

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19720 of 2011

M.Gurunathan

...Petitioner

..Vs..

1.The Management,
Bharat Electronics Ltd.,
Nandambakkam,
Chennai - 600 089.

2.The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus and call for the records of the second respondent pertaining to the order dated 05.05.2011 made in I.D.No.428 of 2002 and quash the same and consequently direct the first respondent to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.S.Ramaswamy Rajarajan

For Respondents: Mr.S.Ravindran, Sr.Counsel
for Mr.S.Venkataraman
(for first respondent)
R2 Labour Court

ORDER

The award dated 05.05.2011 passed in I.D.No.428 of 2002 is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the petitioner made a submission that the writ petitioner was employed as an Electroplater and thereafter promoted to various grades. Based on some false set of allegations regarding theft of certain items, the disciplinary proceedings were initiated against the

writ petitioner. The learned counsel appearing on behalf of the petitioner made a submission that certain charges are framed and he is of the opinion that the charges are framed based on presumptions and assumptions and without any valid document. Thus, the charges framed against the writ petitioner were vague and incapable of being enquired into and the punishment of dismissal itself was inappropriate and the Labour Court failed to consider all these aspects while adjudicating the issues.

3.The learned counsel appearing on behalf of the writ petitioner mainly contended that the writ petitioner was an Office Bearer of the union and charges were framed in order to victimize the writ petitioner and these aspects were not considered by the Labour Court in its award. The enquiry was not conducted properly. The principles of natural justice has been violated. The list of documents as well as list of witnesses were not furnished to the writ petitioner and the benefit of defence assistance was denied. Citing all these instances the petitioner reiterated that based on such vague charges, improper enquiry major penalty of dismissal from service was imposed and therefore the present writ petition is to be considered for the purpose of scrapping the order of the Labour Court.

4.The learned Senior counsel appearing on behalf of the first respondent seriously disputed the contentions raised on behalf of the second respondent by stating that the allegations against the writ petitioner are serious in nature and are in connection with the theft of defence articles. Therefore, the charge memorandum was issued against the writ petitioner and the domestic enquiry was conducted, the enquiry was conducted by violating the principles of natural justice and opportunities were provided to the delinquent workman. Thus, there was no format or otherwise in respect of the approach followed at the time of conduct of domestic enquiry. The writ petitioner submitted his explanations to the activities and accordingly the enquiry officer considered the material placed on record and submitted his report holding that the charges leveled against the writ petitioner/ workman are held proved. Accordingly, the Management imposed the punishment of dismissal from service. Challenging the said order, the writ petitioner raised an industrial dispute before the Principal Labour Court. The Labour Court also considered all the grounds raised by the writ petitioner and dismissed the industrial dispute mainly on the ground that the procedures were followed by the management and the serious charges of theft are held to be proved and accordingly, there is no acceptable ground for the purpose of interfering with the quantum of punishment.

5.The learned counsel appearing on behalf of the respondent/ management reiterated that the first respondent is a

Government of India Enterprise and known as one of the nine Navarathinas in the Public Sector and it manufactures advanced electronic products for the Indian Armed Forces. The petitioner was a senior technician working in the assembly department in the first respondent factory at Nandambakkam at Chennai. Next to the first respondent's factory, there is another factory belonging to India Drugs and Pharmaceutical Limited (IDPL), belonging to Government of India.

6. On 05.02.2000 and 07.02.2000, the Security Officer of IDPL handed over to the first respondent's security officer 9 products belonging to the first respondent which were lying in their compound, closed to the compound wall of the first respondent. Thereafter, the Security vigil was intensified by the first respondent. On 11.02.2000, Assistant Security Officer saw the petitioner throwing away materials towards IDPL Compound by standing close to the compound wall in front of the paint shop. Earlier on 11.09.1999 without gate pass companies' properties were sent out side based on a letter stating that "a single piece was also send for your immediate action". The petitioner was the prime suspect and this was confirmed the report of the Director, Forensic Sciences Department, Government of Tamil Nadu, Chennai.

7. The petitioner was issued with charge sheet dated 18.02.2000 in respect of the above misconducts. Since the explanation of the petitioner was not satisfactory, a domestic enquiry was held in respect of the above charges. In the enquiry, 8 witnesses were examined and 35 documents were marked by the 1st respondent. Augustine Joseph, Assistant Security Officer was examined and produced the materials belonging to the management which were surreptitiously thrown by the petitioner into the compound of the IDPL. P.K.Sivarajan Personal Executive of IDPL corroborated evidence of Augustine Joseph. M.Kasi Scientific Officer and Document Expert, Forensic Sciences Department, Government of Tamil Nadu was examined as MW 1 and he confirmed that the letters authorizing removal of materials was returned by the petitioner.

8. By report dated 04.08.2001 the Enquiry Officer found the petitioner guilty of charges levelled against him. By order dated 20.11.2001, the petitioner was dismissed from service.

9. The non-employment of the petitioner was adjudicated before the Principal Labour Court, Chennai in I.D.No.428 of 2002.

10. By order dated 18.09.2010, the Labour Court held that the domestic enquiry against the petitioner was conducted in a fair and proper manner.

11.By award dated 05.05.2011, the Labour Court held that the conduct of the petitioner on 11.02.2000 in surreptitiously throwing the materials of the management into the compound of IDPL has been duly proved, that the petitioner has unauthorizedly prepared notes for sending the materials of the management without gate pass and that the petitioner was guilty of the following misconducts.

a.Sub Clause 15(1): or loss of goods or property or asset of the Company.

b.Sub Clause 15(27): violation or breach of any provisions of standing orders or any law or any rules framed thereunder applicable to the workmen concerned.

c.Sub Clause 15(60): theft of company's property.

d.Sub Clause 15(64): unauthorized removal of the company's property.....

e.Sub Clause 15(68): Any act.....committed in the course of employment for or wrongful loss to the company.

f.Sub Clause 15(79): any act or omission prejudicial to the interests of the company.

12.The Labour Court further held that the proved charges were grave in nature, that the management cannot repose confidence on the petitioner and that there is no element of victimization. The Labour Court therefore upheld the dismissal of the petitioner.

13.In the writ petition, the grounds raised under (a) to (e) are proof of the petitioner not having serious submissions challenging the impugned award.

14.The learned Senior counsel solicited the attention of this Court regarding the findings of the Labour Court which states that the findings of the Enquiry Officer is unambiguous regarding the proved charges. The report of the Enquiry Officer reveals that the defence statement of the delinquent employee was considered and accordingly arrived at a conclusion that the charges are proved. Further the Labour Court found that there was no victimization or otherwise as charges against the writ petitioner are grave in nature and the enquiry was conducted with reference to the documents available and by examining witnesses.

15.Finally, the Labour Court came to the conclusion that there is no acceptable reason for the purpose of invoking the discretionary powers under Section 11(A) of the Industrial Disputes Act. When the charges against the delinquent employee held proved and the procedures contemplated were also followed by the Management, the Labour Court passed an award holding that there is no reason for interfering with the quantum of

punishment and there is no acceptable ground for exercising the discretionary power under Section 11(A) of the Industrial Disputes Act.

16. On perusal of the entire award, this Court is of the considered opinion that there is no infirmity or perversity as such and accordingly the award passed by the Labour Court in I.D.No.428 of 2002 dated 05.05.2011 is confirmed and the writ petition stands dismissed. No costs.

17. The learned counsel appearing on behalf of the petitioner made a submission that the petitioner may be permitted to submit an appeal before the Appellate Authority of the respondent/Management. It is needless to state that the writ petitioner may do so if he wishes to file any such appeal and in the event of filing an appeal, the Authorities competent are at liberty to consider the same on merits and in accordance with law.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Mrm

To

1. The Management,
Bharat Electronics Ltd.,
Nandambakkam,
Chennai - 600 089.

2. The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.

+1cc to Mr.S.Venkataraman, Advocate, S.R.No. 96653

W.P.No.19720 of 2011

PM(CO)
GN(31/12/2019)