



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 24.01.2018
CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.116 to 119 of 2018

A.Kamaraj	..	Appellant in W.A(MD)No.116 of 2018
V.Anantharaj	..	Appellant in W.A(MD)No.117 of 2018
Pon Subramanian	..	Appellant in W.A(MD)No.118 of 2018
S.Anthony Raj	..	Appellant in W.A(MD)No.119 of 2018

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Management,
Madura Coats Mills Company Ltd.,
Papanasam Mill Post,
Vigramasingapuram,
Tirunelveli District.

3.The Human Resource Director,
Madurai Coats India Private Limited,
Head Office at Bangalore,
Karnataka - 560 005.

..Respondents in W.A(MD)No.116 of 2018

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Management,
Madura Coats Mills Company Ltd.,
Papanasam Mill Post,
Vigramasingapuram,
Tirunelveli District.

3.The Group Industrial Relation Manager,
Madura Coats India Private Limited,
Papanasam Mills Post,
Vigramasingapuram,
Tirunelveli District - 627 422.

<https://hcservices.ecourts.gov.in/hcservices/>

..Respondents in W.A(MD)Nos.117 and 118 of 2018



1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. The Management,
Madura Coats Mills Company Ltd.,
Papanasam Mill Post,
Vigramasingapuram,
Tirunelveli District.

..Respondents in W.A(MD)No.119 of 2018

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent, to call for the records relating to the common order dated 01.09.2017 in W.P(MD)Nos.16492 to 16495 of 2017 respectively on the file of this Court and set aside the same.

Prayer in WP(MD). 16492/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus to call for the records connected with the preliminary award dated 25.04.2016 and the final award dated 27.09.2016 passed by the 1st respondent Labour Court in I.D.No.36/2015 and quash the same and consequently to direct the Respondents No.1 and 2 to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

Prayer in WP(MD). 16493/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus to call for the records pertaining to the impugned order of preliminary award dated 01.09.2016 and the consequential final award passed by the 1st respondent Labour Court in I.D.NO.14/2016 dated 27.09.2016 and to set aside the same with the further direct the Respondents No-1 and 2 to reinstating me with full back wages, continuity of service and all other attendance benefits within a stipulated time that may be fixed by this Honble Court.

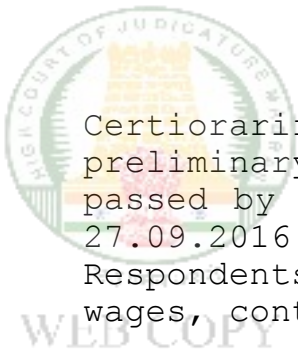
Prayer in WP(MD). 16494/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records connected with the preliminary award dated 01.09.2016 and the consequential final award passed by the 1st respondent Labourt Court in I.D.No.13/2016 dated 27.09.2016 and to quash the same with the further direct the Respondents No.1 and 2 to reinstating the Petitioner with full back wages, continuity of service and all other attendance benefits.

<https://hcservices.ecourts.gov.in/hcservices/>

Prayer in WP(MD). 16495/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of



Certiorarified Mandamus to call for the records connected with the preliminary award dated 07.08.2015 and the consequential final award passed by the 1st respondent Labour Court in I.D.No. 37/2014 dated 27.09.2016 and to quash the same with the further direct the Respondents No.1 and 2 to reinstating the Petitioner with full back wages, continuity of service and all other attendance benefits.

In all WPs.,

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.T.Ravindran
(for R1 and R2)

COMMON JUDGMENT

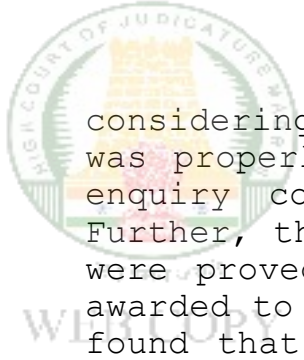
[Order of the Court was delivered by N.KIRUBAKARAN,J]

These appeals have been preferred by the dismissed workmen from the second and third respondents' company. The appellants were working as workmen in the second respondent Mill, namely, Madura Coats Mills Company Ltd., Papanasam Mill Post, Vigramasingapuram, Tirunelveli District. They resorted to illegal strike causing production loss to the Management apart from indulging in threatening co-workers and intimidating the superiors and the co-workers and opposing them also. The said incidents are said to have occurred during the strike call given from 06.12.2012. Whereas, the actual strike commenced from 01.12.2012, even before the date notified.

2.The Deputy Commissioner of Labour took efforts to resolve the problem. However, the efforts ended in failure and many workers forced the Management to declare lock-out from 12.12.2012 to 09.01.2013. Thereafter, a settlement was reached between all the Trade Unions except newly formed Union, namely, Madura Coats Workers Federation, in which, the appellants are the office bearers. On 19.01.2013, all the workers including the recognized unions accepted the said settlement. Only the appellants refused to take part in the settlement and they were subjected to disciplinary proceedings following the procedure.

3.Some of the workers, who refused to take part in the settlement, were suspended and later they were transferred. Since the appellants did not agree for settlement, charge memos were issued and replies were sent by the appellants. Not satisfied with the replies, an Enquiry Officer was appointed. In the enquiry, an opportunity was given to the appellants and the appellants also took part in the enquiry and cross examined four witnesses. The Enquiry Officer found that the charges levelled against the appellants were proved. Based on the reports of the Enquiry Officer and after following the procedure, the second respondent Management passed an order of dismissal on 25.10.2013, dismissing the appellants from the service.

4.The said order of dismissal was challenged before the Labour Court by raising an Industrial Dispute. The Labour Court, after



considering the preliminary issue that whether the domestic enquiry was properly held, passed the preliminary award answering that the enquiry conducted by the Enquiry Officer was fair and proper. Further, the Labour Court framed questions as to whether the charges were proved against the workmen and if so, whether the punishment awarded to the appellants were proper. Ultimately, the Labour Court found that the charges were proved and the punishment imposed was not disproportionate to the charges and accordingly refused to interfere with the order of dismissal.

5. Against the said award of the Labour Court, writ petitions have been filed before this Court. After hearing all the parties, the learned Single Judge was pleased to dismiss the writ petitions taking note of the conduct of the appellants that they indulged in illegal strike causing production loss and abuse of the superior officers and intimidation of the superior officers as well as the co-workers. Apart from that, the learned Single Judge took note of the fact that all other unions, accepted the settlement and even out of the 40 workers in the new Union, in which, the appellants are members, 34 pleaded guilty and joined duty and later they accepted lesser punishment like transfer. The appellants failed to prove their case and therefore, the learned Judge dismissed the writ petitions. Against the said order, the present appeals have been filed.

6. Mr. R. Karunanidhi, learned counsel appearing for the appellants would submit that there is a discrimination in awarding punishment, especially 37 similarly placed persons were given lesser punishment including transfer, whereas, these appellants alone have been given discriminatory treatment by dismissing them from service. He would rely upon the Judgment of the Hon'ble Supreme Court reported in (1983) 4 SCC 225 [Sengara Singh and others vs. State of Punjab and others] to contend that when similarly placed persons were given reinstatement, the appellants should also be given same treatment. Further, he would submit that the appellants realised their mistake and they would file an affidavit regretting for the stand taken by them and sought reinstatement.

7. Further, the learned counsel would refer to 20(2) (ii) of the Standing Order, wherein, for the act of misconduct, only lesser punishment, like, cut in increment, suspension from work for 30 days alone could be given and not punishment of dismissal from service. Hence, he seeks for allowing these appeals.

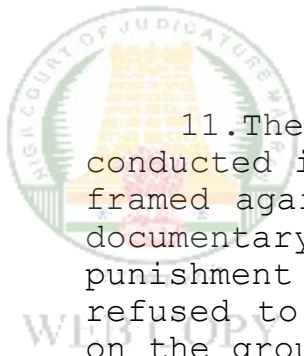
8. On the other hand, Mr. T. Ravichandran, learned counsel for the respondent Management would submit that the appellants are the Union Leaders of the newly formed union and they were mainly responsible for the strike and they also forced the co-workers to go on strike and abused the superior officers and intimidated them. While all other Unions entered into an agreement and resumed the work, only the Union belonging to the appellants, restrained from doing work and demanded the Management to enter into an agreement. Even out of 40 workers of the new Union, others have accepted the settlement, regretted for their activities and they accepted lesser punishment like transfer and only six workers were adamant who are mainly



responsible for the indiscipline in the organization and guilty of the above act of misconduct. Out of six, only four have approached this Court and two have not approached the court. If these appellants are again reinstated, definitely, they will not act in the interest of the Mill and they will spoil the entire working atmosphere of the Mill. He would rely upon the Judgment of the Honourable Supreme Court of India in L.K.Verma vs. H.M.T Ltd. & another [Appeal (civil) 881 of 2006, dated 31.01.2006] , wherein the Honourable Supreme Court held that it may not be proper to allow the employees to break the discipline with impunity. Hence, he seeks for dismissal of these appeals.

9. Heard the learned counsel for the parties and perused the records.

10. A close scrutiny of the records would reveal that the appellants were workers in the second respondent Mill and they formed new Union called Madura Coats Workers Federation and they issued a strike notice dated 23.11.2012 to commence the strike from 06.12.2012. However, contrary to the date of notice, the strike commenced from 01.12.2012. Therefore, the Deputy Commissioner of Labour, who was dealing with the issue, described the strike as illegal. During the period only, the appellants abused and intimidated the superior officers, threatened the co-workers to desist from doing work and come out of the Mill. Subsequently, a compromise was reached between the Management of the Labour Unions except the Union, in which the appellants are the parties. One more important point to be noted is that all the Labour Unions are registered and recognised unions while the appellants' Union is an unregistered one. When all the registered and recognised Unions accepted the compromise and all the workers have resumed the work in the Mill, except 40 members of the newly formed Union. Even out of 40 workers of the unregistered Union, 34 members accepted the settlement and also they regretted for their act and accepted the minor punishment of suspension for 30 days and transfer to some other Unit. Only six persons including the appellants alone were adamant and therefore, left with no other go, the Management issued show cause notices, for which, replies were submitted by the appellants. Since replies given by the appellants were not satisfactory, an Enquiry Officer was appointed. During the enquiry, the Management examined four witnesses and they were cross examined by the workmen and from a perusal of Exs.M.53 and 54, this Court finds that four witnesses were examined and they were cross examined by the appellants. Further, the Management produced the documents to show that the Management suffered production loss as well as mass absence during strike period. The appellants played an important role in conducting the illegal strike causing loss to the industry. Apart from that, the allegation was that the appellants abused and intimidated the superior officers and threatened the co-workers to desist from doing work and come out of the Mill. Therefore, based on the evidence and documents, the Enquiry Officer found that the charges against the appellants were proved and filed a report Ex.M.54. Based on the report, following due procedure of law, the appellants were dismissed from service on 25.10.2013.



11.The Labour Court also found that the domestic enquiry was conducted in a fair and proper manner and found that all the charges framed against the appellants were proved based on oral as well as documentary evidence. Further, the Labour Court found that the punishment imposed on the appellants is proper and the Labour Court refused to interfere with the punishment of dismissal from service on the ground that the quantum of punishment is proportionate to the charges against the petitioner.

12.The learned Single Judge rightly found that the appellants are responsible for the strike and taking note of the fact that all the recognized Labour Unions settled the issue with the Management and only persons like the appellants, who indulged in misconduct alone did not accept the settlement, the learned Single Judge refused to interfere with the award of the Labour Court.

13.This Court is also inclined to follow views of the authorities as well as the learned Single Judge and there is no occasion for this Court to take a different view from the view taken by the Labour Court. This Court, while exercising power under Article 226 of the Constitution of India, cannot go into the question whether domestic enquiry conducted was proper and punishment imposed is appropriate or not.

14.In this case, admittedly, it is proved that the appellants alone were responsible for conducting illegal strike which had commenced before the notified date which was also confirmed by the Deputy Commissioner of Labour as well as Labour Court through evidence that the appellants conducted strike in such a manner causing loss to the company. It is specifically proved that the members of the appellants Union abused the superior officers and apart from that, they also indulged in threatening co-workers to desist from work and therefore, no mercy can be shown to the appellants.

15.In para 5 of the Standing Order for the Labourers at 22.1., it has been found that what is meant by misconduct. If it is found that an employee or worker has committed misconduct, only lesser punishment like cut in increment and suspension of 30 days alone could be given. Whereas, the allegation against the appellants is very serious in nature i.e., threatening and abusing the superior officers and threatening the co-workers to desist from the work, which are all proved by evidence. Therefore, the arguments of the learned counsel for the appellants would not help the appellants in any way. Even the Judgment reported in (1983)4 SCC 225 [Sengara Singh and others vs. State of Punjab and others] relied upon by the learned counsel for the appellants would speak about an agitation by the appellants therein and dismissal of 1100 former members of the Police Force in Punjab, where the State of Punjab could not find out that all the 1100 dismissed members were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Therefore, the Honourable Supreme Court held that there cannot be any discriminatory treatment between those who were reinstated and rest of the 1200 police persons who were dismissed from service. Paragraph 9 of the said Judgment is extracted below-



"9. What then should be done? The appellants have been accused of participating in a procession taken out by the members of the Police Force for ventilating their grievances about their service conditions. May be that still having not reached the stage of tolerance for formation of associations amongst police personnel, the demonstrators may be looked upon with disfavour. But approaching the matter from this angle, all the 1100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of the arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action."

16. The Judgement in L.K. Verma vs. H.M.T., Ltd and another dated 31.01.2006 relied on by the learned counsel for the respondent, Management would actually give correct picture on what has been done in the second respondent company. The Honourable Supreme Court has stated that the recent trend in the decisions of this Court is to strike a balance between the earlier approach of the industrial disputes wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. The relevant paragraph of the said Judgment is extracted hereunder:-

"This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment



imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this Court was bound to follow the decisions of this court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

17. When more than 2000 workers were reinstated and the Management refused to reinstate only six employees including the appellants, it would show the gravity of the misconduct committed by the appellants. When the management was able to reinstate every worker except 6, definitely, it should be because of the past antecedents of the appellants and the indiscipline activities committed by the appellants. If they are reinstated, definitely, it will go against the interest of the very company itself and the working atmosphere will be affected. Therefore, we see no merits in these appeals. Hence, these appeals are dismissed. No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+One cc to Mr.T.Ravindran, Advocate, SR.No.44106

+4ccs to Mr.R.Karunanidhi, Advocate, SR.No.44808

skn

RL/7C/8P/CVC/SAR1/2/4/2018

W.A. (MD) No.116 to 119 of 2018