

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM

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

W.P.No.27559 of 2005
W.P.M.P.No.29978 of 2005

The Management of
Ashok Leyland Ltd.,
SIPCOT Industrial Complex
Hosur-635 126.
Rep.by its Manager IR.

... Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2. Mr.G.Balasubramaniam

... 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 connected with the award dated 03.11.2004 made by the 1st respondent in I.D.No.445/2000 and quash the same.

For Petitioner : M/s.Sanjay Mohan
for M/s. S.Ramasubramaniam & Associates

For Respondents: R1-Labour Court
Mr.R.M.D.Nasurullah
for Mr.K.V.Shanmuganathan

सतयमेव जयते
O R D E R

The award dated 03.11.2004 passed in I.D.No.445 of 2000 is sought to be quashed.

2. The writ petitioner is the Management of Ashok Leyland Limited and the said company has been registered under the provisions of the Companies Act, 1956. The second respondent joined the services of the writ petitioner/company on 06.03.1982 as a semi skilled worker. At the time of termination, the second respondent was employed as skilled-2 worker. The writ petitioner issued a charge sheet alleging that on 02.11.1996, while the second respondent was in the II shift i.e., 8.00 A.M to 4.30 P.M., the Senior Production Engineer Mr.R.Krishnan

allotted work to the second respondent. On the same day at about 8.40 A.M it was found that the 2nd respondent had not started his work allotted to him by Mr.R.Krishnan, Senior Production Engineer and was standing in the Auto Line final area. Mr.Anbu, Senior Production Engineer along with Mr.R.Krishnan, Senior Production Engineer who had allotted work to the second respondent, told the second respondent to do the work allotted to him.

3. When Mr.Anbu, Senior Production Engineer told the second respondent that he was not at all working and refused to work on drilling and Grinding machines, the 2nd respondent abused him using filthy language. The 2nd respondent also removed his chapel and told Mr.Anbu, Senior Production Engineer that he would beat him with his chapel. The 2nd respondent assaulted Mr.Anbu by using physical force by beating him with his hand repeatedly. The evidence of the Senior Production Engineer Mr.Anbu has been accepted by the Labour Court. The domestic enquiry was conducted and the workman was provided with an opportunity to defend his case. The enquiry officer submitted his report holding that the charges against the workman were proved. Based on the proved charges, the second respondent/workman was terminated from service. The second respondent raised an industrial dispute in I.D.No.445 of 2000 before the Labour Court.

4. The learned counsel for the petitioner states that the charges are grave in nature and the same were proved beyond doubt before the enquiry officer and the Labour Court has also made a finding that the enquiry was conducted in a just and proper manner and charges against the workmen were held proved. In this regard, it is relevant to consider the findings of the Labour Court that the enquiry report categorically stating that the charges against the workmen were proved beyond doubt. When the Labour Court had admitted all these grounds raised by the writ petitioner/company, finally held that the punishment of termination is excessive and accordingly, allowed the industrial dispute and ordered for reinstatement without back wages and any other attendant benefits.

5. The learned counsel for the writ petitioner states that even in a case where such grave misconducts were proved beyond doubt before the enquiry officer as well as the Labour Court, the Labour Court ought not to have shown any misplaced sympathy, so as to grant the order of reinstatement. Such reinstatement has sent wrong message to other workers in the Society at large. The workman has not only used filthy language, but also, assaulted the Engineer and the charges were also held proved.

6. The learned counsel appearing on behalf of the second respondent disputed the contention by stating that the second respondent submitted a letter of apology to the Management and

considering the letter of apology, the labour Court ordered for reinstatement. Such circumstances aroused on account of certain provocation and such provocation resulted in such behaviours. Under these circumstances, there is no infirmity in respect of the award passed by the Labour Court.

7. This Court is of the considered opinion that the findings of the Labour Court is unambiguous regarding the proved charges. The Labour Court found that the enquiry was conducted in consonance with the principles of the natural justice and there is no infirmity at all. However, the Labour Court extended misplaced sympathy for the purpose of granting reinstatement. This Court is of the view that misplaced sympathy cannot be granted in such cases. It will send wrong message to the workmen in the society at large.

8. It is relevant to remind the fundamental duties of a citizen enunciated under Article 51-A of the Constitution of India. Sub Clause (i) to Article 51-A enumerates that "to safeguard public property and to abjure violence". Sub Clause (j) stipulates that "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

9. Emphasizing the fundamental duties of the citizen under Article 51-A of the Constitution of India, this Court is of the strong opinion that rights and duties are inseparable concepts and the person, who is claiming right, must keep in mind that he has got corresponding duties towards the fellow citizen and to our great Nation at large. Rights and duties are the relative terms and therefore, in the current day situation, while dealing with the rights of the individuals, his duties are also to be considered by the Constitutional Courts in order to adopt a pragmatic and balancing approach. It is not as if while upholding a rights of a citizen, Court can neglect his duties. Only if a citizen respects his duties as law requires, then alone he can claim his right under the law and it is not as if he can violate his duties and responsibilities and claim rights in isolation. Such a concept, if at all in the mind of a person, the same can never be encouraged by the Constitutional Courts.

10. Keeping this view, this Court is of an opinion that certain allegations, manhandling or physically attacking or assaulting the co-employees or the higher officials can never be tolerated and such offences are already classified as punishable offence under the Indian Penal Code. This apart, respecting the fellow citizen or colleagues in the work place is of paramount importance. Only through maintaining the discipline and decorum, the industrial activities can be developed, so also, the developmental activities across the country can be taken forward. Thus, discipline and decorum in industrial places are

of paramount importance. It is an organizational discipline, which would make the industry to grow further and to develop the prospectus of our great Nation as well as the people at large. Thus, compromising the discipline will lead to destruction within the industry / public institutions. Any indisciplined industry or organization can never see the light of growth. Most of the industries / public institutions had collapsed on account of indiscipline, mal administration or corruption. Thus, discipline, decorum, honesty and integrity are the vital characters to be maintained in the industry / public institutions, factories and trade activities, so as to take our Nation forward on par with the global standards. Our great Nation is a fast growing Country in the world. Under these circumstances, Courts are also duty bound to ensure that such discipline, decorum, honesty and integrity are being maintained at all institutional levels and all such institutional respects are also protected.

11. This being the concept to be borne in mind, this Court is of an opinion that any indiscipline, if noticed and disciplinary actions are initiated against the employees, Courts must be keen in analyzing the factors and arrive a conclusion that such indiscipline activities are brought down and dealt in accordance with law without showing any leniency or misplaced sympathy. Thus in disciplinary matters, misplaced sympathy by the Courts also would lead to destruction of industries / public institutions. The personal likes and dislikes of certain elements or character should not have any impact in deciding such cases of disciplinary proceedings. It is not as if we are compromising the principles, we are compromising the National developments and therefore, there cannot be any such misplaced sympathy in the matter of discipline and decorum in industries and in public institutions.

12. In view of the facts and circumstances of the case, the award of the Labour Court is perverse and in violation of the established principles settled by the Courts. Accordingly, the award dated 03.11.2004 passed by the 1st respondent in I.D.No.445/2000 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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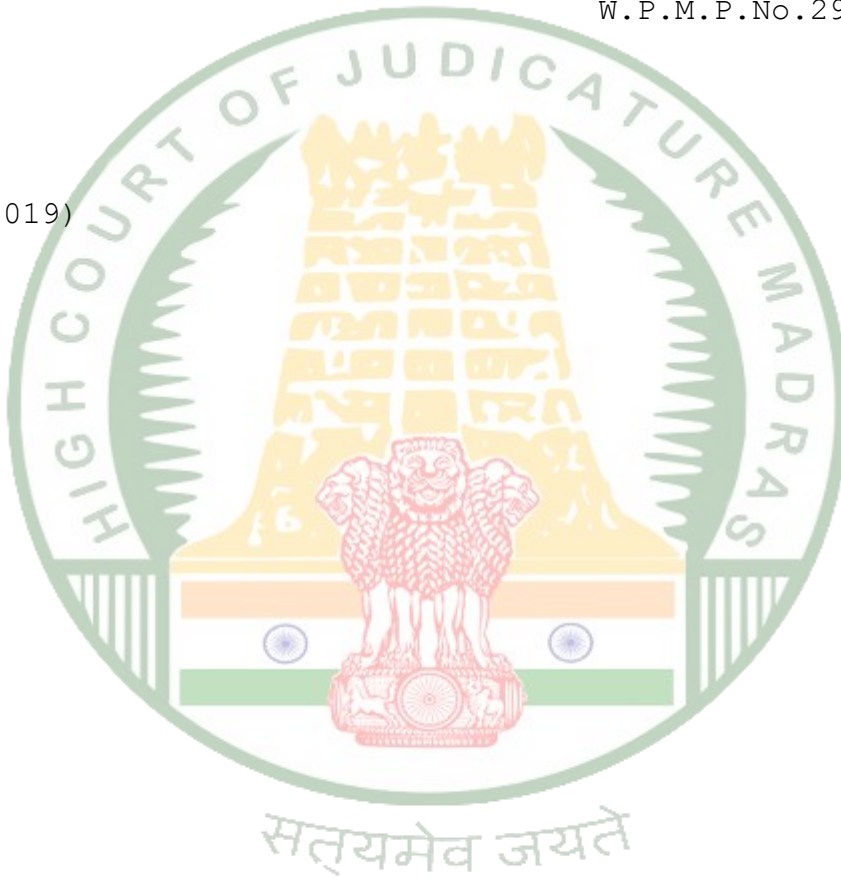
The Presiding Officer,
Labour Court, Salem.

+1 CC to Mr.K.V.Shanmuganathan, advocate sr 84105.

+1 CC to Mr.S. Ramasubramaniam, Advocate sr 83127.

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RSI (CO)
SP(08/11/2019)



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