



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2018

DELIVERED ON : 04.06.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.2944 of 2016, 184, 185 & 14170 of 2017
and
W.M.P.(MD)Nos.2605 of 2016, 143, 144 & 11084 of 2017

South India Mines & Minerals

Industries Private Limited,

Represented by its Executive Director,

Door No.303A,

Narayana Nagar,

Shankar Nagar,

Thalayuthu,

Thirunelveli District.

... Petitioner in all Writ Petitions

Vs.

1) The Central Government Industrial

Tribunal cum Labour Court,

Chennai.

2) The Assistant Labour Commissioner (Central),

Door No.5,

Second Floor,

Lady Doak College Road,

Chinna Chokkikulam,

Madurai 625 002

... 1st & 2nd Respondents in
W.P.(MD) No.2944 of 2016

3) E.Sivan

... 3rd Respondent in W.P.(MD) No.2944 of 2016
and 2nd respondent in W.P.(MD) Nos.184, 185 & 14170 of 2017.

4) The Labour Court,

Thirunelveli.

... 1st respondent in W.P.(MD)
Nos.184 & 185 of 2017

5) The Presiding Officer,

Labour Court,

Thirunelveli.

... 1st Respondent W.P.(MD) No.14170 of 2017

PRAYER in W.P.(MD) No.2944 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 08.09.2015 passed in the Industrial Dispute in I.D.No.72



of 2014 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai and quash the same.

PRAYER in W.P.(MD) No.184 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 23.11.2016 passed in the claim petition in C.P.No.8 of 2016 on the file of the first respondent/ Labour Court, Thirunelveli and quash the same.

PRAYER in W.P.(MD) No.185 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 23.11.2016 passed in the claim petition in C.P.No.129 of 2016 on the file of the first respondent/ Labour Court, Thirunelveli and quash the same.

PRAYER in W.P.(MD) No.14170 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 20.06.2017 passed in the claim petition in C.P.No.9 of 2017 on the file of the first respondent/ Labour Court, Thirunelveli and quash the same.

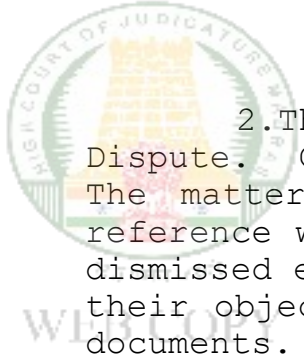
For Petitioner : Mr.T.R.Jeyapalam
(in all W.P.(MD)'s)

For R3 in W.P.(MD) No.
2944/16 and R2 in
W.P.(MD) Nos. 184, 185
&14170 of 2017 : Mr.D.Sivaraman

For R2 in WP(MD)No.
2944/16 : Ms.S.Srimathy
Special Government Pleader

COMMON ORDER

The writ petitioner is the employer. The private respondent, E.Sivan, was working as a Driver in the petitioner company. He was sent on deputation to M/s.Nellai Transport, a Transport firm, exclusively engaged in the business of transporting minerals from the mines of the petitioner to various places. He was placed under suspension on 17.12.2012. A charge memo dated 28.01.2013, was also issued. The delinquent offered his explanation dated 14.02.2013, denying the charges. The Enquiry Officer was appointed. During the pendency of the enquiry, the Enquiry Officer passed away and he was substituted by another Enquiry Officer. The enquiry concluded and a report dated 22.10.2013, was submitted holding that all the charges framed against the delinquent stood proved. The delinquent was dismissed from service by order dated 30.10.2013.



2. Thereafter, the dismissed employee raised an Industrial Dispute. Conciliation proceedings were conducted, but they failed. The matter was referred for adjudication to the Tribunal. The reference was taken on file and numbered as I.D.No.72 of 2014. The dismissed employee filed a claim statement, while the employer filed their objections. Evidence was adduced on either side, by marking documents. Thereafter, the Labour Court passed the impugned award dated 08.09.2015, directing reinstatement of the employee but without back wages.

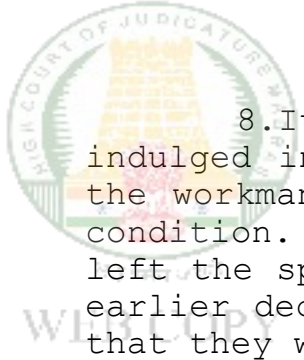
3. The Management did not comply with the direction to reinstate, but questioned the same by filing a writ petition in W.P. (MD)No.2944 of 2016. Since, he was not reinstated, the employee filed C.P.Nos.8 of 2016, 129 of 2015 and 9 of 2017. Though CPs were allowed. Questioning the orders passed in the claim petitions filed by the employee, the Management has filed W.P.(MD)Nos.184, 185 and 14170 of 2017. The orders passed in the claim petitions are only consequential in nature. Since they are interlinked, all the writ petitions are taken up together.

4. Heard the learned Counsel on either side.

5. Learned Counsel appearing for the Management reiterated all the grounds taken in his writ petition. He also took the Court through the materials enclosed in the typed set. He strongly contended that it would be most undesirable to retain such a workman in the services of the company. He contended that the Labour Court was not justified in interfering with the punishment imposed on the delinquent, after recording a finding that a domestic enquiry was properly conducted and that the charges against the workman were held to be proved.

6. The workman did not file any cross writ petition. It is true that the Labour Court passed an award of reinstatement in service with continuity of service but back wages were denied. The findings in the impugned award are also adverse to the workman. But the workman has not chosen to challenge the award passed by the Labour Court. Therefore, the scope of this writ petition is rather limited.

7. All that this Court needs to do is to see whether the Labour Court was justified in interfering with the punishment imposed on the delinquent. This Court went through the contents of the charge memo dated 28.01.2013. The allegation is that the delinquent spoke to his superior on his mobile phone in an inebriated state and made accusatory remarks. He also went to the house of another superior official in a drunken condition. This had happened on more than one occasion. The charge memo alleges that on 23.06.2012, the delinquent went to the house of his superior Thiru.R.Venkateswaran. But the charge memo itself came to be issued only on 28.01.2013. The delinquent was working as a Driver, transporting minerals from the mines. From this, the social background can also be easily visualized.



8. It is not the case of Management that the delinquent indulged in any act of violence. Even the charge memo reads that the workman went to the house of superior officer in an inebriated condition. When he noted that the officer was not available, he had left the spot. Therefore, the Labour Court after referring to some earlier decisions held that the culture of the unskilled workers is that they would raise their voice when ventilating their grievances. The delinquent was aggrieved that he has been retained on deputation against his will and he is made to work in different shifts without rest. Therefore, he appears to have given vent to his emotions. This conduct cannot be met with the punishment of dismissal. That would amount to imposing capital punishment on him.

9. The Labour Court took the view that the livelihood of the workman should not be hit for this conduct. The petitioner was dismissed from service on 30.10.2013. The award was passed on 08.09.2015. There is a clear gap of almost two years between the date of dismissal and the date of award. The Labour Court had negatived the claim for back wages. This itself would be sufficient punishment in the view of the Labour Court. The approach of the Labour Court cannot be said to be perverse, warranting interference at the hands of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Section 11(A) of the Industrial Disputes Act enables the Labour Court to interfere with the punishment of dismissal, if it is of the view that it is unjustified.

10. In this case, the Labour Court formed a conclusion that the punishment handed out by the Management is grossly disproportionate. The contention of the petitioner's counsel is that denial of back wages is not a punishment by itself. But, in the facts and circumstances of this case, this Court is of the view that the award of the Labour Court warrants no interference.

11. W.P.(MD)No.2944 of 2016 stands dismissed. Since the orders passed in the Claim Petitions are consequential in nature, the writ petitions challenging the orders passed in the Claim Petitions also are liable to be dismissed. Accordingly, W.P.(MD)Nos.184, 185 and 14170 of 2017, stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To



2) The Assistant Labour Commissioner (Central),
Door No.5, Second Floor,
Lady Doak College Road,
Chinna Chokkikulam,
Madurai 625 002

3) The Labour Court,
Thirunelveli.

4) The Presiding Officer,
Labour Court,
Thirunelveli.

+4cc to M/S.T.R.Jeyapalam, Advocate SR.No. 66606
+1cc to M/S.D.Saravanan, Advocate SR.No. 66567

ORDER MADE IN
W.P. (MD) Nos. 2944 of 2016, 184, 185 & 14170 of 2017
04.06.2018

mr/ns
JM/SV MMS/SAR 2/19.06.2018/5P/10C