

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.11331 of 2009

T.Nagarajan

.. Petitioner

-vs-

1. The Presiding Officer
Labour Court
Cuddalore

2. The Management of
Nagammai Cotton Mills
Vikravandi Post 605 652
Villupuram District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the preliminary order dated 8.1.2008 and the consequential award dated 10.6.2008 made in I.D.No.104 of 2002 passed by the first respondent, to quash the same and to consequently direct the second respondent herein to reinstate the petitioner with continuity of service, backwages and all other attendant benefits.

For Petitioner : Mr.K.Elango

For Respondents: Mr.S.Jayaraman for R2
R1-Court

ORDER

This writ petition has been directed against the impugned preliminary award dated 8.1.2008 and also the final award dated 10.6.2008 passed in I.D.No.104 of 2002 by the Labour Court, Cuddalore.

2. Learned counsel for the petitioner, assailing the impugned award, pleaded that when the petitioner joined the second respondent-Management as a Spinning Sider in March, 1984, he was discharging his duties sincerely and diligently. However, as he was the Assistant Secretary of Nagammai Cotton Mills Thozhilalar Sangam, which has been espousing the cause of the

workers of the second respondent, he was illegally terminated by the management by the letter dated 15.2.2000. Since the order of termination is reflecting the act of vindictiveness, he has been advised to question the same. It is also stated that the act of vindictiveness can be seen from the charge memos dated 30.6.98, 7.7.98, 13.4.99 and 19.5.99. After issuance of the charge memos, he was also suspended from service from 20.4.99. It is further stated that when the management placed the petitioner under suspension and also issued the charge memos, without giving any sufficient opportunity including the time to submit explanation for the charges levelled against the petitioner, it has ordered for domestic enquiry. After appointing the first enquiry officer to go into the charges levelled against the petitioner in the charge memos dated 30.6.98 and 7.7.98, one another enquiry officer was also appointed to go into the charges levelled against the petitioner in respect of the charge memos dated 13.4.99 and 19.5.99. The first charge memo dated 30.6.98 indicates that on 13.6.98, the petitioner failed to handover the time card in the time office and on the other hand, the petitioner left the card at 8.40 AM. One another allegation put against the petitioner shows that on 15.6.2008 in the night shift, he met the Supervisor Mr.Venkatesan and that he also threatened him. The second charge memo dated 7.7.98 indicates that on 28.6.98 at about 4.10 PM, he went to the residential colony of the factory staff and met the Works Manager Mr.Durai and had also told him that he would beat the spinning master. The third charge memo dated 13.4.99 levelled against the petitioner indicates that he was unauthorisedly absent from duty for three days from 10.4.99 to 12.4.99 and the fourth charge memo dated 19.5.99 indicates that the petitioner abused the spinning master around 3.05 PM on 17.4.99 and therefore he was placed under suspension from service with effect from 20.4.99. When all these charges were levelled against the petitioner, without even waiting for the explanation from the petitioner, ordering for domestic enquiry to go into the charges against the petitioner is itself wrong and impermissible in law. Therefore, the reports of the enquiry officers filed against the petitioner are liable to be interfered with and this apart, when the petitioner was not even able to take part in the enquiries held on 17.7.99, 30.7.99, 3.9.99, 11.9.99 and 1.10.99, he was set ex parte on 1.10.99 in connection with the charge memos dated 30.6.99 and 7.7.99 and the enquiry officer gave his findings on 26.11.99 with regard to the charge memo dated 30.6.98 and the findings dated 1.12.99 with regard to the charge memo dated 7.7.98 holding the petitioner guilty of the charges. Even with regard to the charge memos dated 13.4.99 and 19.5.99, another enquiry officer also commenced the enquiry on 12.6.99. Owing to various reasons, the enquiry was adjourned and finally he was again set ex parte with regard to the rest of the two charge memos. Finally the management, after receiving the reports of

the enquiry officers, dismissed the petitioner from service by order dated 15.2.2000. Therefore, the petitioner questioned the order of dismissal by raising an industrial dispute before the Labour Court, Cuddalore. But the Labour Court, Cuddalore, simply holding that the petitioner was granted all reasonable opportunities and there was no violation of the principles of natural justice, accepting the order of punishment imposed against the petitioner, refused to consider the various legal contentions raised by the petitioner, both in the preliminary award and also in the final award. The preliminary award passed by the Labour Court, Cuddalore shows that the petitioner was given all reasonable opportunities by the enquiry officer during the course of conducting domestic enquiry. This finding cannot be accepted. The reason being that when the management failed to give time to give explanation, the enquiry officer should not have been appointed. Secondly, for the minor charges also that have been proved, the major punishment of removal from service ought not to have been imposed, as it is clearly disproportionate. Therefore, the impugned award passed by the Labour Court refusing to exercise its power under Section 11-A of the Industrial Disputes Act is liable to be quashed.

3. The learned counsel for the second respondent, refuting the above contentions, stated that the petitioner was serving as spinning sider in the second respondent management and he was also elected as Assistant Secretary of Nagammai Cotton Mills Thozhilalar Sangam. Claiming to be the Assistant Secretary of Nagammai Cotton Mills Thozhilalar Sangam, he did not work properly. Even when the petitioner remained unauthorisedly absent, he was warned not only once or twice, but on several occasions. But he failed to mend his ways and this apart, the petitioner also failed to place the time card in the time office on 30.6.98. The second charge levelled against the petitioner shows that on 15.6.2008 in the night shift, he met the Supervisor Mr.Venkatesan and threatened him. Again he met the Works Manager Mr.Durai and told him that he would beat the spinning master. Therefore, when the petitioner was unauthorisedly absent from duty from 10.4.99 to 12.4.99 and no prior permission was sought for from the higher officer, the second respondent issued the four charge memos as mentioned by the learned counsel for the petitioner. The petitioner was given opportunity to submit his explanation. But being the Assistant Secretary of Nagammai Cotton Mills Thozhilalar Sangam, he failed to utilise the time granted for submitting his explanation. Therefore, the enquiry officer, waiting for a long time for his explanation, finding no response, has proceeded with the enquiry by giving various opportunities to the petitioner on 17.7.99, 30.7.99, 3.9.99, 11.9.99 and 1.10.99. Finally in spite of the repeated opportunities given to the petitioner on the dates

mentioned above, the enquiry officer set the petitioner ex parte and proceeded against him with regard to the charge memos dated 30.6.98 and 7.7.98. Similarly, the second enquiry officer, who was also appointed to deal with the other two charge memos dated 13.4.99 and 19.5.99, finding no cooperation from the petitioner, set him ex parte on 4.9.99 and finally, both of them submitted their detailed reports finding him guilty of all the charges. When the management also produced all the witnesses to establish the charges that the petitioner threatened the Supervisor Mr.Venkatesan and also told the Works Manager Mr.Durai that he would beat the spinning master, the petitioner did not come forward to cross examine any one of the witnesses. Taking note of all these things for which the petitioner was also imposed with the punishment of removal from service, the Labour Court, Cuddalore found that the petitioner, in spite of the opportunities granted to appear before the enquiry officer on 17.7.99, 30.7.99, 3.9.99, 11.9.99 and 1.10.99, did not participate in the enquiry and as such held that the principles of natural justice have been fully complied with. On this basis, a preliminary award was also passed. When the matter was taken up for final enquiry, the Labour Court, again finding no merits whatsoever to interfere with the report of the enquiry officer, based on which the order of removal was passed, declined to exercise its inherent power under Section 11-A of the Industrial Disputes Act, 1947. When there was no violation of the principles of natural justice and the enquiry was properly held, the Labour Court, Cuddalore was right in dismissing the industrial dispute raised by the petitioner. The reason being that the petitioner was repeatedly warned for his unauthorised absence on several occasions. Moreover, the allegation levelled against the petitioner that he failed to place the time card in the time office was also proved. Thirdly, the misbehaviour shown by the petitioner before the Supervisor Mr.Venkatesan and the threat posed by the petitioner before the Works Manager Mr.Durai was also proved. Therefore, the second respondent management cannot keep a person like the petitioner that would only disturb the industrial peace. सत्यमेव जयते

4. This Court also fully agrees with the submissions made by the learned counsel for the second respondent and also the reasons given by the Labour Court, Cuddalore that the petitioner was unable to give his explanation in spite of granting opportunities and was also unable to take part in the enquiries. When the petitioner was given sufficient opportunities to take part in the enquiries and for the reason that all the charges levelled against the petitioner have been properly considered by the Labour Court and also upheld the order of punishment, this Court, sitting under Article 226 of the Constitution of India, is not inclined to interfere with both the preliminary and final

awards passed by the Labour Court, Cuddalore. Therefore, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

SS

To

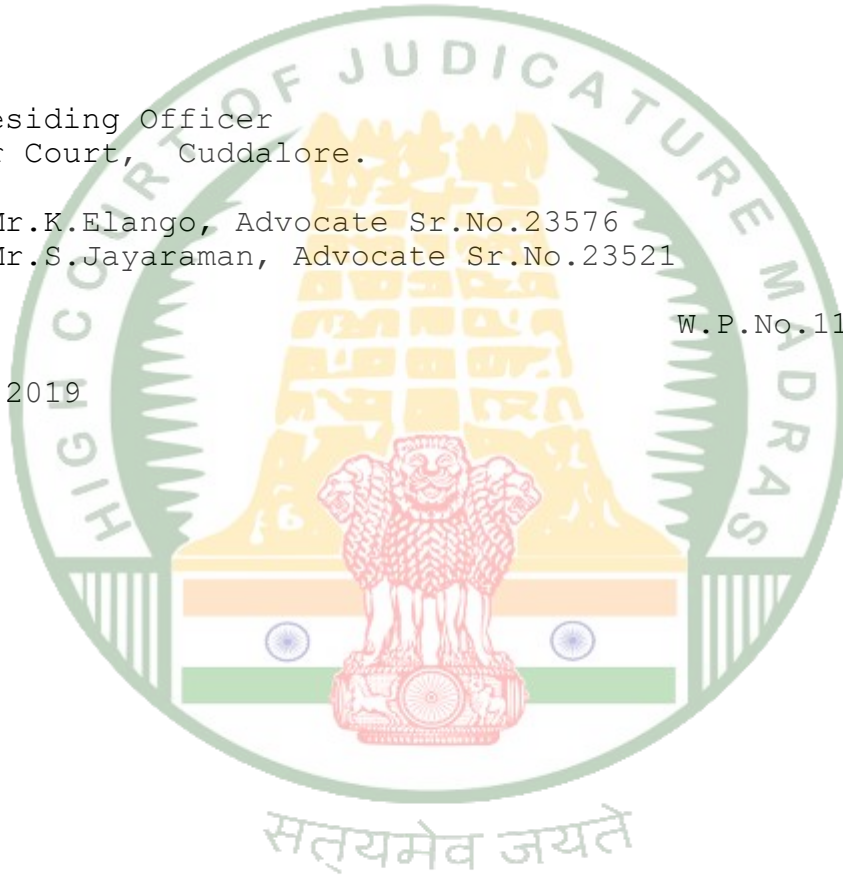
1. The Presiding Officer
Labour Court, Cuddalore.

+1 cc to Mr.K.Elango, Advocate Sr.No.23576

+1 cc to Mr.S.Jayaraman, Advocate Sr.No.23521

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