

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM :

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

Writ Appeal No. 302 of 2009

Vice Chairman and Managing Director,
M/s.Regency Ceramics Ltd., Yanam.

...Appellant

-vs-

1. The Presiding Officer,
Labour Court, Pondicherry.
2. K.V.V.Satyanarayanamurthy,
Rep by its Secretary Regency Ceramics
Workers' Union, Yanam - 533 464.

...Respondents

Writ Appeal filed under Clause 15 of Letter Patent for setting aside the order passed by this Court in W.P.No.9128 of 1999 dated 11.07.2008. Wp No.9128/99 Petition filed under Article 226 of the Constitution of India Praying this Hon'ble Court to issue a Writ of certiorari calling for the relevant file of the 1st Respondent relating to the relating to the award dated 09.07.1998 in Industrial Disputes No.28/1994, and quash the same.

For petitioner : M/s.Anantha Gopalan
for M/s.T.S.Gopalan & Co.

For Respondents : Mr.Ashokpathy for
M/s.Pass Associates (for R.2)

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JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Appeal by the Management is directed against the order passed in W.P.No.9128 of 1999 dated 11.07.2008. The said writ petition was filed by the appellant challenging the award passed

in I.D.No.28 of 1994 dated 09.07.1998.

2. We find from the grounds raised in the writ petition that the appellant would contend that the respondent/employee was imposed the penalty of dismissal based on the proven charges of grave misconduct on two successive occasions as provided under the certified Standing Orders and therefore labour Court erred in holding that the respondent/workman is not guilty of charges.

3. Further the appellant has contended that the Labour Court erred in rendering a finding that the negligence and sleeping on duty have not been proved in legally acceptable manner is without any basis. Further it is contended that without giving any reasons, the labour Court erred in holding that there was no evidence to prove that the respondent/workman is guilty of charges and no reason has been adduced for not accepting the findings of the Enquiry Officer. Further it was contended that the Labour Court erred in holding that the respondent/workman was wrongfully dismissed from service and awarded reinstatement with 25% of backwages and on the contrary punishment of dismissal is the only punishment can be imposed having regard to the proven grave acts of misconduct. Further the appellant contended that the award of the Labour Court suffers from serious errors of law and if the respondent/workman is reinstated, the appellant would be put to serious loss.

4. It appears that no counter affidavit was filed by the respondent/workman. The writ petition was taken up for hearing and has been dismissed by order dated 11.07.2008. The only reason which weighed in the mind of the Writ Court to dismiss the writ petition is that the appellant/management did not seek permission from Labour Court as required under Section 33(2)(b) of the Industrial Disputes Act, 1947. However, we find this contrary to facts since in the very claim statement filed by the respondent/workman before Labour Court, Pondicherry in I.D.No.28 of 1994, in paragraph 31 therein, the respondent/workman admitted that the Management has filed petition seeking for permission under Section 3(2) of the Industrial Disputes Act, 1947, which is also pending in I.D.No.1 of 1994. The said averment is quoted below for better appreciation.

"31. The Management also filed a petition dated 05.07.1994 for seeking permission for the Hon'ble Court under Section 33(2) of the Industrial Disputes Act, which is also pending in I.D.No.1/94."

5. The appellant/management in their counter statement filed before the Labour Court has stated as follows with regard to the said averment, which is quoted herein:

"19.It is further respectfully submitted that the

penalty of dismissal from service in the circumstances of the case and for the nature of charges proved against the petitioner is but proportionate. The past instances of misconduct are definitely relevant consideration for deciding the quantum of penalty. Having regard to the fact that the petitioner was punished for misconducts not concerned with the dispute in I.D.No.1 of 1994, permission of this Hon'ble Court has been rightly sought for under Section 33(2) of the Industrial Disputes Act and this procedure having been sanctioned by the statute is not against law and consequently the dismissal of the petitioner is not vitiated."

6. In the light of the above factual position, the learned writ Court was not correct in holding that the appellant/management has not sought for permission under Section 33(2) (b) of the I.D.Act. Apart from the said finding, there is no finding as regards the other ground raised by the appellant/management in the writ petition questioning the correctness of the award passed by the Labour Court.

7. Therefore, we are of the view that the writ petition should be heard on merits and a decision should be arrived at after considering the contentions advanced by either side.

8. For the above reasons, the appeal is allowed and the order passed in W.P.No.9128 of 1999 is set aside and the matter is restored to this Court to be heard and decided by the appropriate learned Single Bench. The respondent/workman is granted liberty to file counter. Since the writ petition is of the year 1999, we direct the Registry to list the writ petition preferably on or before 22.03.2019. No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mrm

To

The Presiding Officer,
Labour Court, Pondicherry.

Copy To : The Section Officer, Writ Section (Posting)
High Court, Madras-104.

+1cc to M/s.TS.Gopalan & Co, Advocate SR.No.17338

W.A.No.302 of 2009

SV(CO)
GMY(18/03/2019)



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