

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37640 of 2003  
and  
W.P.M.P.No.40923 of 2004

N.Anbu

...Petitioner

vs.

1. The Presiding Officer  
Labour Court,  
Pondicherry-605 009.

2. The Management of  
Hindustan Lever Limited  
Rep.by its Director  
C-61-68, Peptic Industrial Estate,  
Mettupalayam,  
Pondicherry-600 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in connection with the award in I.D.No.57 of 2001 pronounced on 06.11.2002 and quash the same and direct the 2<sup>nd</sup> respondent reinstatement of the petitioner with all consequent benefits including backwages and issue such further or other orders or directions.

For Petitioner : M/s.V.Prakash,  
Senior Counsel  
for Mr.K.Ramkumar

For Respondents: R1-Labour Court  
Mr.Anand Gopalan  
for M/s.T.S.Gopalan & Co  
for R2.

O R D E R

The award dated 06.11.2002 passed in I.D.No.57 of 2001 is under challenge in the present writ petition.

2. The workman is the petitioner in the present writ petition. He raised a dispute before the Labour Court in

I.D.No.57 of 2001. In the short affidavit filed in support of the writ petition, the writ petitioner states that he joined the service of Hindustan Lever Limited on 18.03.1979 as a Packer. On 01.01.1989, he was promoted as Junior Charge hand. On 01.01.1997, he was promoted as Senior Charge Hand. During the year 1998, Ponds India acquired Hindustan Lever Limited. A charge memorandum was issued against the writ petitioner stating that he has refused to attend the maintenance work on 08.03.1999. Consequently, there was no production for some time in the said line. The factory was manufacturing talcum powder and white petroleum jelly. Disciplinary proceedings were initiated against the petitioner on the allegations that he refused to switch on the boiler and thereby caused loss to the Management. After conducting enquiry, the writ petitioner was dismissed from service.

3. On a perusal of the counter affidavit, the writ petitioner has not raised any meaningful ground for the purpose of assailing the award of the Labour Court. The short affidavit did not contain the grounds or supportive averments and it was bald by stating that he was promoted and thereafter, on account of the disciplinary proceedings, dismissed from service. Even in the grounds, it is stated that the case of the workman was not considered.

4. Under these circumstances, this Court is of the considered opinion that there is absolutely no infirmity or illegality in the award passed by the Labour Court on 06.09.2002 in I.D.No.57 of 2001.

5. The learned counsel appearing on behalf of the respondents state that the allegations against the writ petitioner/workman was grave in nature. With a view to cause loss of production, on 08.03.1999, the petitioner deliberately refused to attend to maintenance work, inspite of instructions given by his superiors. On 09.03.1999, a Charge Sheet was issued to the petitioner in respect of the misconduct committed by him. A domestic enquiry was conducted, and three witnesses were examined in proof of the charges. The petitioner did not cross-examine those witnesses. On the basis of the evidence placed before the enquiry officer, it was held that the charges against the writ petitioner/workman were proved. Based on the proved charges, the writ petitioner was dismissed from service.

6. Three charge Memorandums were issued and three separate domestic enquiry were conducted. In all these enquiries, the management was able to establish the charges and based on the evidence, the enquiry officer, held that the charges against the writ petitioner were proved. It is stated that on 31.07.1999, another employee Mr.Panneerselvam indulged in riotous behaviour and the petitioner attacked the said

Panneerselvam, who also in turn hit him back. On account of such misconducts, another set of charges were framed.

7. The Labour Court in its award has considered all the documents and the deposition of the evidence. In respect of the point No.1, the Labour Court found that it is clear "on 08.03.1999, he was not justified in refusing to do the maintenance work. Those three witnesses on the Management side had no axe to grind in the matter. In such a case there is nothing to doubt the genuineness of the testimony. The enquiry officer also highlighted that the claimant Anbu was given opportunity to cross examine the witnesses, but he did not do so. It is further observed that " the perusal of the enquiry officer's report and the evidence concerned would show that no more opportunity need be given to the claimant to cross examine those Management witnesses as it could be seen that the claimant herein deliberately refrained from cross examining those witnesses. In such a case, this Court need not give any direction for the appearance of these Management witnesses so as to enable the claimant to cross-examine those witnesses. By elaborately considering the witnesses and the deposition of the witnesses, the labour Court arrived at a conclusion that there was no infirmity in respect of the evidence given by the enquiry officer.

8. In respect of Point No.2 also, the Labour Court found credence in the evidence produced by the Management and came to a conclusion that the enquiry officer found that the writ petitioner/workman was not indulging in work sincerely and was indisciplined. In respect of three charge Memorandum, the Labour Court found that Mr.Panneerselvam in his evidence as well as the complaint would state that the claimant abused Panneerselvam by dragging Panneerselvam's wife's conduct etc. and claimant also pushed Panneerselvam down. Thereupon Panneerselvam also dealt one blow and that Nagarajan, co-worker was a witness to it. The claimant uttered out intimidation also to the effect that he would with the help of one Gundas, finish off Panneerselvam. The Enquiry Officer Mohan Kumar in his report dated 01.12.1999 discussed in detail the evidence of all the witnesses and arrived at a conclusion that the Labour Court found that there is no infirmity at all in the domestic enquiry conducted by the management in these three charge Memorandum and accordingly, dismissed the dispute filed by the writ petitioner/workman.

9. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the object of Section 11 (A) of the Industrial Dispute Act is that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as

the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

10. Examining the facts and circumstances of the present case on hand, this Court is of the considered opinion that three charge memorandums were framed against the writ petitioner/workman and three separate domestic enquiries were conducted. All the charges against the writ petitioner/workman were proved and the domestic enquiry officer also made a finding that the Management has proved all the charges by way of evidence and through witnesses. Under these circumstances, invoking Section 11(A) would not arise at all. It is further contended that the workman has served for 23 years and therefore, some compensation is to be awarded.

11. The allegations are serious in nature. In such cases, the period of past services rendered by an employee may not be of much value. Courts cannot show any misplaced sympathy considering the gravity of the allegations as well as the proved charges. Only in the event of any ambiguity, of the charges established before the enquiry officer or the Labour Court, the mitigating circumstances shall be considered for the purpose of granting the benefit of compensation or any other relief as contemplated under Section 11(A) of the act. It is not as if the High Court cannot invoke Section 11(A) in a routine manner, so as to provide some relief to the workman. Undoubtedly, long service requires some consideration. However, the said consideration must be provided based on some materials available on record and certainly not on misplaced sympathy. Thus, in cases of grave charges and proved misconducts, courts cannot take any lenient view in this matter.

12. Thus, in the matter of discipline, if a leniency is shown, then the very development of the industry will collapse and all mitigating facts can be considered while granting the relief under Section 11(A) of the Act and not otherwise.

13. In the present case, the award passed by the Labour Court categorically states as follows:

12. Taking into consideration the three set of charges as against the delinquent official the claimant who is having such a mentality as aforesaid cannot be retained by the management. The contention of the claimant that Mr. Mohankumar the Enquiry Officer relating to the third act of charges was part and parcel of the

management cannot be accepted as the sufficient ground for disbelieving the enquiry officer. Objectively the Enquiry officer dealt with the matter. The Claimant could not highlight how on what particular aspects the enquiry officer is vitiated. The bald allegation of the claimant that he was not given opportunity to participate in the enquiry is nothing but a big falsehood as Ex.B3 would torpedo such a plea.

13. This being the factum of the case, this Court is of the considered opinion that there are no sufficient materials to grant any relief to the writ petitioner under Section 11(A) of the Act. Contrarily, the Management has established all the charges against the workman before the enquiry officer. The enquiry officer has held that the charges against the writ petitioner were proved and the Labour Court categorically considered the facts and circumstances as well as the findings of the enquiry officer and also the grounds raised by the workman before the labour Court.

14. This being the categorical finding of the Labour Court, this Court is not inclined to reverse the award of the Labour Court by exercising the powers under Article 226 of the Constitution of India, as there is no infirmity as such in the award. Consequently, the writ petition is devoid of merits and the award of the Labour Court dated 06.11.2002 passed in I.D.No.57 of 2001 is confirmed .

15. In the result, the writ petition stands dismissed. No costs. Consequently, the miscellaneous petition is closed.

Sd/-

Assistant Registrar (CJ Conf)

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सत्यमेव जयते

Sub Assistant Registrar

ssb

To

1. The Presiding Officer  
Labour Court,  
Pondicherry-605 009.

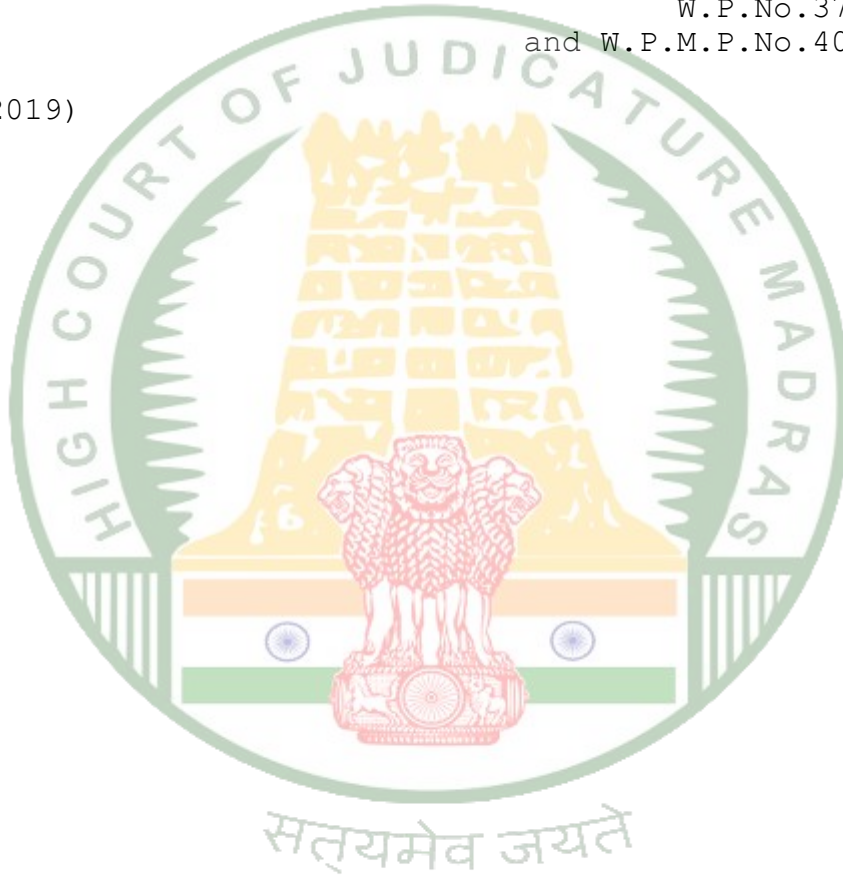
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2. The Management of  
Hindustan Lever Limited  
Rep.by its Director  
C-61-68, Peptic Industrial Estate,  
Mettupalayam,  
Pondicherry-600 009.

+1cc to Mr.K.Sudalaikannan, Advocate, S.R.No. 79535  
+1cc to Mr.T.S.Gopalan & Co Advocate, S.R.No. 79403

W.P.No.37640 of 2003  
and W.P.M.P.No.40923 of 2004

VG II(CO)  
GN(05/11/2019)



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