

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.36330 of 2005

V.Saravanan

... Petitioner

..Vs..

1.The Presiding Officer,
Labour Court,
Salem.

2. Management of Paragon Polymer Products Limited,
04/84, Salem Sangagiri Main Road,
Kanagagiri Colony,
Kakapalayam - Post,
Salem - 637 504.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the record, pertaining to I.D.356/1999, on the file of the Labour Court, Salem, the 1st respondent herein and quash the award dated 22.12.2003 passed by the 1st respondent dismissing the same and further direct the 2nd respondent to reinstate the petitioner in service, with full backwages continuity of service and all other attendant benefits.

For Petitioner : Mr.R.N.D.Nazarullah
for Mr.K.V.Shanmuganathan

For Respondents : Labour Court for R1

Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co. for

O R D E R

The award dated 22.12.2003, passed in I.D.No.356 of 1999, is under challenge in the present writ petition.

2. The facts regarding the case on hand is that the writ

petitioner was employed as a worker and his last drawn salary was Rs.1,485/- per month. The petitioner was involved in grave misconduct on 11.01.1998. The petitioner was not in the shift on 11.01.1998. The petitioner had phoned the Company at about 8.15 am, and told the Supervisor, Mr.Abraham Mathew, who took the phone, to call Mr.N.Purushothaman. Since the said worker Mr.N.Purushothaman was working in the shift at the Strap Press, and if he is called in between the production would be affected, the Supervisor, Mr.Abraham, told the Petitioner that Mr.Purushothaman's shift would be over within fifteen minutes, and asked the petitioner to contact at 8.30 am. The Supervisor, Mr.Abraham, also told the petitioner that if the matter was very urgent, it could be conveyed to him so that he could inform Mr.Purushotham accordingly. The petitioner on hearing what the Supervisor told him got angry, and threatened the Supervisor stating "whether you are going to call Purushothaman or shall o come there, and you will do".

3. At about 8.25 AM, the petition came to the Factory and entered the factory without permission, as he was not working that shift, and proceeded to the strap section and was found talking to Mr.Purushothaman in the department. After that, the petitioner turned his anger on the Supervisor and abused the Supervisor, Mr.Abraham saying, "What do you think of yourself? Why you have refused to call the employee when I called over the phone? Do you think this is an ordinary matter? I will show who I am. Who has told you not to call an employee when called on phone? Call the new Manager I will talk to him. If you come out I will beat you". The petitioner had abused the Supervisor, inside the factory in the presence of the other workmen. The petitioner had also challenged the Supervisor to show his power. The petitioner had also refused to receive the order of suspension pending enquiry when it was handed over to him in person on 12.01.1998 at 8.40 PM. A charge sheet dated 15.01.1998 was issued to him.

4. The petitioner submitted a reply dated 17.01.1998, which was found not satisfactory, and hence an enquiry was ordered and an Advocate, Mr.V.Ragunathan of Salem, was appointed as the Enquiry Officer. The enquiry was conducted following all the principles of natural justice and the petitioner had fully participated in the enquiry, with his observer, and has cross-examined the management witnesses in detail. The petitioner had also examined 9 witnesses on his behalf. The enquiry officer after going through the evidence had given his findings dated 22.05.1998 holding that the charges leveled against the petitioner were proved. Based on the enquiry report, a second show cause notice dated 02.06.1998 was issued to the petitioner to which the petitioner submitted a reply dated 15.06.1998,

which was not satisfactory.

5. In the meantime, the petitioner was also issued another charge sheet on 02.03.1998. The petitioner was issued a suspension pending enquiry order in person on 12.01.1998 night, in the presence of one Mr. Shanmugam, another employee. Annoyed by this, the petitioner and Mr. Shanmugam had instigated the other workmen, coming for the 3rd shift, to go on an illegal strike. The petitioner and Mr. Shanmugam had threatened the other workmen that, "if they go to work, their limbs will be broken and their houses will be demolished". Hence, the workers did not come to work because of this threat from 12.01.1998 night shifts till the night shift of 13.01.1998. Hence, there was a production loss to tune of Rs.4,91,296/-.

6. The petitioner submitted his reply to the charge sheet dated 02.03.1998 on 24.03.1998. On going through the explanation, the explanation was found to be not satisfactory and therefore an enquiry was held. The same enquiry officer was asked to conduct an enquiry and the enquiry was conducted giving all possible opportunities to the petitioner for cross-examination of the management witnesses and 6 witnesses were examined on behalf of the petitioner. The enquiry officer has given a findings dated 30.10.1998 holding the petitioner guilty of the charges framed vide charge sheet dated 02.03.1998. The respondent after going through the findings, issued a second show cause notice dated 20.11.1998 to the petitioner. The petitioner submitted his reply on 03.12.1998 which only reiterated the petitioner's earlier stand and was not satisfactory and therefore considering both the petitioner was dismissed from service vide order dated 22.01.1999. The actions of the petitioner clearly illustrate the lack of respect for authority and that the petitioner is involved in repeated misconducts.

7. The petitioner challenged the order of dismissal in I.D.No.356/1999 on the file of the 1st respondent. Before the 1st respondent, no witnesses were examined on either side and no documents were filed on behalf of the petitioner. However, as many as 65 documents were filed on behalf of the 2nd respondent and after considering the evidence on record, by award dated 22.12.2003, through the 1st respondent was pleased to dismiss the Industrial Dispute, however, directed the 2nd respondent to pay a sum of Rs.5,000/- to the petitioner. The 1st respondent held that the petitioner had accepted that he was not challenging the domestic enquiry and that the alleged that there was no evidence to punish the petitioner for the alleged charges. The 1st respondent found that each of the charges has to be decided on its own merits and it is to be seen whether there is evidence to

prove the charges. The 1st respondent however found that the petitioner did not deny having phoned the company and the supervisor having taken the phone call and that the petitioner had accepted that he was told that the worker Mr.Purushothaman could not be called and that the petitioner had accepted that he went at 8.30a.m. and asked who had given such instructions and was told that it was as per the Manager's direction and that the petitioner had not denied that he had come into the factory. The 1st respondent also found that the petitioner had stated that he had asked for Mr.Purushothaman and was told that on account of the Manager's instructions, the worker could not be called and that the petitioner had accepted the charges in the charge sheet.

8. The 1st respondent also found that the petitioner had cross-examined the witnesses of the respondent and had been given an opportunity in the enquiry and not made any allegation that he had not been given an opportunity during the enquiry. The 1st respondent therefore found that the petitioner had referred to the incident in his explanation and had not denied having phoned the supervisor or having come to the company at 8.30 AM and the 1st respondent found that the management's witnesses had given cogent evidence and that the petitioner's witnesses also gave evidence on similar lines. Therefore, the 1st respondent held that it could be seen that the petitioner had been talking to an employee inside the factory without permission and that there was evidence for the said charges. The 1st respondent also held that, abusing the supervisor and not obeying the instruction is not correct and held that such employees should be dealt with severely and also found that the petitioner has taken part in the second enquiry and was given an opportunity in the said enquiry and could not disprove the evidence of the management witness. The 1st respondent therefore came to the conclusion that the charges were grave and had been proved and therefore the petitioner could not be reinstated especially as he had instigated the other workmen, which is grave misconduct and therefore no sympathy could be shown to the petitioner. Besides, the 1st respondent found that the petitioner's witnesses could not be believed and consequently held that the dismissal was proper, through erroneously directed this respondent to pay the petitioner a sum of Rs.5,000/- for the 5 years of service that the petitioner had put in. Aggrieved by the said award of Labour Court, the petitioner had filed the present writ petition.

9. The learned counsel for the writ petitioner mainly contended that the punishment of termination is disproportionate with the gravity of the proved charges against the delinquent employee. Relying on the said ground, the learned counsel for

the petitioner reiterated that scolding the Supervisor may not be construed as grave charge and therefore, the Labour Court ought to have considered by imposing the lesser punishment by invoking under Section 11-A of the Industrial Disputes Act. Contrarily, the Labour Court confirmed the major penalty of termination from service, which is perverse and consequently, the award of the Labour Court is to be scrapped.

10. The learned counsel appearing on behalf of the respondent Management disputed the said contention by stating that scolding the supervisor is not the only charge and the another charge was also framed against the writ petitioner that he instigated the co-employees to go on illegal strikes and the said charge was also proved against the workmen both before the Enquiry Officer as well as the Labour Court through documents and evidences. Thus, there is no infirmity as such.

11. Compromising the disciplinary aspects would cause degradation in Industrial Discipline. Industrial discipline is paramount important for development of our great Nation. Undoubtedly, certain minor charges can be dealt with leniently. However, the major charges in relation to the instigation of co-employees for illegal strikes can never be viewed leniently. If such charges or allegations are allowed to be diluted, then industries will get affected and it may not be possible for any industry to run in a smooth manner. Thus, the leniency cannot be shown in respect of these charges which causes certain public inconvenience and financial loss both to the Government as well as the public in general.

12. In the present case on hand, the fairness of the enquiry had been tested by the Labour Court and the enquiry was conducted in a just and proper manner. The enquiry was conducted after providing an opportunity to the workman. The charges were proved against the workman and when all the charges were proved against the workman, the Labour Court came to the conclusion that there is no ground for interference with the quantum of punishment and accordingly, rejected the Industrial Dispute.

13. The contention of the learned counsel for the respondent is that the punishment of termination from service deserves no merit consideration, in view of the fact that the second charge was also proved and the second charge is grave and this Court cannot take any lenient view and the Labour Court also rightly rejected the Claim Petition by invoking Section 11A of the Industrial Disputes Act.

14. This being the facts and circumstances, this Court has no hesitation in coming to the conclusion that the reasons furnished in the award are candid and convincing and there is no

infirmity or perversity. Thus, the award dated 22.12.2003, passed in I.D.No.356 of 1999 is confirmed.

15. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

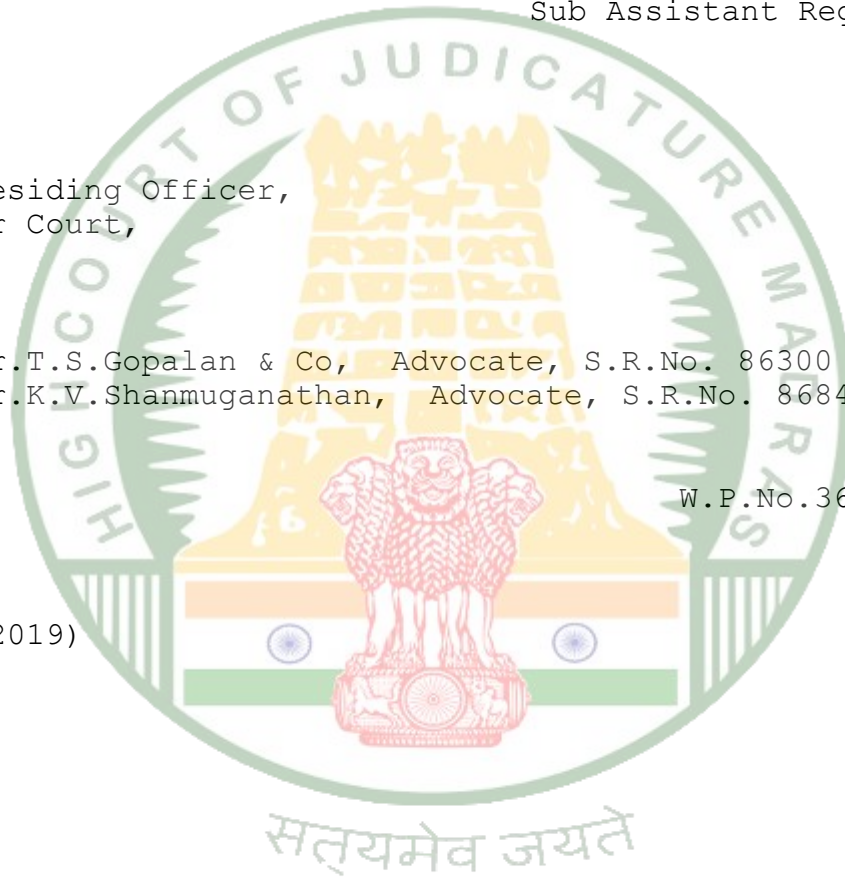
1.The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No. 86300

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No. 86847

W.P.No.36330 of 2005

MR(CO)
GN(21/11/2019)



WEB COPY