Court awarded a compensation of Rs.75,000/- in full quit, to the 1st respondent herein, after having held that the punishment of removal from service is wholly disproportionate to the charge against the workman.

2. The brief facts that led to the filing of the Writ Petition are as follows:

The 1st respondent herein, joined the service of the 3rd respondent as a Helper in the Tannery, in the year 1958. During July 1969, the workman was brought on time scale of pay on monthly wages. On 17.03.1971, the 1st respondent was directed by the Production Assistant to do the job of operator of the Embossing Machine. While operating the said embossing machine, it is claimed that the 1st respondent left the spanner on the felt, which had caused deep impression on one side of the plate of the Embossing Machine, which rendered the plate useless, hampering the production in the unit. The 1st respondent workman was immediately kept under suspension on the same day i.e., 17.03.1971 and the notice of enquiry was served on him on 30.03.1971. The disciplinary enquiry was held 31.03.1971, thereafter a charge memo was issued on 10.05.1971. Eventually, by an order dated 09.10.1971, the workman was dismissed from service, with effect from 17.03.1971. The workman approached the Conciliation Officer and a report of failure of conciliation was made by the Labour Officer, Vellore on 05.02.1973. Another Conciliation was attempted and the said conciliation also failed and the failure report was submitted on 13.08.1984. The 1st respondent sought for a reference of the dispute to the Labour Court under Section 10(1)(c) of the Industrial Dispute Act, 1947. By an order date 27.11.1984, the Government declined to refer the dispute for adjudication, under the Industrial Dispute Act. Aggrieved the workman, viz. the 1st respondent herein, filed WP No.989 of 1985, challenging the order of the Government declining to refer the matter to the Labour Court, the said Writ Petition came to be allowed on 27.07.1994, directing the Government to refer the dispute to the Labour Court.

3. Aggrieved the appellant filed an appeal in the Writ Appeal No.1334 of 1994. During the pendency of the Writ Appeal, the Government referred the dispute to the Labour Court, Vellore, on 29.09.1994 and upon receipt of the notice of the reference, the 1st respondent workman filed his claim statement on 31.10.1994. Recording the said reference having been made the Writ Appeal came to be dismissed on 07.08.1997, thereafter, the Management filed a counter in the reference on 11.11.1997 and on 27.01.2003 the Labour Court passed an award holding that the punishment of removal from service is wholly disproportionate to the wrong committed by the employee. However, finding that

the employee had by the time attained the age of superannuation and he cannot be reinstated in service, the Labour Court awarded a monetary compensation of Rs.75,000/-.

4. Aggrieved by the said award the employee viz. the workman/1st respondent had filed WP No.38522 of 2003 and the Management/appellant filed WP No.1149 of 2004 in this Court.

Pursuant to an interim order passed in the said Writ Petition, the Management had deposited a sum of Rs.75,000/- along with interest amounting to Rs. 79,500/- in the Labour Court on 21.04.2004. On 05.08.2010, this Court has permitted the workman/1st respondent to withdraw the amount deposited by the Management in the Labour Court. Thereafter, the Writ Petitions came to be heard and by a common order dated 01.04.2016, this Court enhanced the compensation payable to Rs.5,00,000/- from Rs.75,000/-. The Writ Petition filed by the Management in WP. No.1149 of 2004 was dismissed. Challenging the said enhancement of compensation as well as the dismissal of the Writ Petition No.1149 of 2004, the Management is before us by way of these Intra Court Appeals.

5. We have heard Mr.V.R.Kamalanathan, learned counsel appearing for the appellant in both the appeals and Mr.J.Saravanavel, learned counsel appearing for the 1st respondent in both the appeals. Respondents 2 to 4 in WA 1080 of 2016 and the 2nd respondent in WA No.1081 of 2016 have been given up.

6. Mr.V.R.Kamalanathan, learned counsel appearing for the appellant would contend that the learned Single Judge was not justified in enhancing the compensation awarded by the Labour Court from Rs.75,000/- to Rs.5,00,000/-. According to him, once the Labour Court awards the monetary compensation, the Writ Petition challenging the said award is not maintainable. He would also contend that the proportionality of the punishment cannot be gone into by the Labour Court.

7. Per contra, Mr.J.Saravanavel, learned counsel appearing for the workman would contend that the nature of the charge being very trivial, the Labour Court was justified in holding that the punishment of dismissal from service is really disproportionate and too harsh. He would also point out the conclusions of the learned Single Judge, wherein, it has been found that the Labour Court has wrongly assumed that the workman had admitted the guilt. He also took us through the Charge Memo, Enquiry Report and other documents relating to the disciplinary proceedings. We are unable to cull out an unqualified admission of the guilt by the workman from any of those documents. As rightly pointed out by the learned Single Judge, the workman had

only admitted that the spanner was left on the felt inadvertently and it was not intentional. It is not even the case of the Management that the workman had left the spanner on the felt with an intention to damage the plate and create loss to the Management. As rightly pointed out by the learned Single Judge, what has been admitted is, the act of leaving the spanner on the felt inadvertently, this in our considered opinion cannot be termed as an unqualified admission of guilt.

8. Considering the relevant factors, the Labour Court has concluded that the punishment of dismissal from service is disproportionate to the delinquency said to have been committed by the workman. Mr.J.Saravanavel, learned counsel appearing for the 1st respondent would draw our attention to the judgment of the Hon'ble Supreme Court in Collector Singh v. L.M.L.Limited, Kanpur, reported in 2015 (2) SCC 410, wherein the Hon'ble Supreme Court had held that, where the penalty imposed is found disproportionate to proved misconduct, the Court can appropriately mould the relief, in order to shorten litigation, in exceptional circumstances. The circumstances of this case are really exceptional in nature. The delinquency is said to have been committed in the year 1971 and the workman was dismissed from service in October 1971. It was due to the wrongful refusal by the Government to refer the matter to the Labour Court, the employee was forced to approach this Court and after this Court having issued a Mandamus, a reference was made in the year 1994, nearly after 23 years, from the date of the dismissal of the employee from service. The management took its own sweet time of three years to file a counter and the Labour Court passed its award, on 27.01.2003, by which time 32 years had lapsed, from the date of the order of dismissal and the workman had attained the age of superannuation. An additional factor is that the Management has also closed down the Tannery Unit. In such circumstances, the Labour Court after having found that the penalty of dismissal from service is drastically disproportionate to the delinquency alleged had chosen to award monetary compensation. The Management did not pay the said monetary compensation also, but filed the Writ Petition challenging the said award.

9. The workman also aggrieved by the quantum of the monetary compensation came forward with the Writ Petition No.38522 of 2003. While enhancing the monetary compensation, the learned Single Judge had in fact observed that the conclusion of the Labour Court that the workman had admitted his guilt is erroneous. No material has been brought to our attention, to enable us to differ from the said factual conclusion arrived at by the learned Single Judge. Though, Mr.V.R.Kamalanathan, attempted to take us to the disciplinary proceedings and make out a case of admission of guilt on the part of the workman, we

are unable to find any such unqualified admission on the part of the workman. Therefore, we are unable to persuade ourselves, to disagree with the finding of the learned Single Judge to the effect that the finding of the Labour Court that the workman had admitted the delinquency committed by him is an in-correct finding. Even the case of the Management, as rightly pointed out by the learned Single Judge is that, the negligent act of the workman in leaving the spanner on the felt had resulted in very severe damage to a costly machine. At the best, it can only be stated to be inadvertent action or negligent action. The workman did not choose to shift the blame on a co-worker, but he had accepted that it was an inadvertent act, which had resulted in damage caused.

10. The very fact that the workman has been forced to undergo to ordeal of this litigation for nearly 47 years now would impel us to agree with the observations of the learned Single Judge where he points out that the compensation of Rs.75,000/- is ridiculously low and the same has to be enhanced, if the workman is to be actually compensated. Hence, we are of the considered view that the enhancement of the compensation to Rs.5,00,000/- from Rs.75,000/- awarded by the Labour Court, by the learned Single Judge, does not call for any interference and the appeals should fail.

11. In fine, the appeals are dismissed and there will be a direction to the appellant to pay the compensation as awarded by the learned Single Judge, of course after deducting the sum of Rs.75,000/- already paid, within a period of eight (8) weeks from today by way of Demand Draft, in favour of the 1st respondent directly to him. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Managing Director,
Tamil Nadu Small Industries Corporation Ltd.,
No.1, Whites Road, Chennai 600 014.
Now at Thiru.vi.ka Industrial Estate,
Guindy, Chennai 600 032.

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2. The Management,
TANSI Tannery,
Vinnamangalam Village,
Minnur (Post),
Ambur Taluk, Vellore District.

3. TALCO Tannery
Vinnamangalam Village,
Minnur (Post)
Ambur Taluk, Vellore District.

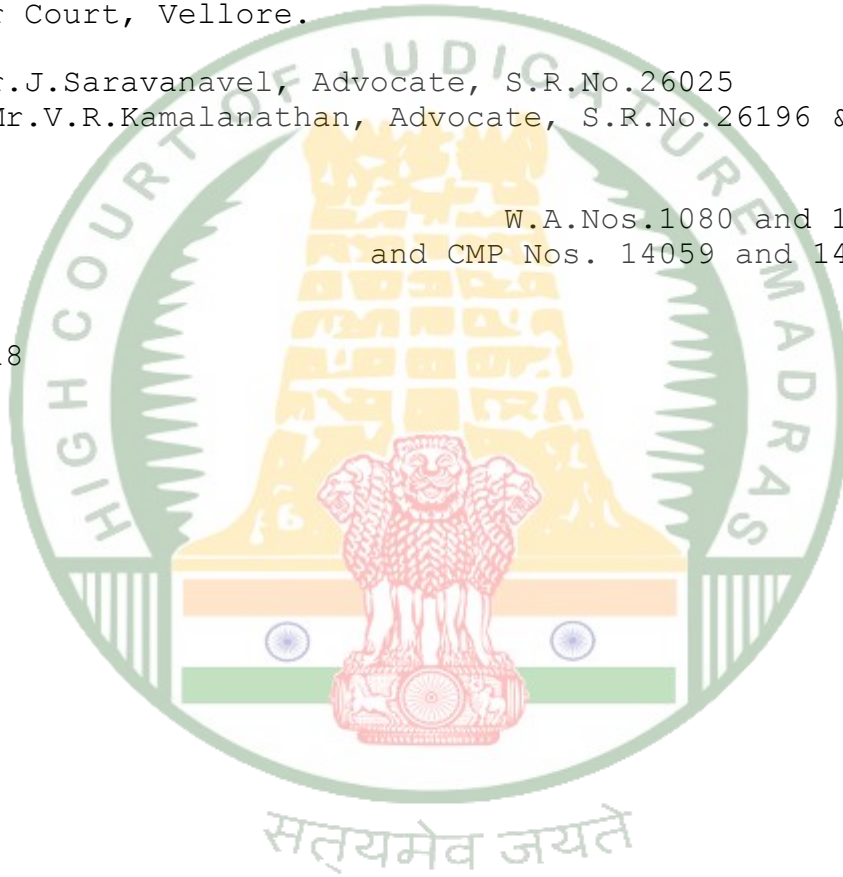
4. The Presiding Officer,
Labour Court, Vellore.

+1cc to Mr.J.Saravanavel, Advocate, S.R.No.26025

+2ccs to Mr.V.R.Kamalanathan, Advocate, S.R.No.26196 & 26197

W.A.Nos.1080 and 1081 of 2016
and CMP Nos. 14059 and 14060 of 2016

CA (CO)
CS/16/05/18



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