

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal Nos.84 to 86 of 2011

W.A.No.84 of 2011:-

PENTASIA PATTALI THOZHIR SANGAM,
No.123, Pillaiyar Koil Street,
Sandorpalayam, Cuddalore. ... Appellant / 2nd Respondent

-vs-

1. The Management of Pentasia Chemicals Limited,
Sipcot Industrial Estate,
Cuddalore-607 005. ... Respondent / Petitioner

2.The Presiding Officer,
Labour Court,
Cuddalore-607 003. ... Respondent / 1st Respondent

APPEAL under Clause 15 of the Letters Patent to set aside
the order of this Court dated 07.04.2010 passed in W.P.No.23155
of 2005 filed for issuance of a Writ of Certiorari, calling for
the records and to quash the award dated 13.04.2005 passed by
the first respondent in I.D.No.81 of 1994.

W.A.No.85 of 2011:-

PENTASIA PATTALI THOZHIR SANGAM,
No.123, Pillaiyar Koil Street,
Sandorpalayam, Cuddalore. ... Appellant / Petitioner

-vs-

1.The Management of Pentasia Chemicals Limited,
(Now known as Asian Paints Ltd.,
Penta Division), Sipcot Industrial Estate,
Cuddalore-607 005.

2.The Presiding Officer,
Labour Court,
Cuddalore-607 003.

3.Pentasia Anna Thozhilalar Sangam,
SIPCOT Industrial Complex,
Cuddalore-3.

.. Respondents / Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order of this Court dated 07.04.2010 passed in W.P.No.37730 of 2005 filed for issuance of a Writ of Certiorari, calling for the records of the second respondent in I.D.No.82 of 1994, dated 13.04.2005 and quash the same and consequently order full payment of wages for the lock out period.

W.A.No.86 of 2011:-

PENTASIA PATTALI THOZHIR SANGAM,
No.123, Pillaiyar Koil Street,
Sandorpalayam, Cuddalore.

.. Appellant / Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Cuddalore-607 003.

2.The Management of Pentasia Chemicals Limited,
Sipcot Industrial Estate,
Cuddalore-607 005.

.. Respondents / Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order of this Court dated 07.04.2010 passed in W.P.No.37731 of 2005 filed for issuance of a Writ of Certiorari, calling for the records of the second respondent relating the proceedings in I.D.No.81 of 1994, dated 13.04.2005 and quash the same and consequently direct the first respondent to reinstate the worker V.Prabhu represented by the petitioner Trade Union with back wages and attendant benefits.

For Appellant : Mr.R.Muralidharan

(In All Appeals)

For Respondent-Management : Mr.R.Krishnamoorthy,
(In All Appeals) Senior Counsel

: assisted by M/s.Vedha

: Mr.Meenakshi Sundaram
for R1, R2 Labour Court,

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals have been filed by the Employees Union, viz., Pentasia Pattali Thozhir Sangam challenging the common order passed in Writ Petition Nos.23155, 37730 and 37731 of 2005, dated 07.04.2010.

2.Heard Mr.R.Muralidharan, learned counsel for the appellant; and Mr.R.Krishnamoorthy, learned Senior Counsel, assisted by M/s.Vedha, learned counsel for the respondent-Management.

3.The respondent-Management filed W.P.No.23155 of 2005 challenging the award of the Labour Court, Cuddalore in I.D.No.81 of 1994, dated 13.04.2005, by which, the Labour Court directed reinstatement with all benefits in respect of two workmen, who were dismissed from service by the respondent-Management.

3.1.The appellant/Employees Union filed W.P.No.37730 of 2005 challenging the award passed by the Labour Court, Cuddalore in I.D.No.82 of 1994, dated 13.04.2005, by which, the petition filed by the Employees Union to declare the lock-out as illegal was dismissed.

3.2.The other writ petition filed by the appellant/Employees Union is W.P.No.37731 of 2005 challenging the award in I.D.No.81 of 1994, dated 13.04.2005, by which, the Labour Court confirmed the punishment awarded to workman V.Prabhu, who was dismissed from service, and dismissed the dispute raised.

4.The writ petition filed by the Management challenging the award of the Labour Court in I.D.No.81 of 1994, insofar as those two workmen, who were directed to be reinstated, was allowed. The two writ petitions filed by the appellant/Union were dismissed.

5.We shall first take up Writ Appeal Nos.84 and 85 of 2011, which have been filed challenging the orders passed in W.P.Nos.23155 of 2005 and 37730 of 2005. So far as W.A.Nos.84 and 85 of 2011 are concerned, before the Labour Court, two questions were framed for consideration, which are as follows:-

“(i) Whether the Management violated the terms and conditions of the settlement dated 08.05.1991 for giving special increment to the workmen namely S.Sampathkumar, S.S.Kumaravel and I.D.Samuelson on

the evaluation of their performance? If so what relief can be given?

(ii) Whether the termination of the service of M.K.Radhakrishnan and Logadasan are valid and if not to what relief they are entitled to?"

6.The first question, which was taken up for consideration by the Labour Court was whether the special increment given to the three workman on the evaluation of their performance was in violation of the memorandum of settlement entered into under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D.Act"), which was marked as Ex.M.159.

7.The second question was whether the termination of services of two of the employees, viz., Mr.M.K.Radhakrishnan and G.Logadasan were valid. The findings on this point is in paragraph 9 of the award passed by the Labour Court. The Labour Court found that in Ex.M.159, which is the settlement under Section 12(3) of the I.D.Act, there is no clause for granting special increment to any worker. However, in the discretion of the Management, special increment can be granted in recognition of good work and unless this is proved, the Management cannot be stated to have acted bona fide. The Labour Court after going through the various clauses in the settlement, Ex.M.159, held that there is no clause in the settlement for grant of special increment and the act of the respondent-Management is against the terms of the settlement and it has adopted an unfair labour practice. The correctness of this finding was tested by the learned Writ Court, in the writ petition filed by the respondent-Management. It was pointed out that even if there is no clause in Ex.M.159, grant of special increment is the discretion of the Management and when such discretion is exercised, it is not known as to how the Labour Court could have come to the conclusion that it would amount to unfair labour practice in terms of the provisions of the I.D.Act.

8.Further, the Court pointed out that the Employees Union was not in a position to show that the increment granted to the three individual workmen was not in recognition of their good work. Furthermore, the Court noted that it is the admitted case of the appellant/Union that there were seventeen workmen during construction stage prior to the commissioning of the plant and they were granted increment during the year 1989 and 1990. The appellant's contention before us is also as stated before the Labour Court. Admittedly, the discretion of the Management cannot be questioned by the workmen unless it is shown to be thoroughly lacking in bona fide or it has been made with mala fide intention. However, there is no such evidence produced by the Employees Union before the Labour Court to establish these two aspects. That apart, the Management had, in the past,

granted special increment to the workmen when the plant was in the construction stage. Therefore, in our considered view, the finding rendered by the Labour Court on this aspect was perverse and therefore, the learned Writ Court was fully justified in interfering with the same. Therefore, we affirm the finding of the learned Writ Court on this issue.

9.The second issue is with regard to whether the termination of services of Mr.M.K.Radhakrishnan and G.Logadasan is valid. The Labour Court has discussed this point from paragraph 11 of the award. The nature of misconduct and the documents which were marked have been referred to in paragraph 12 of the award. Paragraph 13 contains the charges framed against the two workmen marked as Ex.M.35 and Ex.M.68.

10.Though there was no specific reference to the charges, we have gone through the charges. A plain reading of the charges will show that the charges are very serious in nature, a clear case of riotous behaviour inside the factory premises, assault on the officers and Engineers, attempt to sabotage machinery and abruptly stop running machinery without following the shut down procedure especially when, the machinery were working with liquids in high temperatures, shutting valves of the boiler, etc.

11.The Labour Court held that there is no material available to show that the charges have been proved. Unfortunately, it is the very same Labour Court, which had considered the validity of the domestic enquiry and held that the domestic enquiry was fair and proper. Therefore, the Labour Court could not have proceeded to say that nothing was established by the Management in the domestic enquiry, since earlier had rendered a finding that the domestic enquiry was fair and proper. That apart, the Labour Court stated that the two workmen, viz., M.K.Radhakrishnan and G.Logadasan were protected workmen, there is a delay in initiation of the disciplinary proceedings and ultimately, held that the termination of those two workmen is illegal and they are entitled to the relief of reinstatement with continuity of services and back wages and other benefits. The correctness of this finding was tested by the Writ Court and the finding commences from paragraph 26 onwards.

12.As rightly held by the learned Writ Court, a delay of four months cannot be treated to be an inordinate delay in initiating disciplinary action. Furthermore, the Writ Court noted that in the absence of any explanation to the charges by the said two workmen, the conclusion of the Labour Court stating that the charges are not established cannot be sustained. Furthermore, in the domestic enquiry though sufficient

opportunity was granted, the charge sheeted employees did not avail the opportunity, did not cross examine the witnesses, nor produced any evidence on their side to substantiate their case. Further, the Writ Court noted that the affidavits filed by the officers and others of the respondent-Management were marked as Exs.M.11, M.39, M.43, 46, 74, 77, 87, 92 and 114 and the workmen did not controvert any of the affidavits. In this regard, the learned Writ Court rightly referred to the decision in the case of S.Ramaiah Mudaliar Bros and Others vs. Presiding Officer, Industrial Tribunal, Madras and another [1992 1 LLJ 1992] wherein, affidavits were filed before the Industrial Tribunal and there is no procedure that the other party should be invited to cross examine the deponent to the affidavit. Further, the learned Writ Court rightly held that in the absence of the finding by the Labour Court, that there is unless perversity in the domestic enquiry, the Labour Court could not have interfered in the matter.

13.As noticed above, the charge sheeted employees did not participate in the domestic enquiry to cross examine the deponents of the affidavits, despite opportunity was granted by the Enquiry Officer. We have perused the copy of the enquiry report dated 20.10.1992 in which, the Enquiry Officer has specifically recorded this aspect of the matter. Thus, we find that the reasons assigned by the learned Writ Court on point no.2 is perfectly legal and valid, and accordingly, we confirm the same.

14.The next aspect of the matter is with regard to the workmen K.Kasinathan and V.Prabhu and the point, which was framed for consideration before the Labour Court, is as follows:-

"Whether the termination of the services of Tvl.K.Kasinathan and V.Prabhu is valid and if not, to what relief they are entitled?"

15.Mr.R.Muralidharan, learned counsel appearing for the appellant would strenuously contend that though the workmen lost before the Labour Court, the Court should consider with regard to the proportionality of the punishment imposed on those two workmen.

16.We have perused the charges framed against the said workmen and also the affidavit filed by one of the employees of the respondent-Management, which was marked as Ex.M.11. In the said affidavit, it has been stated about the conduct of the charge sheeted workman and we find that the said workman deliberately increased the feed rate to a very high level by increasing the voltage of electricity meter from 170 volts to

230 volts instead of 180 volts and closed the steam valve of the first compartment of the Fluid Bed Dryer, which is against the operating procedures and further, did not ensure that the temperature was maintained at 55°C and consequently, the temperature dipped to 40°C causing loss of production. Apart from that, the other delinquencies committed by the workmen, who surrounded the employee at the behest of other charge sheeted employees, how he was abused in filthy language, how he was manhandled etc. Thus, considering the gravity of the charge, it cannot be stated that the punishment of dismissal from service was disproportionate. In fact, the Labour Court considered all the aspects and rejected the claim made by the charge sheeted employee, considering the documentary evidence placed before it and the uncontroverted statement given by the Management in the domestic enquiry which enquiry was held to be fair and proper by the Labour Court. Therefore, the finding rendered by the Writ Court upholding the award of the Labour Court in confirming the dismissal of the workmen is just and proper.

17.Mr.R.Muralidharan, submitted that apart from the contentions, which were advanced before us, he may be permitted to raise a new contention which goes to the root of the matter and this contention should be taken into consideration, though the Employees Union did not raise such a contention either at the time of explanation to the charges or during the domestic enquiry or in their claim statement made before the Labour Court or before the Writ Court.

18.It is submitted that the order of dismissal passed against the workmen was passed by the Factory Manager Mr.P.K.K.Murthy. It is submitted that the said Mr.P.K.K.Murthy had issued the charge memo and he had also filed an affidavit in the domestic enquiry and he cannot pass the order of dismissal from service and by doing so, has acted as a Judge of his own cause. In support of the contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Rattan Lal Sharma vs. Managing Committee, Dr.Hari ram (Co-education) Higher Secondary School and Others, [AIR 1993 SC 2155] and State of Uttaranchal & Others vs. Kharak Singh, [2009-2-L.W. 241].

19.It is an admitted fact that charge memo is issued by the Factory Manager and in terms of the provisions of the Factories Act, 1948 he is entitled to do so and therefore, issuance of charge memo of the Factory Manager cannot be faulted. If such is the factual and legal position, the Factory Manager is entitled to take disciplinary action against an employee and empowered to pass an order of dismissal. This also cannot be disputed by the workmen. The point canvassed before us is that the Factory Manager had participated in the domestic enquiry and

filed an affidavit. Therefore, he could not have passed the order of dismissal and by doing so, acted as a Judge of his own cause.

20.The argument of Mr.R.Muralidharan is by placing reliance on the decisions in Rattan Lal Sharma (supra) and Kharak Singh (supra).

21.In Rattan Lal Sharma (supra), one Thiru Maru Ram was a member of a three Member Enquiry Committee, which was appointed to enquire into the charges framed against a Principal of a Higher Secondary School. There were twelve charges framed against the Principal and in respect of the twelfth charge, Shri Maru Ram, one of the members of the Enquiry Committee, appeared as a witness in support of the charge. The correctness of this was subject matter before the Hon'ble Supreme Court and it was held that though this point was not raised before the Tribunal or the administrative authorities, can be permitted to be raised before the High Court, since it is an error touching the jurisdiction or procedural error committed by an inferior Court or Tribunal of first instance and that it is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision.

22.In Kharak Singh (supra), the Hon'ble Supreme Court held that when the Enquiry Officer himself has acted as an Investigator, Prosecutor and Judge, the procedure is opposed to the principles of natural justice.

23.Bearing the above legal principles in mind, we have to now examine the facts of the case whether the Factory manager, Mr.P.K.K.Murthy, appeared as a witness in the domestic enquiry to sustain the charge framed against the charge sheeted employees. The answer to this question is an emphatic "no" on account of the findings recorded by the Enquiry Officer. The Factory Manager has filed an affidavit, which was taken as M.W.4 wherein, he has stated that he is responsible for entire affairs of the factory and has detailed about the incident, which has occurred on 14.08.1992 as to how he received news from the Plant Personnel Manager and also the Company's Engineer, how the workers were assaulted, how there were commotion in the factory premises, how various workmen were stopping the machines etc. Thus, the affidavit of the Factory Manager is to be placed on record before the Enquiry Officer as to what he was informed by his officers and what he has seen upon coming to the factory. Thus, the affidavit filed by the Factory Manager is a general record of the proceedings, which is stated to have taken place

on the ill-fated day and therefore, the contentions of the appellant that the Factory Manager acted as an Investigator, Prosecutor and Judge is wholly incorrect.

24.The facts clearly show that the Factory Manager recognised as the occupier of the factory under the provisions of the Factories Act, 1948, is in overall control of the entire affairs of the factory. He can sue and be sued in his name. Therefore, the affidavit filed by the Factory Manager can at no stretch of imagination be taken to be a case where he has acted as a Judge of his own cause. Even assuming without admitting that the appellants are right in stating so, nothing prevented the charge sheeted workmen from cross examining the Factory Manager, who filed the affidavit. The workmen were protected workmen, therefore, they were leaders of the trade union presumed to be well versed with the Labour Laws and procedures, as there were championing cause of other workmen under the guise of collective bargaining. The Enquiry Officer has recorded that in spite of sufficient opportunity granted to them to cross examine the witnesses on the side of the Management which were five in number, they walked out of the proceedings. In such circumstances, it would be too late for the appellants now to contend that this contention should be permitted to be raised before this Court for the first time.

25.As already held by us, there is no bias on the part of the Factory manager, nor he was a Judge of his own cause. That apart, the workmen were protected workmen and the trade union were championing their cause and no objection was raised at any earlier point of time, more particularly, when the dispute was raised before the Labour Court in the year 1994, the order in the preliminary issue was passed on 11.06.1994, final award was passed on 03.04.2005. In the interregnum, this point was never canvassed. The Management as well as the Employees Union filed writ petitions in the year 2005 challenging the award of the Labour Court. No such ground was raised in the writ petitions. Even during the course of arguments of the writ petitions, no such ground was raised. For the first time, in the year 2011, when these appeals were filed, such a contention was raised. As we have already held that there is no illegality in the issuance of the order of dismissal by the Factory manager, the contention advanced by the appellant deserves to be rejected. Even otherwise, it is liable to be rejected on the ground that at no earlier point of time, such a contention was raised by the appellant.

26.The decisions relied on by the learned counsel for the appellant in the case of Rattan Lal Sharma (supra) and Kharak Singh (supra) are distinguishable on facts, as pointed out by us

in the preceding paragraphs.

27.It is submitted by the learned Senior Counsel for the appellant that an interim order was passed in W.M.P.No.25454 of 2005 in W.P.No.23155 of 2015 directing deposit of back wages, vide order dated 10.08.2005. It appears that there was also permission to withdraw a portion of the same by the workmen. As against the said order, the respondent-Management filed W.A.No.1553 of 2005, which was dismissed, vide judgment dated 23.08.2006. The Management not stopping there, approached the Hon'ble Supreme Court and filed S.L.P.No.16812 of 2016 and final orders were passed by the Hon'ble Supreme Court on 31.08.2007 directing the respondent-Management to make deposit of the entire back wages within one month. Accordingly, a sum of Rs.16,32,263/- was deposited.

28.It is submitted that the amount still lying in deposit, since the workmen were not permitted to withdraw the amount which was deposited by two demand drafts which were acknowledged by the officer of the Labour Court, Cuddalore on 24.09.2007.

29.As we have dismissed the appeals filed by the workmen by this judgment, we permit the respondent-Management to withdraw the amounts which have been deposited with accrued interest, if any, on a memo being filed before the Labour Court along with a copy of this judgment. No costs.

30.Thus, for the above reasons, the appellants have not made out any case for interference with the order passed in the writ petitions. Accordingly, the appeals fail and they are dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//सत्यमेव जयते
Sub Assistant Registrar

abr

To

1. The Presiding Officer,
Labour Court,
Cuddalore-607 003.

+3cc to Mr.R.Muralidharan, Advocate, S.R.No.18825 TO 18827
+1cc to Mr.Meenakshi Sundaram, Advocate, S.R.No.18660

W.A.Nos.84 to 86 of 2011

KS(CO)
CS/05/04/2019