



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
16.03.2018	04.06.2018

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No.23557 of 2016andW.M.P. (MD) Nos.16923 and 16924 of 2016

A.Ganesan

... Petitioner

vs.

1.The Management
Sri Nachammai Cotton Mills
Chettinadu, Sivagangai District

2.The Presiding Officer
Labour Court, Madurai

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order passed by the Labour Court, Madurai in I.D.No. 105 of 2010 dated 05.07.2014, quash the same and consequently directing the first respondent to reinstate the petitioner in service with effect from 12.11.2008 with continuity of service with backwages and confer all monetary benefits to the petitioner.

For Petitioner : Mr.S.Bharathy Kannan

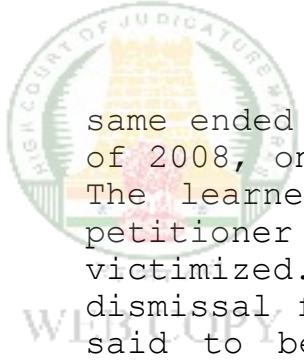
For Respondents : Mr.V.O.S.Kalaiselvam for R1
R2 - Court

O R D E R

The petitioner was employed in the first respondent - Mill. Disciplinary action was initiated against the petitioner independently on two counts. In both the petitioner was found guilty. The Management clubbed both the reports and dismissed the petitioner from service on 12.11.2008. The petitioner raised an industrial dispute in I.D.No.105 of 2010, before the Labour Court, Madurai. The Labour Court passed the impugned award dated 05.07.2014 dismissing the Industrial Dispute. The same is assailed in this writ petition.

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2. The learned counsel appearing for the petitioner would point out that the petitioner was also parallely prosecuted, but the



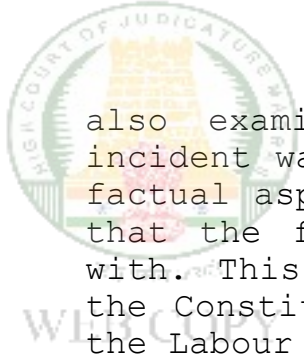
same ended in acquittal vide judgment dated 23.09.2015 in C.C.No.230 of 2008, on the file of the learned Judicial Magistrate, Karaikudi. The learned counsel for the petitioner also contended that the petitioner was acting as Union Leader and that is why he was victimized. He further contended that imposing the major penalty of dismissal for the charges framed against the petitioner can only be said to be grossly disproportionate. He would submit that the Labour Court failed to exercise the jurisdiction conferred on it under section 11-A of the Industrial Disputes Act 1947. He also faulted the Labour Court for not finding the domestic enquiry to be unfair. He wanted this Court to set aside the impugned punishment of dismissal and direct reinstatement of the petitioner in service with all consequential benefits.

3. This Court carefully went through the materials on record.

4. The learned counsel appearing for the Management drew the attention of this Court to para 11 of the impugned award passed by the Labour Court, wherein it has given a specific finding that though the worker questioned the fairness and validity of the domestic enquiry in his main petition, he did not press the same before the Labour Court. Infact, the counsel appearing for the workman made an endorsement that the domestic enquiry is not challenged. Therefore, the Labour Court was right in coming to the conclusion that the workman having not challenged the fairness and validity of the domestic enquiry, there was no need to probe into the same. The only point to be decided was as to whether the order of dismissal is justified.

5. The charges against the workman were two fold. The workman is said to have made an inflammatory speech on 26.07.2006 in a gate meeting. He had communalized the atmosphere and also incited violence. The said speech was duly recorded by the security personnel. Based on the same, a notice was issued on 09.08.2006. The petitioner wanted a copy of the said C.D. In fact, the Management produced the said CD before the Enquiry Officer. But the workman did not take part in the enquiry and that is why he was set ex parte. In fact, the witnesses, who heard the workman's inflammatory speech, deposed during enquiry. The petitioner herein chose not to cross-examine them. In any event, since the workman did not challenge the fairness and validity of the domestic enquiry, the only function of the Labour Court was to see if the findings of the Labour Court are supported by sufficient evidence. From para 15 onwards, the Labour Court had meticulously set out the facts and evidence and sustained the finding of the Enquiry Officer that the charges levelled against the workman stood proved. This Court is of the view that this finding of the Labour Court is eminently sound and does not warrant any interference.

6. The other charge levelled against the petitioner is more serious. On 07.09.2007, he had assaulted his superior officer. The said official lodged a criminal case against the petitioner. He



also examined himself during enquiry. Eye-witness to the said incident was also examined. The Labour Court has referred to these factual aspects from paragraphs 17 to 21 and came to the conclusion that the findings of the Enquiry Officer cannot be found fault with. This Court exercising its jurisdiction under Article 226 of the Constitution of India is of the view that the said finding of the Labour Court does not warrant any interference.

7. The only issue now to be considered is whether the punishment of dismissal is excessive and disproportionate. The charges levelled against the petitioner are serious. He had attempted to divide the workers and incited them to indulge in acts of violence. He had also physically attacked the superior officer, who tried to correct him during duty hours. Since the petitioner had indulged in gross acts of indiscipline and also exhibited violent tendencies, the Management has rightly dismissed him from service. The punishment imposed by the Management cannot be said to be excessive. The Labour Court referred to the decisions of the Honourable Supreme Court and held that the discipline at the workplace is a sine qua non for the efficient working of the organization. When an employee indulges in gross acts of indiscipline and the employer terminates him from service, it is not open to the Labour Court to take an indulgent view of the matter. The approach of the Labour Court cannot be faulted.

8. This Court finds no merit in the writ petition and the same stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Madurai.

+1cc to Mr.S.Bharathy Kannan, Advocate, SR.No.66837.
+1cc to Mr.V.O.S.Kalaiselvam, Advocate, SR.No.66558.

ORDER
IN

W.P. (MD) No.23557 of 2016

and

W.M.P. (MD) Nos.16923 and 16924 of 2016

04.06.2018

AAV/KRK

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RAM/JC/SAR 3/12.06.2018/3P/4C