

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A. No.1226 of 2018

The Management of
Soundararaja Mills Ltd.,
Nedungadu (Post),
Karaikal 609 603,
Rep. by its Assistant General Manager. ..Appellant

Vs

1.The Presiding Officer,
Industrial Tribunal cum
Labour Court,
Puducherry.

2.K.Mohandoss ..Respondents

PRAYER: Appeal is filed under Clause 15 of Letters Patent Act, to set aside the order dated 22.03.2018 passed by this Court in W.P.No.6565 of 2018 and allow the writ appeal.

WP.NO.6565/2018:

Petition filed Under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the 1st Respondent in I.D(L) No.40 of 2012 and quash its preliminary award dated 16.06.2012 and the final award dated 06.10.2017.

For Appellant : M/s.T.S.Gopalan and Co
For Respondents : R1-Labour Court
Mr.Balan Haridas for R2

JUDGMENT

[Judgment of the Court was delivered by DR.VINEET KOTHARI, J.]

This Appeal has been filed by the Management, aggrieved by the order of the learned Single Judge dated 22.03.2018, whereby

the learned Single Judge dismissed the Writ Petition filed by the Management against the preliminary award dated 16.06.2012 with the final award dated 06.10.2017 passed by the Industrial Tribunal cum Labour Court, Puducherry in I.D.(L) No.40 of 2012.

2.The reasons assigned by the learned Single Judge in the impugned order before us are quoted below for ready reference:

"5. The learned counsel for the petitioner also submitted that when there are two charges framed against the second respondent, namely, the misconduct of go-slow in work marked as Ex.M10 and the complaints given by the complainants in Ex.M13 and Ex.M14, the first respondent has come to the conclusion that the complaints Ex.M13 and Ex.M14 cannot be accepted for the reason that the complainants, namely, Maistry Mahalingam and Supervisor, Aranga Karthikeyan were not examined. So far as concerned, the petitioner has fairly established the said charge.

6.Again this Court finds that the said argument does not hold water. The reason is that when the copy of the report of the enquiry officer finding the second respondent guilty in respect of the first charge marked as Ex.M10 was also not made available before the Labour Court, the Labour Court, in my considered opinion, taking note of the factor that the second respondent, who had put in 17 years of service, should not have been visited with the punishment of termination from service without there being any charge proved against him, thought it fit to interfere with the order of termination. Therefore, this Court is not inclined to interfere with the impugned award. Accordingly, the writ petition is dismissed. Consequently, W.M.P.No.8157 of 2018 is also dismissed.

3. The learned Labour Court in its impugned final award dated 06.10.2017, had partly allowed and setting aside the termination of the Petitioner Workman, K.Mohandass and directed the Respondent Management to reinstate the Petitioner within one month along with 30% backwages.

4.The reasons assigned by the learned Labour Court in its award dated 06.10.2017, are also quoted below for ready reference:

"13. Furthermore, it is learnt from the records that though the respondent management has exhibited 93 documents they have not filed the enquiry report submitted by the enquiry officer before this Court. Further, the complaints given by maistry Mahalingam and Supervisor Aranga Karthikeyan are exhibited as Ex.M13 & Ex.M14. But the said complainants have not been

examined before this Court to prove the said exhibits that is the complaints given by them against the petitioner. Though the respondent management has relied upon several citations, it has failed to establish that the domestic enquiry was conducted in a fair manner and failed to prove the charges leveled against the petitioner before this Court after passing of the said Preliminary Award and therefore, as this court has already held that the domestic enquiry conducted by the enquiry officer not in accordance with the principles of natural justice and the respondent management has terminated the service of the petitioner only on the foot of the said invalid enquiry report and as the petitioner has served more than 17 years at the respondent establishment, the punishment of termination from service given to the petitioner for the charge of agitation of go-slow in production and mixing of two different wrong coloured threads into the cones and causing loss to the management, is not proportionate. Therefore, it is just and necessary to held that the termination order passed by the respondent management on the foot of the domestic enquiry report is not sustainable and hence it is to be held that the termination of petitioner by the respondent management is not justified and the petitioner is entitled for the relief of reinstatement as claimed by him in the claim statement.

14.As this court has decided that the termination of petitioner by the respondent management is not justified, it is to be decided whether the petitioner is entitled for backwages with continuity of service as claimed by the petitioner. It is not the case of the respondent that petitioner is working in any other industry after his termination. The petitioner has stated that he is not working anywhere else after his termination. However the petitioner could have served at anywhere else after his termination from the respondent establishment. Considering the above circumstances, this Court decides that the petitioner is entitled for 30% backwages and other attendant benefits.

15.In the result, the petition is partly allowed and the termination of petitioner by the respondent management is not justified and an Award is passed by directing the respondent to reinstate the petitioner within one month from the date of this order and to pay 30% backwages from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No costs."

5. Having heard the learned counsel for the parties and upon perusal of the aforesaid orders, we are satisfied that both the parties failed to prove their respective cases before the Labour Court in appropriate manner and on the basis of the half baked material, the learned Labour Court came to the conclusion that the termination of the Petitioner workman is not justified. We are of the opinion that both the parties can be allowed once again to prove their respective cases before the learned Labour Court.

6. In view of this, we allow the present Writ Appeal of the Management of the Employer and setting aside both the orders of the learned Single Judge dated 23.02.2018 and that of the Labour Court dated 06.10.2018 as well as preliminary Award dated 16.06.2012. We restore the matter back to the learned Labour Court, Puducherry for passing fresh orders, after holding enquiry in accordance with law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Industrial Tribunal cum
Labour Court,
Puducherry.

+1cc to Mr.Balan Haridas, Advocate sr.71447
+1cc to M/s.T.S.Gopalan and Co, Advocate sr.70348

W.A.No.1226 of 2018

jp(co)
nr 30/09/2019