

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 21.01.2019
CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.152/2019 & CMP.No.1453/2019

The Executive Engineer
Tamil Nadu Kudineer Vadikal Varriam
Paramaippu Kottam, Pillur
Coimbatore-641004. .. Appellant / Respondent
Versus

1 Sakthivel .. 1st Respondent / Workman
2 The Presiding Officer
Labour Court, Coimbatore. ... 2nd Respondent /
Labour Court

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 11.04.2018 made in WP.No.15234/2011, filed for issuance of a writ of certiorari calling for the records of the order passed in ID.No.382/2003 dated 27.01.2010 and 06.12.2010 on the file of the Labour Court, Coimbatore, the 2nd respondent herein and quash the said Award.

For Appellant : Mrs.Narmadha Sampath, AAG
assisted by Mr.R.Eraskine Leo
For R1 : Mr.Ajoy Khose

सत्यमेव जयते
JUDGMENT

[Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.Ajoy Khose, learned counsel accepts notice on behalf of the 1st respondent.

2 The respondent / Management in the impugned Preliminary Award dated 27.01.2010 and Final Award dated 06.12.2010 in ID.No.382/2003 on the file of the 2nd respondent - Labour Court, is the appellant herein.

3 The 1st respondent / Workman has raised an industrial dispute, questioning the order of dismissal dated 18.11.2002, which order came to be passed after a domestic enquiry, on the ground that he along with a co-worker, had committed theft.

4 The 2nd respondent - Labour Court, has passed a Preliminary Award dated 27.01.2010 by framing the preliminary issues, viz., '[a] Whether the Enquiry Officer, conducted the domestic enquiry in a fair and proper manner? and [b] Whether the findings of the Enquiry Officer is based on the acceptable legal evidence?'

5 The 2nd respondent - Labour Court, in the Preliminary Award, found in paragraph No.9 that 'in the result, in this case, a Preliminary Award is passed holding that the Enquiry Officer, namely, the Assistant Executive Engineer of the respondent has not conducted the domestic enquiry in a fair and proper manner and therefore, the findings of the said Enquiry Officer under Ex.M.11, are not based on acceptable legal evidences'. The 2nd respondent - Labour Court, also provided an opportunity to the appellant/Management to adduce further evidence to sustain the findings rendered by the Enquiry Officer and in the course of enquiry, Exs.M.1 to M.7 came to be marked and on behalf of the respondent/Management, one Thiru.K.Radhakrishnan, Assistant Engineer, was examined. The 2nd respondent - Labour Court passed the impugned Final Award on 06.12.2010 holding that the very same documents which came to be marked in the Preliminary Award, have been marked and despite that, the Labour Court had independently assessed the weightage of the oral and documentary evidences and also taken note of the fact that the criminal case registered against the 1st respondent / workman, had also ended in acquittal and on appraisal and scrutiny of the entire materials, found that the order of dismissal passed against the 1st respondent/workman is liable to be set aside and he is entitled for continuity of service from 23.07.1997 and also back wages and other attendant benefits @ Rs.1,300/- per month for the non-employment period commencing from 23.10.2000 to till the date of reinstatement in service and also directed the Management to pay a cost of Rs.2,000/- as cost of the litigation to the 1st respondent / workman.

6 The Management, challenging the legality of the said Award, had filed WP.No.15234/2011 insofar as the 1st respondent / workman is concerned and in respect of the co-worker against similar kind of Award, filed WP.No.12303/2012 and both writ petitions were entertained and pendency of the writ petitions, a direction was issued to comply with the requirement of section 17-B of the Industrial Disputes Act, 1947 and the said direction was also complied with by the Management.

7 The learned Single Judge, upon perusal of the grounds and on consideration and appraisal of the impugned Award and other materials, vide impugned common order dated 11.04.2018, had dismissed both the writ petitions and challenging the legality of the order dated 11.04.2018 made in WP.No.15234/2011, the present writ appeal is preferred.

8 Mrs.Narmadha Sampath, learned Additional Advocate General assisted by Mr.S.Eraskine Leo, learned counsel appearing for the appellant / Management has drawn the attention of this Court to the typed set of documents and would submit that though as against the order of dismissal, the 1st respondent / workman was having an effective alternate remedy, he did not avail the same and had straight away raised the Industrial Dispute and the Preliminary as well as the Final Awards went against the Management and she would further aver that the services of the 1st respondent / workman have not been regularised and despite the fact that from the date of dismissal till the impugned Award, he did not work and the 2nd respondent - Labour Court had ordered reinstatement with continuity of service and full back wages and in respect of the non-employment period, the 1st respondent / workman is not entitled to any wages. It is the further submission of the learned Additional Advocate General that the charge leveled against the 1st respondent / workman is very serious in nature and it pertains to moral turpitude in the form of allegation of theft and both the 2nd

respondent - Labour Court as well as the learned Single Judge, had not taken into consideration the nature and gravity of the charge and ordered reinstatement of the 1st respondent / workman with continuity of service and other attendant benefits and hence, prays for interference.

9 Per contra, Mr.Ajoy Khose, learned counsel appearing for the 1st respondent / workman would submit that the 2nd respondent - Labour Court in the Preliminary Award as well as in the Final Award, on a thorough consideration of the oral and documentary evidences, had rightly reached the conclusion to order reinstatement of the 1st respondent / workman with attendant and consequential benefits and challenge made by the Management in filing the writ petition, has also ended in dismissal and since the findings are concurrent in nature, this Court, in exercise of its Appellate Jurisdiction under Clause 15 of the Letters Patent, may not re-appreciate the said evidences and reach an altogether a different conclusion and prays for dismissal of the writ appeal with exemplary cost.

10 This Court paid its best attention to the rival submissions and also perused the materials placed before it in the form of typed set of documents.

11 The primordial question arises for consideration is that whether the impugned Preliminary Award and Final Award passed by the 2nd respondent - Labour Court as confirmed by the learned Single Judge in WP.No.15234/2011 warrant interference?

12 The domestic enquiry was conducted by the Assistant Executive Engineer, viz., Thiru L.Janarthanan, and he submitted his Report under Ex.M.6 dated 13.08.2002, holding that the petitioner/workman/1st respondent herein, was found guilty of the charge that he has committed theft along with the co-worker. The 1st respondent/workman made a challenge to the order of dismissal by raising ID No.382/2003 and the 2nd respondent - Labour Court, has formulated a preliminary issue, viz., 'whether the Enquiry Officer conducted the domestic enquiry in a fair and proper manner and whether the findings of the Enquiry Officer are based on acceptable legal evidence'.

13 The 2nd respondent - Labour Court, went into the oral and documentary evidences let in during preliminary enquiry and reached a conclusion that the Assistant Executive Engineer / Enquiry Officer did not conduct the domestic enquiry in a fair and proper manner and therefore, the findings of the said Enquiry Officer under Ex.M.11, are not based on acceptable legal evidence and gave a chance to the Management to let in evidence to sustain the findings reached by the Domestic Enquiry Officer.

14 In the Award enquiry, Thiru K.Radhakrishnan, Assistant Engineer of the appellant/Management examined himself as M.W.1 and Exs.M1 to M7 were marked. The 2nd respondent - Labour Court though found that Exs.M1 to M7 were part of the documents marked during preliminary enquiry, did go into the legality or otherwise of the said evidence and formulated the following questions for consideration:-

'1 Whether the respondent has proved the charge of theft levelled as against the petitioner?

2 Whether the order of dismissal dated 18.11.2002 under the Ex.M7 is to be set aside?

3 Whether the petitioner is entitled for reinstatement in service under the respondent with continuity of service? If the answer is yes, whether he

is entitled for back wages and other attendant benefits?''

15 The 2nd respondent - Labour Court found that the appellant/Management did not issue any show cause notice or charge sheet to the 1st respondent / workman specifying the allegations and therefore, the 1st respondent / workman was prevented from making an effective defence. The 2nd respondent - Labour Court also gone into the allegation as to whether the 1st respondent / workman along with Thiru K.Nagaraj [petitioner in ID.No.477/2003] committed theft of three motors, brass ingots and aluminium ingots belonging to the appellant/Management prior to 09.10.2010 at Bodithimmampalayam Pipe Factory, while they were working as Maintenance Assistants and factually found that as per the evidence of M.W.1, he was not aware of the contents of the documents and on going through the documents only he became aware of the contents and he was also informed by the former officials and he did not know the facts of the case directly.

16 The 2nd respondent - Labour Court found that Ex.M2 is the case in Cr.No.435/2000, registered against the 1st respondent / workman and his co-worker by Annur Police Station for the commission of the alleged offence u/s.381 IPC and found that the said criminal case

has ended in acquittal and as per the contents of the First Information Report, they developed suspicion against the 1st respondent / workman and the co-worker, viz., Tr.K.Nagaraj. The 2nd respondent - Labour Court has also taken note of the evidence of M.W.1, where he had deposed that in the year 2000, nobody was working in the Pipe Factory at Bodithimmampalayam and prior to that, one contractor was running the factory and the production was stopped from the year 1993 and from the years 1993 to 2000, various persons were employed as watchman and at the time of handing over the possession to the appellant/Management by the Contractor, no inventory of articles have been taken and the building was having only a roof without any compound wall and further deposed that as per the Stock Register, no statement was prepared as to the availability of the said stocks and he was also aware of the fact that in respect of the criminal case registered on the very same set of allegations, the 1st respondent / workman has been acquitted. M.W.1 further deposed that he was not aware of the brand name of the motor, the company in which it came to be manufactured and the said details have not also been given either in the complaint given before the police station or in the Enquiry Report.

17 The 2nd respondent - Labour Court has recorded the finding that the appellant/Management did not produce

any document to prove that the properties which were said to be stolen, were kept in the said Factory by producing the Stock Register and one Senguttuvan was in-charge of the said premises and he was not examined as a witness on behalf of the appellant/Management. The 2nd respondent - Labour Court further found that even in the Final Award Enquiry, the same set of evidences, which were let in during preliminary enquiry, have been let in once again by the appellant/Management despite the opportunity given to them to adduce further evidence to sustain the findings of the Enquiry Officer and therefore, found that the appellant/Management had failed to establish the charge levelled against the 1st respondent/workman by adducing acceptable legal evidence and the consequent order of dismissal from service.

18 In the considered opinion of the Court, the 2nd respondent - Labour Court had recorded its findings in the Final Award by thorough consideration of the oral and documentary evidences. In fact, the learned Single Judge, in the writ petition filed by the appellant/Management, challenging the said Award, had also gone into the said issue and found that the findings recorded by the 2nd respondent - Labour Court do not warrant interference. In the considered opinion of the Court, the findings as to the sustainability of the domestic enquiry and the quantum of punishment imposed upon the 1st respondent/workman do not warrant interference for the reason that this Court, in exercise of its judicial review, cannot reappraise the oral and documentary evidences and reach an altogether different conclusion.

19 Now, coming to the issue of quantum of back wages and other attendant benefits awarded by the 2nd respondent - Labour Court to the 1st respondent/workman is concerned, the 1st respondent/workman was working as the Maintenance Assistant from 23.07.1997 till he was dismissed from service on 18.11.2002 and prior to that, he was suspended with effect from 23.10.2000. The 2nd respondent - Labour Court did take note of the fact that the services of the 1st respondent/workman was not regularised and however found that he is entitled for reinstatement in service since it was found that the dismissal of the workman was an illegal dismissal. The 2nd respondent - Labour Court, also had taken note of the fact that but for the suspension and dismissal from service, the 1st respondent/workman would have definitely continued in service and since the criminal case on very same set of facts had ended in acquittal and that the availability of the evidence do not also point out any delinquency on the part of the 1st respondent/workman, the 2nd respondent - Labour Court had found that he is entitled to reinstatement in service with continuity of

service and back wages and other attendant benefits at the rate of Rs.1300/- per months for the non-employment period commencing from 23.10.2000 till he is reinstated in service.

20 This Court, on an independent application of mind to the findings recorded by the 2nd respondent - Labour Court in the Final Award as well as the impugned order dated 11.04.2018 made in WP.No.15234/2011, is of the considered view that there is no error apparent on the face of the record and no infirmity in the said findings.

21 The writ appeal lacks merit and deserves dismissal and accordingly, the writ appeal is dismissed confirming the order dated 11.04.2018 made in WP.No.15234/2011. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AP
To

1 The Executive Engineer
Tamil Nadu Kudineer Vadikal Varriam
Paramaippu Kottam, Pillur
Coimbatore-641004.

2 The Presiding Officer
Labour Court, Coimbatore.

+1cc to Mr.Ajoy Khose, Advocate SR.No. 5147

WA.No.152/2019

A.SK(26/02/2019)

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