

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.07.2018****CORAM:**

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

W.A(MD)No.955 of 2017

The Management,
Sivagangai District Co-operative Milk
Producers Limited,
Karaikudi - 2,
Sivagangai District. ... Appellant/Petitioner
Vs.

1. The Presiding Officer,
Labour Court,
District Court Building,
Madurai. ... 1st Respondent/1st Respondent
2.P.Ganesan ... 2nd Respondent/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 29.11.2016 made in W.P(MD)No.8515 of 2012, on the file of this Court.

Prayer in WP(MD)No. 8515 of 2012 :

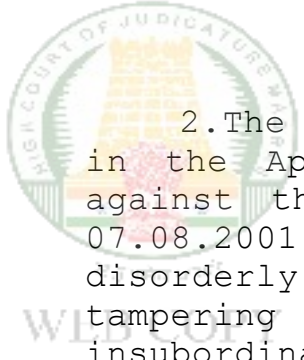
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI, calling for the records on the file of the Respondent relating to the order of the Labour Court, Madurai in I.D.No.41/2006, dated 13-10-2011 and to quash the same.

For Appellant : Mr.V.O.S.Kalaiselvam
For R - 2 : Mr.S.M.Mohan Gandhi

JUDGMENT

(Judgment of the Court was delivered by
DR.ANITA SUMANTH, J.)

This Writ Appeal is filed by the Management of the Sivagangai District Co-operative Milk Producers Limited challenging an order of the learned Single Judge dated 29.11.2016 dismissing their Writ Petition.



2. The second respondent workman was employed as a Boiler Man in the Appellant Concern on 24.12.1987. Charges were framed against the workman vide three charge memos dated 11.04.2001, 07.08.2001 and 08.10.2001. Briefly put, the charges relate to disorderly behaviour, use of abusive and unparliamentary language, tampering with official records such as boiler log books, insubordination and indisciplined behaviour.

3. An Enquiry Officer was appointed and enquiry was conducted on 20.05.2002. After due enquiry, the officer held that 17 charges had been proved as against the workman and he was dismissed from service on 21.06.2005.

4. An Industrial Dispute in I.D.No.41 of 2006 was filed by the workman. It is relevant to note that the workman had not challenged the legality or validity of the enquiry before the Labour Court and the only issue canvassed related to the proportionality of the punishment.

5. After hearing both parties, the Presiding Officer of the Labour Court came to the conclusion that the charges were not liable to be sustained and directed reinstatement of the workman in service within two months from the date of receipt of order. The Labour Court, while directing reinstatement, also considered the grant of attendant benefits concluding that the workman was not entitled to back wages and other benefits.

6. Writ petitions were filed challenging the aforesaid order of the Labour Court both by the management as well as by the workman. Both writ petitions came to be dismissed by the learned single Judge vide his order dated 29.11.2016. As far as the workman's writ petition was concerned, W.P(MD)No.13192 of 2014, it was found that the workman not having questioned the legality of the enquiry before the Labour Court, could not agitate the same thereafter. Accordingly, the writ petition filed by the workman was dismissed.

7. As far as W.P(MD)No.8515 of 2012 was concerned, wherein the management had challenged the direction of the Labour Court to reinstate the workman, the learned single Judge upheld the conclusion of the Labour Court finding that the denial of back wages and the direction to reinstate was justified on an overall consideration of the facts concerned.

8. Having heard learned counsel and perused the papers, we are of the view that the order of the learned single Judge does not contain any infirmity or illegality and no case has been made out in this regard.

<https://hcservices.courts.gov.in/hcservices/>
9. The learned counsel appearing for the appellant relies on a judgment of the Supreme Court in the case of *U.P.S.R.T.*



Corporation and Vinod Kumar, [2008 -I-LLJ-676 (SC)], wherein the Bench confirms the order of dismissal of a workman as being the appropriate punishment for an employee found guilty of misappropriation of funds. This judgment is factually distinguishable insofar as the charges framed in the present case are different.

10. The management also relies on a judgment of the Supreme Court in the case of *L & T Komatsu, Ltd., and Udayakumar* [2008 (1) L.L.N.783], particularly paragraph 11, which discusses the principles in relation to proportionality of punishment. Paragraph 11 states as follows:

'11. Again in *Madhya Pradesh Electricity Board V. Jagdish Chandra Sharma* [2005 (2) L.L.N.67], this Court dealt with the matter as follows, in para.8, at pages 70 and 71:

"The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction was imposed on the employee. The jurisdiction under S.107A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 225 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In *Uttar Pradesh State Road Transport Corporation V. Subhash Chandra Sharma and others* [2000 (2) L.L.N. 402], this Court, after referring to the scope of interference with punishment under S.11A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to



be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In *Krishankali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh* [2004 (4) L.L.N. 766], this Court after referring to the decision in *State of Rajasthan V.B.K.Meena* [1996 (2) L.L.N. 1269], also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In *Bharat Forge Company, Ltd, v. Uttam Manohar Nakate* [2005 (1) L.L.N. 625], this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in *Mahindra and Mahindra Ltd. v. N.B.Narawade* [2005 (1) L.L.N. 1074] (vide supra). This Court summed up the position thus, in Para.14, at pages 1079 and 1080:

'It is no doubt true that after introduction of S.11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court / Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under S.11A is only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the



Court, or the existence of any mitigating circumstances which enquires the reduction of the sentence, is the past conduct of the workman which may persuade the Labour Court to reduce the punishment.'

It may also be noticed that in *Orissa Cement, Ltd. v. Vadikanda* (vide supra) and in *New Shorrock Mills v. Maheshbahai T.Rao* [1997 (1) L.L.N. 69] this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated:

'punishment of dismissal for using abusive language cannot be held to be disproportionate.'

If the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Employers, Management, Colliery, M/s Bharat Coking Coal, Ltd., V. Bihar Colliery Kamgar Union through Workman* [2005 (2) L.L.N.47], this Court after referring to and quoting the relevant passages from *Krsihnakali Estate v. Akhil Bharatiya Chah Mazdoor Sangh* and another [2004 (4) L.L.N. 766] (vide supra) and *Tournamulla Estate v. Workmen* [1973 (2) L.L.N.190], held in Para 17, at page 5].

'.. The Courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the industrial Tribunal could have exercise its authority under S.11A of the Act to interfere with the punishment of dismissal...'"

11. In the present case, all relevant facts and circumstances have been duly taken into consideration by the Labour Court as confirmed by the learned single Judge. It is a settled proposition that Courts will be cautious in re-appreciating evidence and findings on questions of fact, particularly, when the legality of the proceedings have not been challenged. We are faced with concurrent findings of fact and see no reason to interfere in the same. In this view of the matter, we decline to interfere with the order of the learned single Judge and confirm the same. The Writ Appeal is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/



To

The Presiding Officer,
Labour Court,
District Court Building,
Madurai.

+1cc to Mr.S.M.Mohan Gandhi, Advocate Sr.No.73758

PS/PM

VB/KAK/SAR1/04.09.2018/6P/3C

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