

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.09.2019

CORAM

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

W.P.No.23202 of 2005

A.T.Mariadoss

..Petitioner

Vs.

1. Presiding Officer,
Labour Court, Coimbatore.

2. The Management,
Kothari Industrial Corporation Ltd.,
Water Falls Estate (East),
Water Falls Estate Post,
Valparai - 642105.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent in I.D.No.77 of 2000 dated 24.03.2004 and pass the portion of the award denying backwages from 15.07.1998 to 30.11.2003, (date of retirement) and direct the second respondent to pay back-wages from 15.07.1998 to 30.11.2003, to the petitioner and all the consequential benefits.

For Petitioner : Mr.R.Munusamy

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

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O R D E R

The award dated 24.03.2004 passed in I.D.No.77 of 2000 is under challenge in the present writ petition, as far as the denial of back-wages from 15.07.1998 to 30.11.2003 and further direction is sought for to pay back-wages from 15.07.1998 to 30.11.2003 to the writ petitioner with all other consequential benefits.

2. The petitioner was employed as Supervisor in the Tea Plantation in the Tea Estate of the second

respondent. One Mr.T.M.Bidappa, Field Officer, during his routine visit, noticed that two of his workers (one of them is Mrs.Pechiama) who were marked present for work but they were not found in their place of work. The routine visit was conducted on 21.04.1998 and on enquiry, it transpired that the petitioner had sent the two workmen for doing his personal work in his house. Consequently, a show cause notice was issued to the writ petitioner on 30.04.1998. On 08.05.1998, the petitioner submitted his explanation. Denying the explanation on 15.06.1998, the enquiry officer after conducting enquiry, submitted his report, holding that the charges against the petitioner were proved. Thereafter, a second show cause notice was issued and the management proposed and imposed the punishment of dismissal of the writ petitioner in show cause notice dated 29.06.1998. The writ petitioner submitted his further explanation to the second show cause notice on 02.07.1998. However, the management was not convinced with the reply furnished by the writ petitioner and passed an order of dismissal in proceedings dated 14.07.1998. On 31.01.1999, the Conciliation Officer gave his failure report, consequently, a dispute was raised by the writ petitioner in I.D.No.77 of 2000 before the first respondent. Admittedly, no oral evidence was adduced by both the parties. The petitioner filed a copy of a letter which was marked as W1 and the management side's document was marked as M1 to M4. During the pendency of the industrial dispute, the petitioner reached the age of superannuation on 30.11.2003. The first respondent/Labour Court passed an award that the enquiry conducted by the second respondent/Management was fair and proper and not vitiated by any other grounds. The award dated 24.03.2004, further, states that while dealing with the propriety of the arrangement, it was found disproportionate by the Labour Court and accordingly, directed reinstatement of the writ petitioner without back-wages but continuity of service. Since the petitioner had crossed the age of superannuation, there was no scope for reinstatement. Consequently, the respondent has calculated the terminal benefits due, to the writ petitioner upto 30.11.2003 and paid the same and decided not to challenge the portion of the amount granting reinstatement.

3. The learned counsel appearing on behalf of the second respondent made a submission that the petitioner was a supervisor, hence, he will not fall under the definition of the workman under Section 2(s) of the Industrial Disputes Act, 1947. However, the Labour Court failed to adjudicate the preliminary issue, in respect of the status of the writ petitioner whether, he is a

workman or not. The petitioner had the powers to allocate the work itself would show that he had 'supervisory powers'. Even as per the version of the petitioner, he had permitted the concerned workman to leave the work spot. Thus, the petitioner had served as a supervisor and hence, he would not answer to the definition of 'workman' under Section 2(s) of Industrial Disputes Act, 1947. The Labour Court on appreciation of facts as well as the evidence arrived at a conclusion that the petitioner was guilty of the misconduct. Further, the Labour Court found that the domestic enquiry was conducted in a fair manner and there was no infirmity or procedural violations. Under those circumstances, the Labour Court committed an error in interfering with the quantum of punishment imposed by the management. The writ petitioner was in occupation of quarters provided by the management for a substantial period and even after his superannuation, without any payment of rent. The Labour Court itself has denied back-wages, considering the fact that the charges against the writ petitioner was proved.

4. In view of the fact that the writ petitioner had already retired from service, his dues were also settled by the Management. Thus, the denial of the back-wages by the Labour Court alone is to be considered by this Court.

5. The petitioner states that when the order of termination itself was set aside by the Labour Court, the Labour Court ought to have granted the benefit of back-wages to the writ petitioner. However, the reinstatement was ordered without any back-wages but continuity of service. Thus, the Labour Court award is to be quashed to the extent of denying back-wages to the writ petitioner.

6. This Court, is of the considered opinion that the Labour Court cogently considered all the issues raised in this regard. However, the Labour Court had not adjudicated the point raised by the second respondent/Management that the writ petitioner is not a workman within the definition under Section 2(s) of the Industrial Disputes Act, 1947. However, at this length of time, this Court, need not go into the ground raised in this regard, as the writ petitioner reached the age of superannuation and his terminal benefits were also settled by the Management. As far as the back-wages are concerned, this Court, is of the considered opinion that the charges against the writ petitioner were proved and the Labour Court found that there was no infirmity as such, in respect of the procedures followed for conducting the domestic enquiry, when the manner of the

enquiry is confirmed by the Labour Court and the Labour Court set aside the termination of the order only on the ground that the penalty of termination is disproportionate to the gravity of the proved charges and has rightly come to the conclusion that back-wages cannot be paid only in case, where the entire actions of the Management is found invalid. Then alone, the Court have awarded the back-wages and back-wages can never be granted in a routine manner in all cases where the reinstatement is ordered by accounting a balanced approach in respect of the proved charges.

7. A striking balance in between, has to be arrived by this Court in such circumstances, where the charges of misconduct are proved and the Courts have come to the conclusion that the imposition of penalty is not in proportionate to the gravity of the proved charges. If that being the said point agitated by the Labour Court and this Court is of an opinion that there is no infirmity or otherwise in respect of the conclusion arrived in this regard for non-payment of back-wages to the writ petitioner, keeping in mind that the charges of respondent on misconduct were proved against the writ petitioner. Further, the terminal benefits were also settled in favour of the writ petitioner and he retired from service.

8. This being the factum, this Court is not inclined to interfere with the findings of the Labour Court, as the writ petitioner has not reached in acceptable legal grounds to do so. Consequently, the award dated 24.03.2004 passed in I.D.No.77 of 2000 is confirmed and the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sni/dua
To

The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.T.S.Gopalan , Advocate SR.No. 78322

W.P.No.23202 of 2005

A.SK(04/11/2019)