

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.03.2019

Pronounced on : 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.27159, 27160, 25425 and 25426 of 2011
Respective M.P.Nos.1 & 2 of 2011 and
2 & 3 of 2011

1. P.N.Ravinder ... Petitioner in
W.P.Nos.27159/2011
&Respondent No.2 in
W.P.No.25425/2011
2. M.Subramani ... Petitioner in
W.P.Nos.27160/2011
&Respondent No.2 in
W.P.No.25426/2011

Versus

1. The Management of M.R.F.Limited,
represented by its Plant Head,
Arakkonam Tiruttani Main Road,
Ichiputhur, Arakkonam taluk,
Vellore District. ... Petitioner in
W.P.Nos.25425 &
25426 of 2011 and
Respondent No.1 in
W.P.Nos.27159 &
27160 of 2011
2. The Presiding Officer,
Principal Labour Court,
Vellore. ... Respondent No.2 in
All the Writ Petitions

Prayer: Writ Petitions filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorari, for the reliefs as stated therein.

Prayer in W.P.No.27159, 27160 of 2011:

Calling for the records relating to common award dated 05.04.2011 passed in I.D.No.137 of 2005 on the file of the second respondent / Principal Labour Court Vellore and quash the same in so far as confines the relief of back wages to 50% instead of award of full back wages and pass such further or other appropriate order.

Prayer in W.P.No.25425/11 and 25426/11:

To call for the records connected with I.D.No.137 of 2005, 139/2005 on the file of the 1st Respondent Principal Labour Court Vellore and to quash the award dt. 05.04.2011 (along with I.D.No.139 of 2005 along with I.D.No.137/2005.

For Petitioners in
W.P.Nos.27159 & 27160/2011
& Respondent No.2 in
W.P.No.25425 & 25426/2011... Mr.V.Prakash, SC
for M/s.K.Sudali Kannu

For Respondent No.1 in
W.P.Nos.27159&27160/2011
& Petitioner in
W.P.No.25425 & 25426/2011 ... Mr.Sanjay Mohan, SC
for M/s.S.Ramasubramanian
Associates

COMMON ORDER

The challenge in all these Writ Petitions is to the Award passed by the Principal Labour Court, Vellore in I.D.Nos.137 and 139 of 2005 dated 05.04.2011, wherein, the Labour Court has ordered reinstatement of the workmen with continuity of service, attendant benefits and also 50% of back wages.

2. Writ Petitions in W.P.No.25425 and 25426 of 2011 are filed by the Management against the Award of the Labour Court in granting reinstatement with continuity of service and 50% of back wages, while Writ Petitions in W.P.No.27159 and 27160 of 201 are filed by the workmen, challenging the Award insofar as denial of 50% of back wages to them by the Labour Court.

3. The issues involved in the Writ Petitions and the points for consideration before this Court are one and the same, all the Writ Petitions are taken up together for common disposal as under:

4. For the sake of convenience, the parties are hereafter described as "petitioner/Management and the respondents/Workmen.

5. The brief facts which led to the filing of the present Writ Petitions both by the petitioner/Management and the respondents/workmen, are stated as under:

5.1. The petitioner/Management was having a factory at Arakkonam, which is engaged in the manufacturing of tyres and tubes. The respondents/workmen joined the petitioner factory on 01.11.1999 as Apprentices and on completion of training period or the probation as the case may be, their services came to be confirmed on 01.05.2002. According to the petitioner/Management, both the workmen had involved in the act of misconduct that on 11.3.2004 when the company bus was proceeding to the factory at about 10.00 p.m., the workmen along with others had blocked the bus and started pelting stones, which resulted in causing injuries to one Manikandan, who was the driver of the bus and also extensive damage to the bus. Since the act of violence by the workmen had resulted in causing injuries to the driver and also resulted in damage to company bus and endangering the lives of the fellow workmen who were passengers in the bus proceeding towards factory to attend their work, the petitioner/Management felt that it was not conducive to hold disciplinary proceedings by conducting a domestic enquiry. The petitioner/Management felt that by conducting a domestic enquiry into the act of misconduct of this nature would invite more risk particularly with regard to providing safety to the witnesses and other workmen and therefore, decided to take action against the workmen, directly.

5.2. In the above circumstances, the petitioner/Management, by letter dated 18.3.2004 dismissed both the workmen who are the petitioners in W.P.Nos.27159 and 27160 of 2011 for the act of misconduct as narrated above. According to the petitioner/Management, they had reserved their right to establish the act of misconduct indulged by the workmen in order to support the order of dismissal in a Court of law if the same was required. The respondents/workmen, as against the order of dismissal, raised industrial disputes, which were numbered as I.D.Nos. 137 and 139 of 2005. The disputes were referred for adjudication before the second respondent/Labour Court and the second respondent Labour Court considered the commonality between two disputes, proceeded to hold a joint trial. The petitioner/Management had filed an application, seeking

permission to adduce evidence to prove the charges against the respondents/workmen. On behalf of the petitioner/Management, four witnesses were examined as MWS.1 to 4, of whom, MWS.1 and 2 being eye witnesses who happened to be the co-workers and MWS3 and 4 were the staff of the company, working as Exectuve and Manager respectively. On behalf of the petitioner/Management, as many as 48 documents were marked as Exs.M1 to M48. On behalf of the workmen, respondents/workmen themselves appeared as witnesses as WW1 and WW2 and on their behalf, 25 documents were marked as Exs.W1 to W25.

6. The second respondent/Labour Court, after advertng to the oral evidence and the materials placed for consideration, had come to the conclusion that the charges against the respondents/workmen were not established at all as there was no clinching material made available on behalf of the petitioner/Management in order to implicate the workmen to the charges levelled against them. Moreover, since the petitioner/Management failed to conduct domestic enquiry to prove the charges, the Labour Court was of the view that the termination of the workmen was, a 'termination simplicitor' and therefore, due compensation as per the provisions of the Industrial Disputes Act had not been paid and finally held that dismissal of the workmen was invalid in the eye of law and therefore, ordered reinstatement with continuity of service and attendant benefits, but restricted the back wages only to the extent of 50% to the workmen. The present Writ Petitions have been filed against the said Award of the second respondent Labour Court.

7. Shri Sanjay Mohan, learned Senior Counsel appearing for the petitioner/Management would vehemently contend that the second respondent/Labour Court has erred in ordering reinstatement when charges levelled against the workmen were too serious in nature and at best, the Labour Court ought to have considered for grant of some compensation to the workmen and not reinstatement in service with continuity of service etc. The learned counsel would argue that the incident of damaging the bus and causing injury to the bus driver was not disputed and when such incident was not disputed, whether it is appropriate in the interest of industrial discipline and peace, for the Labour Court to order reinstatement of the workmen who charged with act of violation.

8. In this regard, the learned counsel appearing for the petitioner/Management would draw the attention of this Court to almost entirety of the Award passed by the Labour Court. The

learned counsel would submit that the fellow workmen, namely, MW1 and MW.2 examined and they appeared to have given statements to the police about the alleged charges against the respondents/workmen and when the fellow workmen had given evidence against the respondents/workmen, the Labour Court ought to have considered that aspect seriously and at best could have ordered if not satisfied with the evidence of both the witnesses, only compensation, but not the reinstatement. The learned counsel would submit that the incident had happened in 2004 and the workmen were dismissed on 18.3.2004. Now nearly 15 years have lapsed and whether it is expedient to order reinstatement of the workmen at this distance of time as according to the learned counsel, due to passage of long time, tyre technology has undergone phenomenal changes and these workmen would not be fit to discharge the duties as they were doing way back 15 years ago. He would submit that the Labour Court ultimately has not found any act of victimization on the part of the Management and in such event, the Labour Court ought to have granted only compensation and not reinstatement. The learned counsel would submit that the workmen who indulged in violation, cannot be reinstated in service as that would send a wrong signal to law abiding workmen and morale of the other workmen would be affected if such workmen are allowed to return to work. The learned counsel would submit that the Courts have laid down principles that in certain situations, award of the compensation is the best solution for maintaining the industrial peace and in this regard, the second respondent/Labour Court ought to have taken that course instead of ordering reinstatement of the workmen. In support of his contentions, the learned counsel would rely upon the following decisions, viz.,

i) "AIR 1990 SC 1054 (Workmen and others versus Bharat Fritz Werner (P) Ltd. And others)", wherein, the learned counsel would draw the attention of this Court to paragraphs 21 and 22, wherein, the Hon'ble Supreme Court has observed as under:

"21. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or when though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry (Hindustan Steel Ltd. v. A.K. Roy). In cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of

future employment.

"22. The misconduct that has been found established against these five workmen involves threatening the highest executive, viz; the President of Company, with dire consequences, wrongfully confining him in his room and compelling him to withdraw the notice. These acts of misconduct involve acts subversive of discipline on the part of these workmen. Three of these workmen were office bearers of the Union. It cannot be said that these workmen had acted at the instigation of somebody. Taking into consideration the facts and the circumstances of the case, we are of the opinion that, keeping in view that interests of the industry, this is a case where it can be said that it is not desirable and expedient to direct reinstatement of these workmen. In our view, therefore, the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment."

The learned counsel would submit that in the interest of industry when the situation warrants that reinstatement of the workmen was not desirable, compensation can be ordered by the Labour Court.

ii) "(2006) 1 SCC 430 (Hombegowda Edn.Trust and another versus State of Karnataka and others)". The learned counsel would draw the attention of this Court to paragraph 21 of the order passed by the Hon'ble Supreme Court and also paragraph 25 which are extracted as under:

"21. In *M.P. Electricity Board v. Jagdish Chandra Sharma* [(2005) 3 SCC 401], this Court held :

"In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organisation. Discipline at the workplace in an organisation like the employer herein, is the sine qua non for the efficient working of the organisation. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, "discipline is a form of civilly

responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large".

Obviously this idea is more relevant in considering the working of an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organisation as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion."

"22. to 25.

"26. This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

The learned counsel would submit that in the interest of discipline of the industry particularly at working place, the Court has to strike a balance and in order to achieve industrial peace, which is the ultimate goal of the scheme of the Industrial Disputes Act, in the cases of this nature, the Labour Court ought to have adopted the course of ordering compensation instead of reinstatement.

iii) "AIR 1975 SC 1900 (The Cooper Engineering Ltd. Versus P.P.Mundhe)" wherein, the Hon'ble Supreme Court has converted the order of reinstatement to one of compensation. The learned counsel would submit that this Court has a power to modify the award by converting the award of reinstatement into one of considerable compensation on the basis of last drawn wages received by the respondents/workmen. He would submit that the last drawn wages of two workmen were Rs.5883/- and 7893/- respectively and during the period of litigation before this Court, the workmen were paid about Rs.4 lakhs each towards 17(B) wages and he would urge this Court to take into consideration the above factor for the purpose of ordering any compensation by modifying the award.

iv) "AIR 1970 SC 1401 (Hindustan Steels Ltd., Rourkela versus A.K.Roy and Others)", wherein, the learned counsel would draw the attention of this Court to paragraphs 16 to 18, which are extracted as under:

"16. The Tribunal no doubt felt that it was not established whether the investigation and the report following it were properly done and made, that the company ought to have disclosed it to the workman and given him an opportunity to vindicate himself and that the non-disclosure of the report made the termination illegal and unjustified. That may or may not be right. But what was relevant, at the stage when the Tribunal came to decide what relief the workman was entitled to,, was the question whether the management genuinely apprehended as a result of the report that it would be risky to retain the workman in the company's service. They may have gone wrong in the manner of terminating the workman's service -as held by the Tribunal. But, if the management truly believed that it was not possible to retain the workman in the company's service on grounds of security and consequently could not place confidence in him any longer, that present case would be one of those exceptional cases where the general rule as to reinstatement could not properly be applied. Thus

of course does not mean that in every case where the employer says that he has lost confidence in the workman, and therefore, has terminated his service that reinstatement cannot be granted and the Tribunal has to award compensation. On the other hand, it on an examination of all the circumstances of the case, the Tribunal comes to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or prejudicial to the interests of the industry to retain the workman in his service on grounds of security, the case would be properly one where compensation would meet the ends of justice.

"17. On a consideration of all the circumstances, the present case, in our view, was one such case. The Tribunal exercised its discretion mechanically without weighing the circumstances of the case. That was no exercise of discretion -at all. There is ample authority to the effect that if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari may properly issue to quash its order. [See S.A. de Smith, Judicial Review of Administrative Action, (2nd ed.) 324-325]. One such relevant consideration, the disregard of which would render its order amenable to interference, would be the well-settled principles laid down in decisions binding on the tribunal to whom the discretion is entrusted. The refusal by the High Court to interfere was equally mechanical and amounted to refusal to exercise, its jurisdiction. Its order, therefore, becomes liable to interference.

18. There is, therefore, no difficulty in holding that the order of reinstatement passed by the Tribunal was liable to be quashed and that the High Court erred in refusing to interfere with it merely on the ground that it could not do so as it was a case where the Tribunal had exercised its discretion. The question next is, having held that the order of reinstatement was not a proper order, in that, it was not in consonance with the decided cases, do we simply quash the order of the Tribunal and that of the High Court and leave the concerned workman to pursue his further remedy? The other alternative would be to remand the case to the, Tribunal to

pass a suitable order. In either case, in view of this judgment, no other order except that of compensation can be obtained by him. If the case is remanded and the Tribunal on such remand passes an order of compensation and fixes the amount, such a course would mean further proceedings and a possible appeal. That would mean prolonging the dispute, which would hardly be fair to or conducive to the interests of the parties. In these circumstances we decided that it would be more proper that we ourselves should determine the amount of compensation which would meet the ends of justice. Having come to that conclusion, we heard counsel for both the parties. After doing so and taking into consideration all the facts and circumstances of the present case we have come to the conclusion in the light also of the decisions of this Court such as *Assam Oil Co. v. Its Workmen*(¹), *Utkal Machinery Ltd. v. Workmen*(²) and the recent case of *Ruby General Insurance Co. Ltd. v. P. P. Chopra*(³) that compensation, for a period of two years at the rate of Rs. 160/- per month, that being the last salary drawn by the concerned workman, would meet, the ends of justice."

9. Per contra, the learned Senior counsel Mr.V.Prakash, appearing for the respondents/workmen would submit that the second respondent/Labour Court categorically held that the act of misconduct of the workmen was not established at all and in which case, mere ordering compensation to the workmen would amount to punishing the innocent workmen. According to the learned Senior Counsel, the finding of the fact by the Labour Court in regard to failure on the part of the Management to establish the charges against the workmen is final and such finding of fact cannot be interfered with by this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India unless the same is found to be legally unacceptable and perverse. In this case, the Labour Court has given definite finding that the Management witnesses did not categorically point out any overt or covert act of misconduct committed by the respondents/workmen in their evidence adduced before the Labour Court. In fact, both the fellow workmen examined as MW1 and MW2 did not directly depose against the workmen and this was appreciated by the Labour Court in favour of the workmen. The other two witnesses examined by the Management were hear-say witnesses and they were all part of the Management and their evidence could be hardly relied upon. In any event, they were not direct witnesses. Therefore, learned

Senior Counsel would submit that in the absence of any evidence at all, the Labour Court has rightly come to the conclusion in favour of the workmen. Moreover, the learned Senior Counsel would also draw the attention of this Court that the dismissal of the workmen by the Management without enquiry amounted to unfair labour practice as provided in the Fifth Schedule appended to the Industrial Disputes Act. He would draw attention of this Court to Clause 5 (f) of the Fifth Schedule, which is extracted as under:

"5. To discharge or dismiss workmen-

(a) to (e)

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;"

(g)"

He would submit that the workmen were entitled to be put on notice as to why the domestic enquiry was dispensed on some acceptable reasons. In this case, no reasons were spelt out by the Management, except saying that it was not conducive to hold domestic enquiry. Such general assertion on the part of the Management is not acceptable for dispensing with enquiry. In this case, the learned Senior Counsel would further submit that the Management having violated the law in not conducting the domestic enquiry, cannot seek indulgence of this Court and seek equity for that matter, urging this Court to convert the order of reinstatement into one of compensation.

10. As far as contention of the learned Senior Counsel appearing on behalf of the Management about the Labour Court in not finding any victimization of the respondents/workmen at the hands of the Management, the learned Senior Counsel would submit that victimization was pleaded, but the Labour Court did not give any finding, since it found that the charges were not proved and therefore, there was no necessity to go into the issue of victimization. In any event, the learned Senior Counsel would submit that the victimization can be inferred from the circumstances of the case as arbitrary treatment at the hands of the Management amount to victimization. According to the learned Senior Counsel, these workmen were victimized because of the fact that they wanted to organize themselves and formed an union to fight for legitimate rights of the workmen and by dismissing the respondents/workmen, the Management has, in fact achieved by injecting the fear into the minds of every fellow workman that in case they organize themselves into any trade union, they

would meet by same fate. He would submit that the tactics adopted by the Management is only to instill fear and nothing else and the fear is the key in the hands of the Management.

11. Lastly, the learned Senior Counsel would submit that in respect of denial of the 50% back wages, unfortunately, the Labour Court has not given any reasons once the Labour Court has found that the action taken against the workmen by the Management was illegal and void, the natural corollary of such conclusion is to order reinstatement with full backwages. According to the learned Senior Counsel, grant of full backwages is the normal rule and any exception, the reasons must be spelt out.

12. In support of his above contentions, the learned Senior Counsel would rely upon the following decisions, viz.,

i) (2010) 3 SCC 324 (Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and others)", wherein, the learned counsel would draw attention of this Court to paragraphs 22 and 30, which are extracted as under:

"22. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

"23. to 29.

"30. In General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC 591, the three Judge Bench considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The factual matrix of that case was that after finding the termination of the respondent's service as illegal, the Industrial Tribunal- cum-Labour Court awarded 50% back wages. The writ petition filed by the appellant was dismissed by the Punjab and Haryana High Court. This Court set aside award of 50% back wages on the ground that the workman had raised the dispute after a gap of 2 years and 6 months and the Government had made reference after 8 months. The Court then proceeded to observe:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act,

entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

The learned Senior Counsel would submit that in this case, both the workmen are permanent employees having rendered considerable years of service and therefore, the Labour Court ought to have granted full back wages automatically and denial of the same would amount to punishing the innocents.

ii) "(2014) 15 SCC 313 (Tapash Kumar Paul versus Bharat Sanchar Nigam Limited and another)" , wherein, the learned Senior Counsel would draw the attention of this Court to paragraph 10 wherein, certain observations were made from other cases and the relevant portion is extracted hereunder:

"24. Another three-Judge Bench considered the same issue in Surendra Kumar Verma & Ors. v. Central Government Industrial Tribunal-cum- Labour Court, New Delhi & Anr.[5] and observed:

"6... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

According to the learned Senior Counsel, grant of full back wages is the normal rule and no special impediment in awarding the relief is shown.

iii) "(2010) 3 SCC 192 (Harjinder Singh versus Punjab State Warehousing Corporation)", wherein, the learned Senior Counsel would draw attention of this Court to paragraphs 30 and 31, which are extracted as under:

"30. 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.

"31. 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."

In the above case, the Hon'ble Supreme Court has held that the worker who is deprived of his livelihood is deprived of all his fundamental and constitutional rights and the approach of this 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. The Hon'ble Supreme Court has held that the Court must alive to the suffering of the workmen who are deprived of their livelihood by illegal action taken by the Management.

(iv) "1982(1) LLJ 33 (Workmen versus M/s.Williamson Magor & Co.Ltd. and another)". In regard to victimization of workmen, the learned Senior Counsel would rely upon this decision, wherein, he would draw attention of this Court to

paragraphs 12 to 14 which are extracted hereunder:

"12. The word 'victimization' has not been define in the statue. The term was considered by this Court in the case of Bharat Bank Limited v. Employees of Bharat Bank Ltd. This Court observed, "It (victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with". A submission was made on behalf of the management in that case that 'victimization' had acquired a special meaning in industrial disputes and connoted a person who became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed". This submission, however, was not considered by the Court. When, however, the word 'victimization' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to the management.

13. This Court in the case of K. C. P. Employees' Association, Madras v. Management of K. C. P. Ltd. Madras & Ors. observed:

"In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts".

14. We would therefore accept the interpretation of the word 'victimization' in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimization of the superseded workmen."

13. The learned Senior Counsel would submit that in the cases cited by the learned counsel for the Management, are all cases relating to where the workmen were found guilty of the charges and in such situation, the Courts felt that the compensation was the equitable remedy. Such is not the situation in the case on hand where admittedly no domestic enquiry was conducted to prove the charges and the Management

has miserably failed to prove the same before the Labour Court. Therefore, it does not lie in the mouth of the Management to plead with this Court to award compensation in lieu of reinstatement.

14. Lastly the learned counsel for the Management would submit that the Court need to adopt a practical approach and need not unjustly enrich the workmen, by ordering reinstatement with 50% back wages covering long period of non-employment.

15. The learned counsel would therefore, implore this Court that the Court may take a practical view of the matter and may not to confirm the award passed by the Labour Court. In any event, since the Labour Court felt that only 50% of the back wages, the workmen are entitled to, that the Writ Petitions filed by the workmen for denial of 50% should be dismissed as being without any merit.

16. This Court heard Shri Sanjay Mohan, learned Senior Coun appearing for the petitioner/Management and Shri V.Prakash, learned Senior Counsel appearing for the respondents/workmen, perused the materials and pleadings placed on record and also the decisions cited on behalf of both sides.

17. The admitted position as far as the present cases are concerned, is that the workmen were dismissed from service on 18.3.2004 and that the dismissal order was not preceded by any domestic enquiry nor was there any formal disciplinary action initiated against the workmen. However, the reason for such action taken by the Management in dismissing the workmen directly without initiating any formal disciplinary process, was that the same was not conducive to conduct any domestic enquiry as that would invite further risk in matter of safety of other workmen who were likely to be the witnesses to the incident which was said to have happened on 11.3.2004. Therefore, the Management reserved its right to adduce evidence before the Labour Court as such right is recognized under the provisions of the Industrial Disputes Act and also the law laid down by the Hon'ble Supreme Court. So far, the stand of the petitioner/Management was right from their perspective as they found that it was risky to go through the process of domestic enquiry in view of the acts of violence that had taken place on 11.3.2004. However, what remains to be seen is whether the Management has ultimately proved the case against the respondents/workmen before the Labour Court?.

18. In this case, the Management has let in evidence through four witnesses, viz., two fellow workmen and two from the Managerial position. The evidence of MW1 and MW2 who are fellow workmen, did not really point to the involvement of the respondents/workmen in the incident said to have happened on 11.3.2004. The evidence given by these two witnesses was hardly inspiring to implicate the respondents/workmen in the charges levelled against them. Therefore, the Labour Court has rightly held that their evidence cannot be relied upon and their statements made before the police cannot be relied upon also since the statements were not voluntarily given as per their own evidence. Moreover, the evidence of Management Witnesses, namely, MW.3 and MW.4 were only hearsay evidence and in the absence of any direct evidence, hearsay evidence cannot be relied upon for the purpose of establishing the charges framed against the workmen. The charges of this nature can be substantially proved only on the basis of oral evidence and in the absence of oral evidence even remotely connecting the respondents/workmen to the incident, the finding of the Labour Court stating that the charges were not established, cannot be faulted with.

19. This Court does not find that the finding of the Labour Court on this aspect suffers from any infirmity or anything amiss warranting intervention of this Court. Needless to mention that the finding of the fact rendered by the Labour Court, cannot be interfered with by this Court which is exercising extraordinary jurisdiction under Article 226 of the Constitution unless the same is found to be legally unacceptable and perverse. In this case, this Court in fact finds that the Labour Court has rightly come to the conclusion in respect of fact that the charges were not established by the Management at all. Once the charges were found to be not established and the Management having failed to prove the same before the Labour Court despite the liberty given to them, this Court has to see whether it is still open to the Management to plead for grant of compensation to the workmen instead of reinstatement with continuity of service awarded by the Labour Court.

20. The principal contention raised on behalf of the Management by the learned counsel was that the victimization was not disputed and the incident which took place on 11.3.2004 was also not denied. In such circumstances, the Labour Court ought to have granted compensation. This Court is unable to appreciate as to how such plea could be entertained in the first place, since that would mean that the guilt of the respondents/workmen was established, ignoring complete absence of evidence against

the respondents/workmen. As rightly contended by the learned Senior Counsel for the respondents/workmen, the citations relied upon by the Management was in relation to workmen who were found guilty of the charges and ultimately, the Courts have come to their rescue in awarding some compensation. The same analogy cannot be applied to the case on hand as the respondents/workmen were given clean chit by the Labour Court coupled with the fact that no domestic enquiry was conducted by the Management to establish the charges against the workmen. Therefore, in such situation, the Labour Court had left with no choice except to order reinstatement with continuity of service and with all attendant benefits.

21. The next argument advanced by the learned counsel for the petitioner/Management is that by passage of considerable time, say 15 years, the tyre technology has completely undergone a drastic change and therefore, the reinstatement of the workmen at this distance of time is not in the interest of the industry since these workmen over a period of time, would have become out of tune with the present tyre technology. Once again this Court is unable to appreciate such arguments being advanced on behalf of the Management, for the reason, that it was not the fault of the workmen for allowing delay of litigation pending before the Labour Court and before this Court. Nothing prevented the petitioner/Management from obeying the award of the Labour Court by reinstating the workmen immediately after the award was passed by the second respondent/Labour Court in 2011 itself. Having not chosen to implement the award and has chosen to challenge the same, it does not lie in the mouth of petitioner/Management to contend that today the workmen may not be suitable for being reinstated and to discharge duties in the present situation. If this plea is to be accepted, then in every case, this Court has to only order compensation since the development of technology is all pervading in all sectors of industrial activity and it was not confined to tyre technology alone. Such a submission made on behalf of the Management is unacceptable and the same is to be rejected outright. In regard to submissions made on behalf of the Management, the Labour Court did not find any act of victimization on the part of the Management, the argument was resisted by the learned Senior Counsel on behalf of the workmen that the victimization was in fact pleaded, but the Labour Court did not go into the said aspect in view of its finding that the charges itself were not established and therefore, no necessity to go into the said aspect at all. This Court is in agreement with the submission made on behalf of the workmen that the Labour Court did not find any scope for giving any finding on victimization, since the Labour Court was impelled and constrained to interfere with the punishment meted out to the workmen on the principal ground that the charges itself were not proved. When such was the

situation, there was no further requirement to go into the other aspect of the victimization. Therefore, the Labour Court has not given any finding on the aspect of victimization which does not mean that the victimization was not found in the act of the petitioner/Management.

22. As rightly contended by the learned Senior Counsel for the workmen that the victimization can be inferred from the circumstances of the case. According to him, any arbitrary treatment by the Management meted out to the workmen would amount to victimization. In this case, firstly, it is not in dispute that the Management did not conduct any enquiry before the workmen were dismissed from service and the reason stated for not conducting of domestic enquiry even assuming the same was correct, but the fact remains that no enquiry was conducted and the workmen were dismissed from service arbitrarily. As rightly contended by the learned Senior Counsel for the workmen that no notice was issued by the Management to the Workmen, explaining the reasons for not conducting the enquiry, but merely stating that the conduct of the enquiry was not conducive and the same would invite risk, cannot be considered as valid unless the same is supported by valid reasons. Therefore, this Court is unable to accept the plea of the petitioner/Management that the victimization was completely absent and hence the Labour Court on that score ought to have granted compensation instead of reinstatement. The Labour Court after considering all the circumstances of the case, evidence and pleadings, has rightly come to the conclusion that the respondents/workmen are entitled to the reinstatement with all attendant benefits including continuity of service. However, the Labour Court while granting the principal benefits, has denied 50% of backwages. The learned Senior Counsel has relied on several decisions as aforementioned to support his case that the denial of backwages is not sustainable in law since the Labour Court did not spell out any reasons for denial of the same. No doubt, the Labour Court has not given any reasons for denial of 50% of backwages, however, this Court in the circumstances of the case, can substitute the reasons in order to sustain the award as it is. It is a fact that the Labour Court in the concluded paragraph of the Award, has simply observed that the workmen were entitled to 50% of the wages without mentioning on what basis, 50% of wages were denied to the workmen. However, this Court after consideration of various materials and also the fact that the respondents/workmen have not worked for the relevant period when they were out of the employment, can draw presumption that the workmen may have secured some employment in order to sustain themselves. No doubt when the Court set aside the dismissal order on the ground of illegality, the grant of full backwages is automatic, at the same time, this Court cannot

lose sight of the fact that the workmen concerned had not worked for the period in order to earn full wages from their employers. In such event, it is always open to the Court to consider the grant of backwages either full or portion of it or complete denial of the same. In this case, the Labour Court felt that the workmen are only entitled to 50% of back wages although no reasons were given, this Court feels that in the circumstances of the case that denial of 50% of backwages cannot be construed as completely arbitrary or unjust. Denial of the backwages cannot be construed to mean that the respondents/workmen are being punished although they have come out unscathed from the allegations levelled by the Management. Some times, pragmatism and equity can also be applied either in favour or against in order to achieve larger industrial discipline and purpose. Even in the matters where the order of termination is interfered with on the ground of illegality and unjustness, the Writ Court is not powerless to take a view in respect of grant of backwages since the present trend of cases is that the grant of backwages is not automatic in all matters where the punishment is interfered with.

23. In the light of the above, this Court is of the view that due to the passage of considerable time before the award could be passed in 2011, grant of 50% of backwages is fair enough and this Court is not inclined to interfere with the award of the Labour Court only on the ground it does not spell out any reasons for denial of full backwages. On the whole, the approach of the Labour Court cannot be faulted with on any point of law or fact and therefore, this Court has no hesitation in dismissing all the Writ Petitions filed both by the petitioner/Management and the respondents/workmen.

24. In the result, all the Writ Petitions are dismissed. Consequently, all connected MPs are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Suk

To

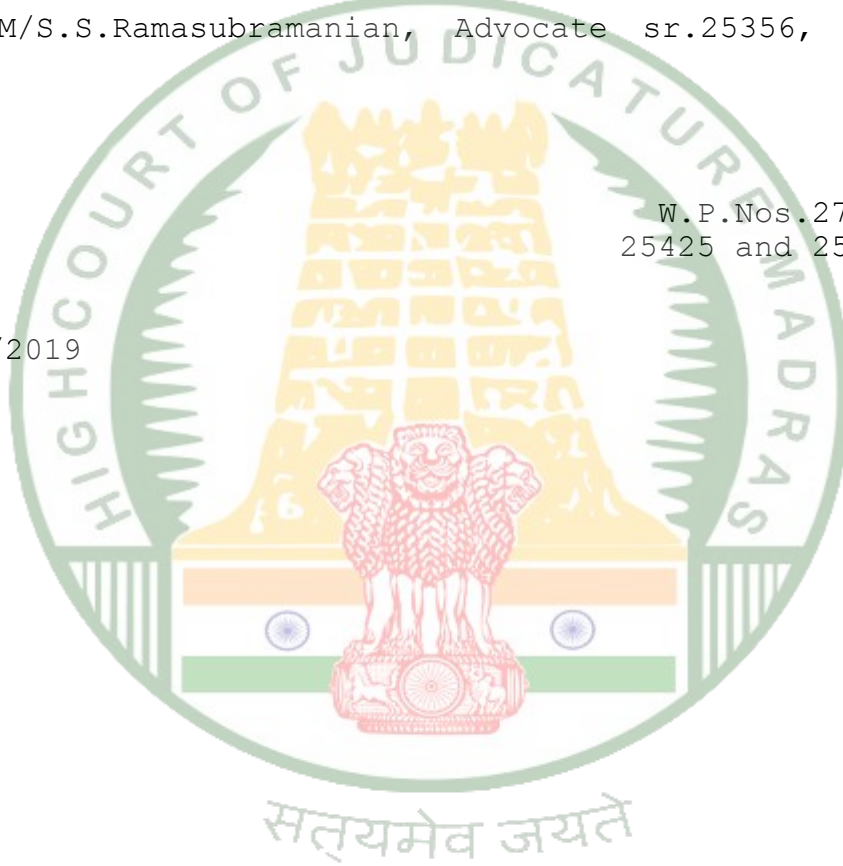
The Presiding Officer,
Principal Labour Court, Vellore.

+2cc to M/S.K.Sudalaikannu, Advocate Sr.26124, 26126

+4cc to M/S.S.Ramasubramanian, Advocate sr.25356, 25357,25358
and 25359

W.P.Nos.27159, 27160,
25425 and 25426 of 2011

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srg 21/03/2019



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