

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.11905 of 2010
and M.P.No.1 of 2010

Madras Cricket Club
1, Bells Road, Chepauk
Chennai 600 005
Rep. By Honorary
Secretary

... Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai 600 001.

2.V.Balakrishnan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records and quash the award dated 25.01.2010 in I.D.No.129 of 2004 passed by the 1st respondent, Presiding Officer, Principal Labour Court, Chennai.

For Petitioner : Mr.C.Manohar Gupta
for M/s.Gupta and Ravi

For R2 : Mr.K.Elango

R 1 : Court

O R D E R

The present Writ Petition is filed challenging the award of the Labour Court made in I.D.No.129 of 2004 passed by the 1st respondent.

2.The learned counsel appearing for the petitioner contended that the 2nd respondent misbehaved with his Superior, assaulted him by holding his tie and brandished his chappal and used abusive language. The petitioner suspended the 2nd respondent and issued charge memo. The 2nd respondent evaded receiving charge memo and subsequently on 01.08.2003 received

the charge memo. While the petitioner was contemplating holding enquiry, the President of the Employees Union of the petitioner, of which 2nd respondent is the Secretary, sent a letter dated 04.08.2003 stating that unless the charge sheet is withdrawn and suspension is revoked, the investigation would take a ugly stand. In view of such a threat, the petitioner did not conduct any enquiry and dismissed the 2nd respondent with immediate effect, reserving their right to prove the charges leveled against the 2nd respondent in appropriate forum, if necessary. The 2nd respondent raised an Industrial Dispute in I.D.No.129 of 2004. Before the 1st respondent, the 2nd respondent examined himself as W.W.1 and one N.Jagan as W.W.2 and marked 5 documents as Exs.W1 to W5. The petitioner examined M.Panneer Selvam whom the 2nd respondent assaulted and threatened as M.W.1 and N.Dhandayuthapani as M.W.2 and marked 14 documents as Exs.M1 to M14. The 1st respondent considering the pleadings, oral and documentary evidence, held that:

(i) the charges leveled against the 2nd respondent were proved;

(ii) the contention of the 2nd respondent that he was victimized for his trade union activities cannot be countenanced on the ground that the petitioner and Union had entered into Section 12(3) of the Industrial Disputes Act, (hereinafter referred to as 'the Act') settlement on 21.07.2003, marked as Ex.M14, which was accepted by all the employees.

(iii) the 2nd respondent caught hold of the tie of M.W.1 and brandished his foot wear and used filthy language.

3.The Labour Court considering the pleadings, oral and documentary evidence, held that the petitioner has proved that the charges leveled against the 2nd respondent were proved and not conducting enquiry will not vitiate the order of dismissal, but directed the petitioner to reinstate the 2nd respondent into service with continuity of service, attendant benefits, but without backwages.

4.The learned counsel appearing for the petitioner contended that the 1st respondent having held that the charges leveled against the 2nd respondent such that he assaulted and used abusive language to the Superior, erred in interfering with the punishment of dismissal. The 1st respondent has discretionary power under Section 11 A of the Act to interfere with the punishment imposed by the Management only when the punishment imposed was shockingly disproportionate to the charges leveled against the employee. In the present case, the petitioner proved that the 2nd respondent has committed serious misconduct and the order of dismissal is not disproportionate to

such a serious misconduct and prayed for allowing the Writ Petition.

5. In support of his contentions, the learned counsel appearing for the petitioner relied on the judgments reported in:

(i) 2005 (1) LLN 1074 [Mahindra and Mahindra Ltd., Vs. N.B.Narawade]:

"2.3 In the second round before the Labour Court, the said court after considering the evidence that was brought on record, specifically came to the conclusion that from the evidence of witnesses of the Company it is clear that the respondent workman had abused his superior on 22-11-1991 in filthy language without any provocation. It also held that the said respondent workman did not bring any cogent evidence on record in his favour that he did not commit any misconduct. However, in regard to punishment of dismissal imposed on the respondent workman the Labour Court came to the conclusion that the same was harsh and improper hence, deserved to be set aside and substituted the said punishment by directing the respondent's reinstatement with continuity of service but with 2/3rd back wages w.e.f. 5-3-1993.

14. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the

punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. [(1960) 1 LLJ 518 (SC)] and New Shorrock Mills [(1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

(ii) 1991 (1) LLN 268 [Engine Valves, Ltd., Madras Vs. Labour Court, Madras and another]:

"18. The decision of this Court in Madras Fertilisers case [1990 - I L.L.N. 477] (vide supra), relied upon by the learned counsel for the respondents only lays down that where the Labour Court has not made a proper exercise of the discretion vested in it under S. 11-A of the Act, this Court in the exercise of its powers under Art. 226 of the Constitution of India can certainly do what the Labour Court failed to do. Having regard to the principles referred to above, we are of the view that the power and discretion conferred under S. 11-A of the Act have to be exercised judicially and judiciously and that there should be sufficient indication in the order itself of the fact that the Court exercising powers under S. 11-A of the Act was aware of and alive to the norms and requirements of S. 11-A of the Act. The Court exercising powers under S. 11-A of the Act after finding the misconduct to have been proved is first obliged to advert itself to the question of necessity or desirability to interfere with the punishment imposed by the management and, if the management could not justify the punishment imposed thereafter it must consider the question as to the relief that is to be granted to the employee. In so considering the relief to be granted, the Court has an obligation to consider whether the punishment imposed is disproportionate or shockingly severe to the

charges held proved and if so whether a reinstatement has to be ordered or whether any other lesser punishment has to be imposed. A specific finding must be recorded whether it was expedient and proper to reinstate the employee or whether award of compensation in lieu of reinstatement will meet the requirements and ends of justice of the case concerned. Absence of reasons to invoke the power and interfere under the provisions of S. 11-A in a particular case would render the very exercise of powers arbitrary and perverse and the order consequently would stand vitiated."

(iii) 2005 (2) LLN 47 [Employers, Management, Colliery, M/s.Bharat Coking Coal, Ltd., Vs. Bihar Colliery Kamgar Union through workmen]:

"13.It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is not a mitigating circumstance to reduce the sentence of dismissal."

6.Per contra, the learned counsel appearing for the 2nd respondent contended that the 2nd respondent was a member of the Madras Cricket Club Union from 1995 - 1997 and he was elected as a General Secretary of the Union in the year 1997. The 2nd respondent was representing the cause of the workers since 1995. Earlier settlement entered between the petitioner and Union expired on 31.12.2002. The Union was negotiating with the petitioner for fresh settlement, raising various demands in October 2012. The Management was not willing to settle many of the demands. As a General Secretary of the Union, the 2nd

respondent did not accept many of the proposals made by the petitioner. In order to victimize the 2nd respondent for his trade Union activities, the petitioner issued charge memo dated 28.07.2003, alleging that he misbehaved with M.Panneer Selvam who was an Junior Executive in-charge of services. The petitioner alleged that incident occurred on 13.07.2003 and the said M.Panneer Selvam gave a complaint on 14.07.2003. The petitioner issued charge memo only on 28.07.2003, after negotiations with Union with regard to demands was completed and settlement under Section 12(3) of the Act was reached on 21.07.2003. This clearly shows that the 2nd respondent was victimized for his trade Union activities.

6(i) The 2nd respondent received charge memo on 01.08.2003 and submitted his explanation on 02.08.2003, stating that the charges leveled against the 2nd respondent were fabricated and issued in order to victimize him against his trade union activities. On 04.08.2003, the President of the Union wrote a letter to the petitioner to withdraw the charge memo and revoke suspension. Immediately, the petitioner without conducting enquiry, dismissed the 2nd respondent from service. In the Industrial Dispute, the 1st respondent without properly appreciating the pleadings, oral and documentary evidence, held that the charges are proved. The 1st respondent erred in holding that the 2nd respondent was not victimized for his trade union activities. The 1st respondent failed to see that the petitioner did not issue any charge memo while the negotiations were going on with Union for entering into settlement under Section 12(3) of the Act and 2nd respondent was actively participating in the said negotiations. Immediately after entering into settlement under Section 12(3) of the Act, the petitioner issued charge memo on 28.07.2003 for the alleged incident that took place on 13.07.2003. The charges leveled against the 2nd respondent are fabricated and the petitioner failed to prove the said charges. On the other hand, the 2nd respondent has examined himself as W.W.1 and one N.Jagan as W.W.2 and proved that the charges leveled against him are fabricated. The 1st respondent has rightly exercised the discretionary power Under Section 11 A of the Act and ordered reinstatement. The Labour Court held that there is no material evidence placed by the petitioner to prove that the 2nd respondent used filthy language. The Labour Court relying on the judgment of the Division Bench of the Gujarat High Court, held that maximum penalty cannot be imposed. The Labour Court while interfering with the punishment, has not granted backwages. That itself is a punishment for the 2nd respondent and the 1st respondent has rightly exercised discretionary power under Section 11 A of the Act and ordered reinstatement. The 1st respondent ought to have awarded backwages also as the order of dismissal passed by the petitioner is illegal and prayed for dismissal of the Writ Petition and relied

on the judgment reported in 2009 (1) LLJ 251 (Mad) [Management of Chemplast Sanmar Ltd., Vs. Presiding Officer, Labour Court, Salem and another]:

"30.The competency of this Court under Article 226 of the Constitution of India was discussed by this Court in the above said decision after referring to the well settled legal principles. Following the ratio laid down by the Supreme Court, and in the considered view of this Court as well, it is to be resolved that the Labour Court has properly appreciated the circumstance and decided the case as per the power exercisable under Section 11-A of the Industrial Disputes Act and in view of the legal position, if the Court intends to interfere with the decision of Labour Court, certain conditions are to be fulfilled. In our opinion, the decision of the Labour Court has conformed to the statutory prescriptions in this regard and there is no reason to interfere with the same. In this context, the outcome reached by the learned single Judge is appropriate and there is no circumstance to disturb the finding.

31.We have bestowed our careful attention to the attending circumstances, of this case and followed the legal principles laid down by the Supreme Court and arrived at a conclusion that the dismissal order would not stand for legal scrutiny which deserves to be set aside. We find no reason to interfere with the finding of the Labour Court and no necessity to differ from the decision of the learned Single Judge. The appeal suffers dismissal."

7.Heard the learned counsel appearing for the petitioner as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the petitioner was issued a charge memo dated 28.07.2003 to the 2nd respondent alleging that the 2nd respondent has misbehaved and attempted to assault M.W.1 and used filthy language. The alleged incident was on 13.07.2003 and complaint was given on 14.07.2003. The 2nd respondent received charge memo on 01.08.2003 and submitted his explanation on 02.08.2003. Before the petitioner could proceed further, the President of the Employees Union in which the 2nd respondent was the General Secretary sent a letter dated 04.08.2003 asking the petitioner to withdraw the charge memo and revoke the suspension. In the said letter, the

President of the Union threatened the petitioner that "You are advised to withdraw the charge sheet and revoke the above suspension order before things take an ugly stand and it may strain our good relationship". On receipt of the said letter, the petitioner decided not to conduct any Domestic Enquiry and sent a reply dated 14.08.2003 to the Union and on the same day dismissed the petitioner with immediate effect stating the reason for not conducting the Domestic Enquiry. In the order of dismissal dated 14.08.2003, the petitioner has reserved its right to prove the charges before the appropriate forum. The 2nd respondent in the dispute raised before the 1st respondent contended that the charges leveled against the 2nd respondent were fabricated and he is being victimized for his trade union activities. In the counter statement filed by the petitioner before the 1st respondent also the petitioner reserved their right to prove their charges as mentioned in the dismissal order. Both the petitioner and the 2nd respondent had let in oral and documentary evidence before the 1st respondent. The 1st respondent considering the pleadings, oral and documentary evidence, held that:

(i) the charges leveled against the 2nd respondent were proved;

(ii) the contention of the 2nd respondent that he was victimized for his trade union activities cannot be countenanced on the ground that the petitioner and Union had entered into 12 (3) settlement on 21.07.2003 marked as Ex.M14, which was accepted by all the employees.

(iii) the 2nd respondent caught hold of the tie of M.W.1 and brandished his foot wear and used filthy language.

8(i) The 1st respondent has given cogent and valid reason for such a finding. Having held so, the 1st respondent exercising his discretionary power under Section 11 A of the Act, set aside the order of dismissal and ordered reinstatement of 2nd respondent with continuity of service, attendant benefits, but without backwages. The reasons given by the 1st respondent for exercising the discretionary power and interfering with the order of dismissal is erroneous. It is well settled that the Labour Court or the Tribunal can interfere with the punishment imposed by the Management only when such a punishment is shockingly disproportionate to the charges leveled against the employee and proved in the Domestic Enquiry. The discretion under Section 11 A has to be exercised judicially.

8(ii) In the present case, the 1st respondent has held that the charges leveled against the 2nd respondent were proved and 2nd respondent was not victimized for his trade union activities. The proven charges against the 2nd respondent is that he caught hold of the tie of M.W.1 who is the Junior Executive in-charge of the Services and brandished his chappal and used abusive

language. Having held so, the 1st respondent erred in interfering with the punishment of dismissal on the ground that the incident did not happen in a factory or an industry where number of employees would be working and that 2nd respondent did not beat M.W.1, but only brandished his chappal. This reason given by the 1st respondent for reinstatement with continuity of service is ridiculous one and it means only when a worker working in a factory or industry beats his Superior, he can be dismissed from service. The charges leveled against the 2nd respondent are serious in nature i.e., threatening the Superior in the presence of others. For this proven charges, the order of dismissal is disproportionate. For the above reason, the judgments relied on by the learned counsel appearing for the petitioner are squarely applicable to the facts of the present case. The judgment relied on by the learned counsel appearing for the 2nd respondent is not applicable to the facts of present case and does not advance the case of the 2nd respondent.

9. For the above reason, the impugned award of the 1st respondent dated 25.01.2010 made in I.D.No.129 of 2004 is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To

The Presiding Officer,
Principal Labour Court,
Chennai 600 001.

+1cc to M/s.Gupta and Ravi, Advocate SR.No.68173

+1cc to Mr.K.Elango, Advocate SR.No.67660

W.P.No.11905 of 2010

RV (CO)
GMY (19/09/2019)