

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 25-09-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.4238 of 2019

G.Ravichandran

.. Petitioner

vs.

- 1.The District Revenue Officer/Administrator,
M.R.Krishnamoorthy Co-operative Sugar
Mills Ltd.,
Sethiathope 608 702,
Chidambaram Taluk,
Cuddalore District-607 102.
- 2.The Commissioner/Director of Sugar Department,
690, Anna Salai,
Nandanam,
Chennai-600 035.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to Award passed in I.D.No.21 of 2016 dated 20.12.2018 on the file of the Labour Court, Cuddalore and quash the said Award and direct the first respondent to reinstate the petitioner with full back wages and all other consequential benefits after set aside the dismissal order dated 30.01.2016.

For Petitioner : Ms.P.Uma

For Respondent-1 : Mr.V.Venkadasalam

For Respondent-2 : Mr.Bala Ramesh,
Special Government Pleader.

O R D E R

The Award of the Labour Court dated 20.12.2018 passed in I.D.No.21 of 2016 is under challenge in the present writ petition.

2. The writ petitioner filed a petition under Section 2-A(2) of the Industrial Disputes Act, 1947 before the Labour Court

Cuddalore, to set aside the order through which the writ petitioner was dismissed from service by the first respondent on 30.01.2016. The writ petitioner claimed reinstatement with back wages and continuity of service.

3. The writ petitioner states that he engaged into the service of the first respondent as Clerk VI on permanent post through Employment Exchange, Cuddalore District on 03.04.1989. Though the writ petitioner is eligible for promotion, he was not promoted to the higher post. The writ petitioner in his affidavit states that in respect of claim for promotion, he met the Office Manager Mr. Mohan and explained his grievances. The Office Manager informed the writ petitioner that he cannot consider his grievances and shouted to leave the office. The writ petitioner states that aggressive Office Manager beaten the writ petitioner and the writ petitioner tried to prevent the assault of the Office Manager. Immediately, other staffs entered the cabin and prevented the assault.

4. The writ petitioner states that he was grievously injured and had taken treatment in the Government Hospital at Cuddalore. The writ petitioner was placed under suspension by order dated 26.08.2015 and a charge memo was issued. An enquiry was conducted and the Enquiry officer without examining any witnesses or documents, gave a report that all the charges 1 to 5 framed against the writ petitioner were proved. Based on the ex parte enquiry, the writ petitioner was dismissed from service on 30.01.2016 stating that all charges were proved against the writ petitioner. The writ petitioner preferred an appeal before the second respondent-Commissioner/ Director of Sugars and the said appeal was rejected by order dated 17.05.2016. Thereafter, the writ petitioner raised a dispute before the Labour Officer and the said Conciliation was ended in failure. Thus, the industrial dispute was filed before the Labour Court, Cuddalore in I.D.No.21 of 2016.

5. The contention of the writ petitioner is that the Labour Court, without giving an opportunity to the writ petitioner, relied on the Management's oral evidence especially MW-1 to MW-12 and dismissed the industrial dispute. The Labour Court has not properly appreciated the evidences submitted by the writ petitioner. The writ petitioner states that the chargesheet itself is not valid and the domestic enquiry was not fair and proper. The appreciation of evidences were done erroneously by the Labour Court. Under those circumstances, the findings of the Labour Court is contrary to the facts established.

6. The learned counsel for the writ petitioner states that the domestic enquiry was conducted ex parte and based on the

enquiry report, an order of dismissal was issued. The Labour Court having not been satisfied with the domestic enquiry, conducted an enquiry itself. The management was permitted by the Labour Court to let in fresh evidence to prove the charges before the Labour Court. The management side examined MW-1 to MW-12 witnesses and marked Exs.M-1 to M-20.

7. The writ petitioner-workman examined himself as witness and marked Exs.P-1 to P-4. However, the labour Court did not permit the writ petitioner to lead evidence disproving the same. Thus, the writ petitioner states that the entire procedure adopted by the Labour Court is in violation of the principles of natural justice.

8. At the outset, it is contended that the charges are not proved and therefore, the dismissal order is to be set aside. The Labour Court erroneously relied upon the Exs.M-1 to M-3 complaints to frame charges against the writ petitioner. Therefore, the entire award is proceeded based on an erroneous perception and accordingly, the writ petition is to be allowed.

9. The first respondent disputed the contentions raised by the writ petitioner by stating that the Labour Court has recorded on 20.12.2017 that the domestic enquiry is not proper since the writ petitioner did not attend the hearing. When the matter was taken up for the preliminary objection, the management on request, the Labour Court's permission to prove the charges. If the Court comes to a conclusion that the enquiry conducted without participation of the writ petitioner in the writ petition is not correct. Even the writ petitioner also wanted to cross-examine all the witnesses and therefore, the Labour Court granted permission to give further evidence and produce documents to prove the charges.

10. The writ petitioner without raising any objection had participated in the process of enquiry and therefore now in the present writ petition, the writ petitioner cannot raise any question stating that the Labour Court has committed an error.

11. In this regard, the learned counsel for the first respondent relied on the judgment of the Hon'ble Supreme Court in the case of Divyash Pandit vs. Management, NCCBM [(2005) 2 SCC 684] held as under:-

"Labour Law - Labour Court/Tribunal
- Practice and procedure - Evidence - Leading of additional evidence - Scope - Pleading necessary in respect of - Held, Labour Court undoubtedly has power of allowing the management to lead additional evidence to establish charges against employee concerned
- Even though management may not have made

any prayer for leading additional evidence in its written statement, but following in Karnataka SRTC v. Laxmidevamma [(2001) 5 SCC 433] further held, this does not place a fetter on powers of Court/Tribunal to require or permit parties to lead additional evidence, including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that domestic enquiry was non est, facts of case warranted that it should have given one opportunity to the management to establish the charges before passing an award in favour of the workman.

In view of the above that all the argument of the petitioner that Labour Court has no right to give opportunity to the management to establish the charges is incorrect and liable to be rejected."

12. The Labour Court has given complete opportunity to the writ petitioner and the writ petitioner also availed of the opportunity. On two occasions, the writ petitioner made representation that he has no evidence on his side and informed that only certain documents on his side which he had already filed before the Labour Court. Near about 1 year period the writ petitioner had participated in the enquiry proceedings without raising any objections. Thus, now he cannot plead before this Court that the Labour Court had not given any opportunity to him. The writ petitioner himself had appeared in all the hearings and he has made endorsements in the Court that he has no evidence on his side. The writ petitioner filed a memo to pass final orders in the main case. Thus, the entire averments in the writ petition is contrary to the statements made by the writ petitioner before the Labour Court.

13. With regard to the charges that the Enquiry Officer as well as the Labour Court have held that the charges have been proved. Mr. Mohan is the main witness in the case to prove charges and he appeared before the Labour Court and gave evidence confirming the charges. Other witnesses also deposed against the writ petitioner. The writ petitioner did not deny the charges in his reply. The Labour Court had gone through the facts, materials and evidences and finally arrived a conclusion that the charges against the writ petitioner have been proved and accordingly confirmed the punishment of dismissal issued by the management.

14. To substantiate the said arguments, the case decided by the Supreme Court in the case of Management of Madurantakam Co-

operative Sugar Mills Ltd vs. S.Viswanathan [(2005) 2 LLJ 49] held as under:-

"There was a ding dong battle as the Supreme Court described it, between the parties to this litigation extending over nearly three decades that is, from 1976. Each of them, namely, employer-appellant and respondent-workman had equal share of success and failure, the last laugh being that of the respondent in this appeal, though his back wages, were finally reduced to 50%. The Supreme Court upheld the decision of the Labour Court, which was in favour of the respondent, directing as it did his reinstatement, and retiral benefits. The Supreme Court observed that the findings of the Labour Court on facts could not be considered as perverse. Neither the single Judge nor the Division Bench of the High Court avoided the error of entering the realm of factual disputes. The High Court could go into question of fact decided by the Labour Court, upon recording reasons for its conclusion that the findings of the Labour Court were either perverse or based on no evidence, the Supreme Court added."

15. Further this Court in the case of S.Arumugam vs. Presiding Officer, Labour Court, Madurai and another [(2002) 4 LLN 391] observed as under:-

"There was no excuse at all for the misconduct of the workman here. The provocation for the slapping was the misconduct which he himself had committed in the course of his work and about which he was admonished. Such misconduct on the part of the workman leading to assault of the co-worker is subversive of industrial discipline, and it is not an act which can be condoned."

16. This Court is of the considered opinion that the charges against the writ petitioner are undoubtedly serious.

17. The Labour Court further found in paragraph 24 of the award that the writ petitioner was continuously involving in violence and was in the habit of using filthy languages in the factory. Further he had physically assaulted the another employee in the office and the said charges were proved beyond any doubts. The Labour Court arrived a conclusion that the deposition of all the witnesses cannot be said to be incorrect

and there is no reason for all such witnesses to uniformly depose that the writ petitioner had assaulted the other employee in the office. When the witnesses have consistently deposed that the writ petitioner had assaulted the employee, then there is no reason to consider the case of the writ petitioner by the Labour Court. The writ petitioner, on earlier occasion, was subjected to four enquiry proceedings and earlier he was imposed with the order of suspension and stoppage of increments and other punishments. Thus, the previous conduct of the writ petitioner in the workplace was also not satisfactory.

18. In the case of Mahendra Nissan Allwyns Ltd., Vs. M.P.Sidappa & Ors, in C.A.No.5750/1998, decided on 13.11.1998, the Hon'ble Supreme Court of India held as follows:

"4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the security guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehaviour was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed. The punishment imposed against the respondent must remain unaltered."

19. In the case of New Shorrock Mills Vs. Maheshbhai T.Rao, in Civil Appeal No.1959 of 1992, decided on 25.10.1996, the Apex Court held as follows:

"9. It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages. The Labour Court was exercising jurisdiction under Section 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered

with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were at least three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the Inquiry Officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted."

20. Significantly, in the case of Management of Sundaram Industries Limited and Presiding Officer, Labour Court and another, decided on 20.06.2003, in W.P.No.3551 of 2000, the Hon'ble Supreme Court of India made an observation that Maintenance of discipline and order in the work place is very essential and in this regard, Paragraph 19 is extracted hereunder:

"19. I am inclined to hold that the said reasonings of the Labour Court do not justify invocation of Section 11-A so as to direct reinstatement in a case of this nature. Maintenance of discipline and order in the work place is very essential in any work place, public or private. If an employee could be permitted to use vulgar and filthy words against his superior officers and would also attempt to assault, he does not deserve to be retained in service. Even assuming that he had a justifiable cause, if reinstatement would result in encouraging indiscipline among the workers, then in the alternative the management can be directed to pay reasonable compensation. Such workers who will not behave in a

disciplined manner and do not even specifically or seriously dispute the allegation of violent behaviour and using abusive expression, cannot be thrust upon the management who is not willing to take back the worker. In MAHENDRA NISSAN ALLWYNS LTD. v. M.P.SIDDAPPA (2000 (4) L.L.N.,562), the Supreme Court had to deal with a case of aggressive behaviour by the employee and use of filthy language, and the Supreme Court held that the charges were serious in nature. The Supreme Court also remarked that if such charges are not serious charges against a workman worthy of his dismissal from service they (Court) do not know what else can be."

21. In the case of Michel Selvaraj and Ashok Leyland, Limited, reported in 2004 (1) L.L.N. 294, the Hon'ble Division Bench of this Court observed as follows:

"7.In such circumstances, if these acts on the part of the union leader were not enough to contaminate or pollute the otherwise calm and congenial atmosphere in the industry, there could be no other example and the Labour Court has precisely failed to note the true impact of the acts on the part of the appellant. In our opinion, the attitude of sympathy has to be shown where the person concerned deserves the same. The appellant herein was certainly not a person who deserves such sympathy as on the very advent of his service, he had started behaving in an atrocious manner, exhibiting violent temper, etc., and on a number of occasions he was either cautioned or he had agreed to mend his ways."

22. It is relevant to remind the fundamental duties of a citizen enunciated under Article 51-A of the Constitution of India. Sub Clause (i) to Article 51-A enumerates that "to safeguard public property and to abjure violence". Sub Clause (j) stipulates that "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

23. Emphasizing the fundamental duties of the citizen under Article 51-A of the Constitution of India, this Court is of the strong opinion that rights and duties are inseparable concepts and the person, who is claiming right, must keep in mind that he has got certain duties towards the fellow citizen and to the Nation at large. Rights and duties are the relative terms and therefore, in the current day situation, while dealing with the rights of the individuals, his duties are also to be considered by the Constitutional Courts in order to adopt a pragmatic and balancing approach. It is not as if while upholding a rights of a citizen, Court can neglect his duties. Only if a citizen

respects his duties as law requires, then alone he can claim his right under the law and it is not as if he can violate his duties and responsibilities and claim rights in isolation. Such a concept, if at all in the mind of a person, the same can never be encouraged by the Constitutional Courts.

24. Keeping this view, this Court is of an opinion that certain allegations, manhandling or physically attacking or assaulting the co-employees or the higher officials can never be tolerated and such offences are already classified as punishable offence under the Indian Penal Code. This apart, respecting the fellow citizen or colleagues in the work place is of paramount importance. Only through maintaining the discipline and decorum, the industrial activities can be developed, so also, the developmental activities across the country can be taken forward. Thus, discipline and decorum in industrial places are of paramount importance. It is an organizational discipline, which will make the industry to grow further and to develop the prospectus of our great Nation as well as the people at large. Thus, compromising the discipline will lead to destruction within the industry / public institutions. Any indisciplined industry or organization can never see the light of growth. Most of the industries / public institutions had collapsed on account of indiscipline, mal administration or corruption. Thus, discipline, decorum, honesty and integrity are the vital characters to be maintained in the industry / public institutions, factories and trade activities, so as to take our Nation forward on par with the global standards. Our great Nation is a fast growing Country in the world. Under these circumstances, Courts are also duty bound to ensure that such discipline, decorum, honesty and integrity are maintained at all institutional levels and all such institutional respects are also protected.

25. This being the concept to be borne in mind, this Court is of an opinion that any indiscipline, if noticed and disciplinary actions are initiated against the employees, Courts must be keen in analyzing the factors and arrive a conclusion that such indiscipline activities are brought down and dealt in accordance with law without showing any leniency or misplaced sympathy. Thus in disciplinary matters, misplaced sympathy by the Courts also will lead to destruction of industries / public institutions. The personal likes and dislikes of certain charters should not have any impact in deciding such cases of disciplinary proceedings. It is not as if we are compromising the principles, we are compromising the National developments and therefore, there cannot be any such misplaced sympathy in the matter of discipline and decorum in industries and in public institutions.

26. This being the view of this Court, the present case is to be considered with reference to such principles.

27. The findings of the Labour Court reveals that the misconduct levelled against the workman stands duly proved through the evidence. In paragraph 24 of the award, it is observed that the Labour Court that the writ petitioner was continuously involving in violence and was in the habit of using filthy languages in the factory. Further, the writ petitioner had physically assaulted the another employee in the office and the said charges were proved beyond any doubts. Under these circumstances, the Labour Court had arrived a conclusion that the deposition of all the witnesses cannot be said to be incorrect and there is no reason for all such witnesses to uniformly depose that the writ petitioner had assaulted the other employee in the office. Thus, the previous conduct of the writ petitioner in the workplace was also not satisfactory.

28. Considering all these facts and circumstances, the Labour Court came to the conclusion that the writ petitioner is not entitled for the relief of reinstatement with back wages and continuity of service.

29. On perusal of the findings of the Labour Court as well as the gravity of the charges proved against the writ petitioner before the Labour Court, this Court has no hesitation in coming to the conclusion that there is no infirmity in respect of the conclusion arrived by the Labour Court.

30. Accordingly, the award dated 20.12.2018 passed by the Labour Court in I.D.No.21 of 2016 is confirmed and Consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

Svn
To

1.The Presiding Officer,
Labour Court,
Cuddalore

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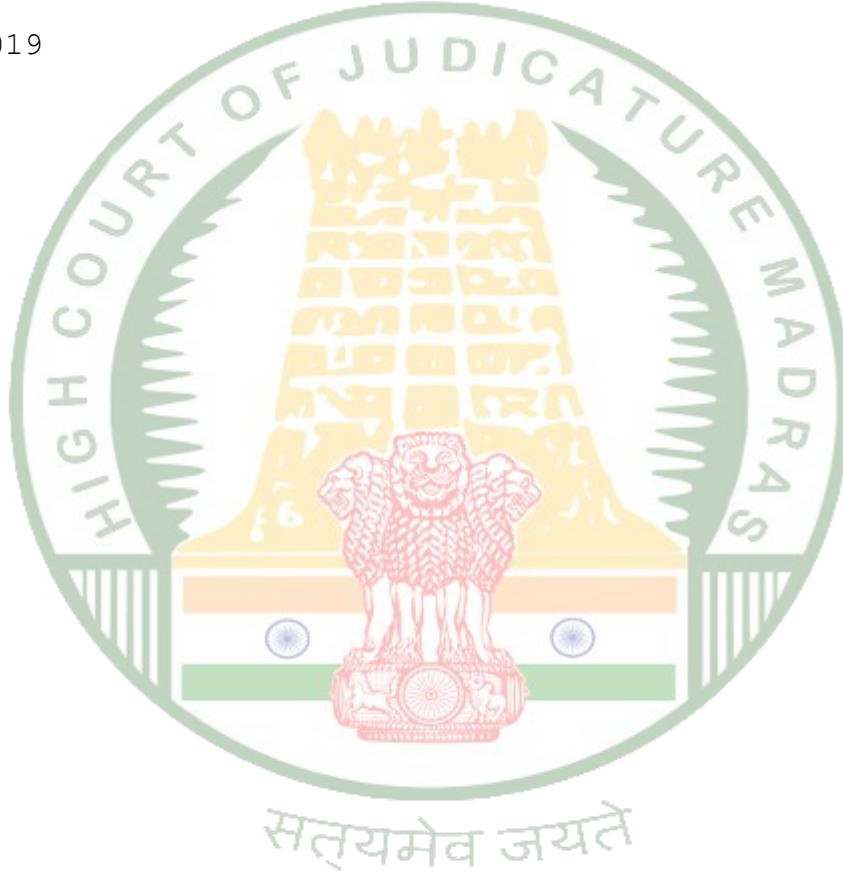
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W.P.No.4238 of 2019

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