

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.14381 of 2010

And

M.P.No.1 of 2010

The Managing Director,
Aditi Diamonds (P) Ltd.,
All India Press Compound,
Kennedy Nagar, P.B.No.77,
Pondicherry-605 001. ... Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.K.Gnanambigai ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari, calling for the
records pertaining to I.D.No.46 of 2005 and quash the Award
dated 24.12.2009 passed therein by the first respondent.

For Petitioner : Ms.R.Maheswari

For Respondent-1 : Labour Court

For Respondent-2 : Mr.P.R.Thiru Neelakandan

ORDER

The Award dated 24.12.2009 passed by the first
respondent-Labour Court in I.D.No.46 of 2005, is under challenge
in the present writ petition.

2. The writ petitioner is the Managing Director, Aditi
Diamonds (P) Limited.

3. The learned counsel appearing on behalf of the writ
petitioner states that the writ petitioner is a Company
incorporated under the provisions of the Companies Act, 1956.

The writ petitioner is involved in the business of polishing diamonds and has a small compliment of workforce comprising of permanent, temporary and casual workmen, in all totally numbering 135.

4. The benefits contemplated under the ESI Act and PF Act are being extended to the workmen. The second respondent-employee was employed as the Junior Supervisor in the Bottom Section and during working hours, she had indulged in an act involving moral turpitude. A complaint was given by one Senior Supervisor Mr.Rajendra Gaonkar on 11.08.2004 against the second respondent-employee for an act involving moral turpitude, demanding the complainant to marry her. The second respondent-employee admitted the said fact during the enquiry in the presence of two women employees. An enquiry was conducted with the presence of two women employees.

5. On 19.08.2004, the second respondent-employee went to the house of the complainant, demanding him to withdraw the complaint submitted by him on 11.08.2004. On 20.08.2004, the complainant Mr.Rajendra Gaonkar gave another complaint with regard to the visit of the second respondent-employee to his house and the demand made by her to withdraw the complaint.

6. In view of the continuous misconduct and the complaints in this regard, the writ petitioner-Management placed the second respondent-employee under suspension on 28.08.2004. On 31.08.2004, the second respondent-employee submitted a letter, admitting the above facts. Based on the admission, a show cause notice was issued on 09.09.2004, stating that why she should not be dismissed from service.

7. On 12.09.2004, the second respondent-employee submitted her reply to the show cause notice. Consequently, the writ petitioner-Management passed an order on 15.09.2004, dismissing the services of the second respondent-employee, as the explanation submitted by her was not satisfactory and untenable. On 20.07.2005, the Labour Officer (Conciliation) submitted a failure report. Accordingly, an industrial dispute was raised in I.D.No.46 of 2005. The Labour Court allowed the industrial dispute, against which the present writ petition is filed.

8. The learned counsel for the writ petitioner mainly contended that the fairness of the enquiry was not disputed by the second respondent-employee. The second respondent-employee was given an opportunity to defend her case. The order of dismissal was issued based on the proved charges, which all are grave in nature. The repeated misconducts resulted in filing a complaint by another Supervisor, allowing the writ petitioner-Management to initiate action against the second respondent-

employee. Therefore, the writ petitioner-Management had acted neutrally in all respects and to ensure that the principles of natural justice has been followed in all respects.

9. The learned counsel for the writ petitioner-Management reiterated that exercise of Section 11-A of the Industrial Disputes Act, 1947, by the Labour Court is perverse in view of the fact that the Labour Court has not recorded any acceptable reason. Contrarily, the findings of the Labour Court reveals that the charges against the second respondent-employee was proved beyond doubt and the charges are gave in nature. In spite of all these findings, the Labour Court has finally invoked Section 11-A of the Industrial Disputes Act, 1947, which is untenable.

10. The learned counsel appearing on behalf of the second respondent-employee disputed the contentions raised by the learned counsel appearing on behalf of the writ petitioner-Management, by stating that the second respondent-employee joined the services of the writ petitioner-Company in the year 1993 as a Polisher and was subsequently promoted as Checker in the year 1995 and Supervisor in the year 1996. She has got an unblemished record of service. Lastly she was working in Bottom Section as Supervisor.

11. The second respondent-employee states that one Senior Supervisor by name Rajendra Gaonkar approached her on 11.06.2003 and expressed his desire to marry her. The second respondent-employee said that she would reply after consulting her family members. The said Mr.Rajendra Gaonkar was already married and living with his wife. Finally, she said that she is not willing to marry the said Supervisor Mr.Rajendra Gaonkar.

12. The second respondent-employee further states that the said Mr.Rajendra Gaonkar started giving various troubles in her work place. Narrating the same, the learned counsel for the second respondent-employee is of an opinion that it is the complainant Mr.Rajendra Gaonkar, who committed the misconduct and the writ petitioner-Management taken the action against the second respondent-employee based on certain false set of facts. The various discussions between the complainant and the second respondent-employee were also narrated and the learned counsel for the second respondent-employee is of an opinion that the order of dismissal is perverse as the principles of natural justice has been violated and against the Standing Orders.

13. The learned counsel for the second respondent-employee states that the copy of the domestic enquiry report was not given to the second respondent-employee and therefore, the order of dismissal is liable to be set aside.

14. In support of the above contentions, the learned counsel for the second respondent-employee cited the judgment of the Hon'ble Supreme Court of India in the case of Harjinder Singh vs. Punjab State Warehousing Corporation [CDJ 2010 SC 462], in paragraph-23, it has been held as under:-

"23. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable

grounds put forward by the employer - public or private."

15. The learned counsel for the second respondent-employee is of an opinion that it need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory.

16. In the case of Meenglas Tea Estate vs. Its Workmen [CDJ 1963 SC 043], wherein in paragraph 4, the Hon'ble Supreme Court, held as under:-

"4. The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was, questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirements must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of

natural ,justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it."

17. In the case of Iswarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Company Ltd and Another [CDJ 2014 SC 339], wherein the Hon'ble Supreme Court of India, in paragraph-9, held as under:-

"9. We find the judgment and award of the labour court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the labour court in its Award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the Award of the labour court was based on sound and cogent reasoning, which has served the ends of justice.

It is relevant to mention that in the case of Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil[1], with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that-

"The power of interference under Art.227 is to be kept to a minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court." It was also held that-

"High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Art.227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it." Thus it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.

In the case of Harjinder Singh v. Punjab State Warehousing Corporation[2], this Court held that,

"20.....In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and unjustifiably interfered with the award of reinstatement passed by the Labour Court with compensation of Rs.87,582 by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulation."

18. In the case of K.V.S.Ram vs. Bangalore Metropolitan Transport Corporation [CDJ 2015 SC 035], wherein the Hon'ble Supreme Court of India, in paragraph-11, held as under:-

"11. In the Writ Petition, while setting aside the award of the Labour Court, learned Single Judge placed reliance upon the judgment of this Court passed in the case of Punjab Water Supply Sewerage Board & Anr. vs. Ramsajivan & Anr., reported in 2007 (2) SCC (L&S) 668 = (2007) 9 SCC 86 and also another judgment of the High Court and observed that a person who practices fraud for securing employment cannot perpetuate on the ground of delay and the learned Single Judge faulted the Labour Court for exercising discretion under Section 11A of the Industrial Disputes Act and interfering with the punishment of dismissal from service. In our considered view, in exercise of its power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the Tribunal,

only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court."

19. A perusal of the observations made by the Apex Court of India in the judgments (cited supra), this Court is of an opinion that those observations are the general principles and therefore, not directly applicable with reference to the facts and circumstances of the present case. Undoubtedly, those principles are golden principles to be followed while considering the facts and circumstances of the particular case.

20. In the present case, the second respondent-employee, first time before the Labour Court, made a submission that she had given a complaint against the said Supervisor, who made the complaint, which was the cause for initiation of action. When the second respondent-employee, at the first instance, telling such a fact before the Labour Court, after receiving the order of termination, then the very sanctity of the statement is to be tested. The second respondent-employee has not filed any documents nor established by way of any evidence, before the Labour Court that she had given a complaint immediately and no action was taken by the Management against her complaint.

21. In the absence of any such proof, the mere statement made before the Labour Court, at the first instance, be construed as an after thought and such statements are made mainly to defend the cases before the Labour Court. Thus, such statements, which all are factually contradict and disputed, must be established by way of documents or evidences.

22. In the present case, the second respondent-employee failed to establish any such complaint. Therefore, the case build-up on that basis cannot be trusted upon.

23. Considering the arguments made by the learned counsel appearing on both sides, this Court is of an opinion that the documents Ex.A-1 to A-6 were marked by the writ petitioner-Management and the second respondent-employee marked Exs.R-1 to R-10. The contention of the writ petitioner-Management was that the second respondent-employee gave torture to one Mr.Rajendra Gaonkar to marry her and based on his

complaint, the writ petitioner-Company had taken action against the second respondent-employee and terminated her from service to maintain the modesty of the women employees. The complaint given by Mr.Rajendra Gaonkar was marked as Ex.R-4. The Ex.R-4 reveals that the second respondent-employee enquired about the personal life of the said Mr.Rajendra Gaonkar and she told him that if he did not take any positive decision, she will do something seriously and under those circumstances, the said Supervisor required the writ petitioner-Company to initiate action against her.

24. A domestic enquiry was conducted, in which the second respondent-employee had admitted the above misconduct. However, before the Labour Court she has raised an objection, but the writ petitioner-Management filed an enquiry proceedings, which was marked as Ex.R-5. The second respondent-employee herself admitted her relationship with Mr.Rajendra Gaonkar to some extent that is discussing and exchanging their personal life. The Labour Court arrived a finding that the second respondent-employee herself admitted about her misconduct before the enquiry proceedings and the enquiry proceedings was marked as Ex.R-5.

25. On perusal of Ex.R-5, the Labour Court found that the statement of Mr.Rajendra Gaonkar was recorded, in which one Mr.Baskar signed as a witness. The second respondent-employee had also signed in the said report. The second respondent-employee has admitted her signature found in Ex.R-5 enquiry proceedings. However, she said that her signatures were obtained in two papers without reading the contents. Under those circumstances, the Labour Court arrived a conclusion that the enquiry was not conducted properly and there was no allegation against the second respondent-employee prior to the alleged incident. Thus, the Labour Court arrived a conclusion that the domestic enquiry was not conducted in accordance with the principles of natural justice.

26. This Court has to examine whether such an enquiry conducted in camera by the writ petitioner-Management in respect of the nature of the misconduct can be accepted for the purpose of testing the validity of the termination order or not.

27. This Court is of the considered opinion that the conduct of enquiry by the writ petitioner-Management has not been denied by the second respondent-employee. The participation of the second respondent-employee in the enquiry proceedings was also not disputed by the second respondent-employee. The admission of the misconduct by the second respondent-employee before the enquiry proceedings is also not disputed by the second respondent-employee. In other words, the second respondent-employee admitted the misconduct before the Enquiry

Office. The nature of the complaint is regarding certain personal allegations in relation to the personal affairs of the complainant and the second respondent-employee. Under those circumstances, the writ petitioner-Management conducted an enquiry, which cannot be held as partial or conducted with a biased manner.

28. The allegation of misconducts are no way connected with the administrative affairs or regarding the writ petitioner-Management affairs of the writ petitioner-Company. Contrarily, the complainant as well as the second respondent-employee developed an affair, which resulted in filing a complaint by the complainant and the writ petitioner-Management therefore cannot be blamed for conducting such an enquiry in view of the fact that there is no possibility of any partiality. Under those circumstances, the only intention of the writ petitioner-Management would be to maintain the decorum as well as to protect the modesty of the women employees working with the writ petitioner-Management. Thus, an enquiry was conducted.

29. When the second respondent-employee admitted the misconduct, then there is no point in conducting a detailed enquiry. The admission was made in the presence of a witness and the enquiry proceedings were witnessed by the other employees and they have signed the enquiry proceedings. Thus, the enquiry was conducted. The second respondent-employee admitted the guilt and the misconduct. When the charges are admitted by the employee, then there is no question of conducting any further elaborate enquiry. Such an enquiry will be a futile exercise and has become an empty formality. It is the settled principle that once an employee admitted the guilt, then no further enquiry is required.

30. The next question would arise whether the objections raised by the second respondent-employee regarding the conduct of the enquiry before the Labour Court can be accepted or not. In this regard, it is relevant to state that the statement made by the second respondent-employee is not supported by any documents. The blanket statement of coercion or influence, can never be accepted by the Courts.

31. If at all the signature of the second respondent-employee was obtained by the writ petitioner-Management during the course of enquiry regarding the admission of the charges, then immediate objections ought to have been raised spontaneously. However, no such objection letter or otherwise is marked as a document before the Labour Court. Contrarily, the second respondent-employee made a blanket statement, stating that the enquiry was not conducted properly. Therefore, such a statement made before the Labour Court, which is to be construed as an after thought, made in order to defend the case based on

certain legal opinions. Therefore, the facts in this regard are to be considered. While the industrial dispute is raised, then the second respondent-employee raised a ground that the signature in two papers were obtained from her without explaining the contents. Such statements cannot be believed as the facts and circumstances reveal that the affair between the complainant as well as the second respondent-employee was established and the writ petitioner-Management initiated disciplinary proceedings. She was placed under suspension and an enquiry was conducted and during the enquiry, she admitted the charges and under those circumstances, this Court is unable to come to a conclusion that the principles of natural justice had been violated in this case.

32. Even if certain procedural lapses are found regarding the conduct of enquiry, this Court is of the considered opinion that if such lapses or omissions resulted or caused any prejudice to the interest of the employee concerned, then only the Courts can arrive a conclusion that the order is in violation of the principles of natural justice. If such omissions or lapses in the enquiry proceedings are not affecting the rights of the employee or did not cause any prejudice to the interest of the employee, then there is no reason to remand the matter or to quash the final order of penalty imposed by the writ petitioner-Management.

33. In the present case, the enquiry was conducted in camera and during the enquiry in the presence of witnesses, the second respondent-employee admitted the guilt. That being the factum, there is no reason to arrive a conclusion that the enquiry proceedings conducted is in violation of the principles of the natural justice.

34. This being the facts and circumstances, this Court is of the considered opinion that the Award of the Labour Court dated 24.12.2009 passed in I.D.No.46 of 2005 stands quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

Svn

To

The Presiding Officer,
Labour Court,
Pondicherry.

W.P.No.14381 of 2010

A.SK(29/11/2019)