

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	20.08.2019
Judgment Pronounced on	27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.24408 of 2013

The Management of Addison & Co. Ltd.
No.803, Anna Salai,
Chennai 600 003.

... Petitioner

vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.Balasubramanian

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari to call for the records connected with I.D.No.350 of 2000 on the file of the 1st Respondent and to quash the order dated 31.05.2013 passed by the Presiding Labour Officer, Principal Labour Court, Chennai, made therein.

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

For 2nd Respondent :Mr.R.Rajaram

O R D E R

Challenging the Award dated 31.05.2013 passed by the 1st Respondent in I.D.No.350 of 2000, the Management of the Petitioner/Company has come up with the present Writ Petition.

2. The 2nd Respondent/workman joined the services of the Petitioner/Company vide order dated 01.12.1993 as an "Operator" in the Tools works of the factory at Smith Road. On 01.07.1998 and 02.07.1998, the 2nd Respondent/workman is said to have involved in certain acts that constitute serious misconducts as per the Standing Orders of the Company. Based on various complaints issued by the workmen of their Company, the

Petitioner issued a detailed charge sheet on 07.07.1998, specifying various charges levelled against him and called upon him to issue a reply within three days from the date of receipt of the said charge sheet.

3. The 2nd Respondent/workman issued a reply dated 17.07.1998 merely denying the charges levelled upon him and sought time to submit a detailed reply. Thereafter, the 2nd Respondent/workman submitted his detailed explanation on 27.07.1998, denying the charges in the charge sheet dated 07.07.1998. As the explanation given by the 2nd Respondent/workman was not satisfactory, the Petitioner/Company held a domestic enquiry against the 2nd Respondent/workman and intimated to him through an enquiry notice dated 04.08.1998. The enquiry proceedings commenced on 18.08.1998 as scheduled and the Enquiry Officer vide his detailed Report dated 18.07.1999 held that the charges in the charge sheet dated 07.07.1998 against the 2nd Respondent/workman have been proved.

4. Subsequently, on 25.09.1999, the findings of the Enquiry Officer were forwarded to the 2nd Respondent/workman along with the second Show Cause Notice, seeking his explanation by 30.09.1999 as to why he should not be dismissed from service. For the said notice, the 2nd Respondent/workman issued a reply dated 19.10.1999, which the Petitioner/Company found unsatisfactory. Hence, the Petitioner/Company issued a dismissal order dated 21.10.1999, dismissing the 2nd Respondent/workman from the services of their Company.

5. Aggrieved by the order of dismissal dated 21.10.1999, the 2nd Respondent/workman raised an Industrial Dispute and the Conciliation ended in failure, thereby resulting in I.D.No.350 of 2000, challenging the fairness of the domestic enquiry conducted by the Petitioner/Company and the punishment imposed on him. Though the Labour Court, initially, by means of a Preliminary Award, held that the domestic enquiry conducted against the 2nd Respondent/workman was in a fair and proper manner, by an Award dated 31.05.2013, set aside the order of dismissal dated 21.10.1999 for the reason that the Petitioner/Company failed to prove the charges, and directed the Petitioner/Company to reinstate the 2nd Respondent/workman in service with backwages and all other attendant benefits.

6. Learned counsel for the Petitioner/Company contended that the Award of the Labour Court is perverse, as the incident constituting serious misconduct for which the 2nd Respondent/workman is charge-sheeted, though, said to have occurred outside the premises of the Petitioner/Company, is directly linked to the work of the Petitioner/Company and that assaulting and abusing fellow workmen, intimidation by threat,

slowing down the work thereby causing loss to the Company, are serious misconducts, and the Labour Court ought not to have granted the relief of reinstatement of the 2nd Respondent/workman into service with backwages and all other attendant benefits.

7. It is his further contention that even assuming that assaulting fellow workmen, slowing down production, etc. have serious impact on the industry, such misconducts cannot be taken note of lightly, as it will send a wrong signal to other workmen who indulge in such activities. According to the learned counsel, the 2nd Respondent/workman was drawing a sum of Rs.4,445/- per month as salary at the time of dismissal from service and that, if he is reinstated, he would now be drawing more than Rs.28,000/- per month. Hence, according to the learned counsel, as two decades have gone by, it would be inappropriate to reinstate the 2nd Respondent/workman into service, when he lacks discipline.

8. In reply, learned counsel appearing for the 2nd Respondent/workman submitted that when charges against the 2nd Respondent/workman are not established, the normal course would be reinstatement with all benefits and the same has been granted by the Labour Court. He drew reference to the evidence of the Management witness viz. M.Anandan, who has stated in his complaint as well as in his evidence that he was assaulted by the 2nd Respondent/workman outside the premises of the Petitioner/Company. Though the 2nd Respondent/workman denies that he assaulted the said Anandan, such an assault was not done in connection with the employment of the Petitioner/Company. Learned counsel pointed out that the Petitioner/Company has eventually omitted the words 'within the premises' and instead, they have added the words 'outside the premises' in the charge sheet furnished to the 2nd Respondent/workman.

9. It is further submitted by the learned counsel appearing for the 2nd Respondent/workman that the dispute in the case on hand is between two rival Unions and that in order to support the henchmen, the Petitioner/Company has foisted the charges against the 2nd Respondent/workman, which are held to be not proved and that he has been victimized.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. Even though the domestic enquiry is held to be fair and proper, it does not mean that the perversity in the enquiry findings need not be canvassed. If there is any contra evidence which has resulted in a finding of proving the guilt, the Labour Court can re-appreciate the evidence and come to a different conclusion. Even though, one M.Pattabiraman, Assistant

Engineer, who was examined in the domestic enquiry as M.W.1 has stated in his evidence that the 2nd Respondent/workman was wandering in the Grinding Section and he was informed by his Supervisor that the workman produced only 9 units instead of 30 units, the Labour Court came to the conclusion that there is no evidence that the 2nd Respondent/workman was wasting time during working hours and that he is responsible for slowing down the work. Also, there is no evidence on behalf of the Petitioner/Company that on the date of the alleged incident, the 2nd Respondent/workman has stopped the machine and was thereafter found elsewhere.

12. The Labour Court has also discussed with regard to the plea raised by the 2nd Respondent/workman that there are two Unions and that due to the rivalry between the Unions, the Petitioner/Management issued charge memo to the 2nd Respondent/workman, conducted enquiry and dismissed him from service.

13. When the Award passed by the Labour Court is a finding of fact, this Court finds no reason to interfere with the same. That apart, the argument of the learned counsel appearing for the 2nd Respondent/workman that it is a case of victimization, cannot be accepted, in view of the charges framed against the 2nd Respondent/workman. That apart, there is no evidence let in on behalf of the 2nd Respondent/workman before the Labour Court to show that he has been victimized. Even otherwise, in view of the foregoing discussion, the Labour Court came to the conclusion that the charges framed against the 2nd Respondent/workman have not been established.

14. Undoubtedly, the entire incident in the case on hand has taken place outside the Petitioner's Factory and at no stretch of imagination, it can be stated that it took place within the precincts of the Factory. That apart, even assuming that such incident has taken place outside the Factory, it does not pertain to employment.

15. In the decision rendered by the Bombay High Court in the case of Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Ltd. vs. Ramachandra Shankar Shinde reported in 1992 I LLJ 435, relied on by the learned counsel appearing for the 2nd Respondent/workman, it is observed that if a restricted application is not given to the action which takes place outside the premises and casual connection not strictly insisted upon, there would be no safety to the employees, since every personal quarrel can be easily converted into matters affecting the employer. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"12. In other words, restricting our

consideration to acts of violence or assaults, if these takes place on the premises of the undertaking and within the duty hours, there could be a presumption that such action must be regarded as subversive of discipline or contrary to the norms of good behaviour implied by Standing Order 24(1). If on the other hand such acts take place away from the premises of the undertaking, something positive and more has to be established to show casual connection between the acts and subversive of discipline. Such casual connection was conceded in Mulchandani Electrical's case (supra) and once the concession was made the fact the actual physical assault had taken place away from the premises of the undertaking paled into insignificance and lost importance. In the instant case casual connection, in my opinion, has not been established beyond doubt. The position might have been different as indicated earlier if Devtale was the immediate superior of or in a superior position than the Respondent in the employment hierarchy to decide upon the question of resumption of employment. That does not appear to have been established by cogent evidence. Merely because the complaint of another employee might have affected the concerned employee who is then alleged to have assaulted the former, will not bring in its wake the question of subversive of discipline or breach of norms of good behaviour per se when the assault or threat or abuse takes place outside the establishment. If a restricted application is not given to the action which takes place outside the premises and casual connection not strictly insisted upon there would be no safety to the employees since every personal quarrel can be easily converted into matters affecting the employer. In other words when the assault, threat or abuse takes place outside the premises of the undertaking it is not enough to establish that the persons concerned are co-employees. It is essential to establish more. It is enough to say that the party assaulting mentioned other officers. For eg. an employee may assail

the conduct of the employer pertaining to non-increase in wages or giving of bonus. Even abusive phraseology or obscene phraseology may be used. Such talk, away from the premises between co-employees cannot bring in its wake contravention of Standing Order 24(1). Suppose there was quarrel between two employees about something totally extraneous to the work place. That obviously would not bring in its wake violation of Standing Order 24(1). Similarly, if there was a personal quarrel between two employees pertaining to their work of similar aspects of the work, that would not necessarily bring in its wake violation of Standing Order 24(1), unless it could be established that by such assault, discipline in the employer's factory was attempted to be subverted. There is a total failure on the part of the employer to establish this aspect in the present matter. In Mulchandani Electrical's case this has been conceded on behalf of the workmen before the Supreme Court. Once the concession was made the situs of the assault lost importance. In the present case there is no such concession and the employer must be regarded as having failed to establish this vital actual aspect of the matter."

16. In the case on hand, due to the dispute which arose between two Unions of the Petitioner/Company, the 2nd Respondent/workman was charge-sheeted for the charge of misconduct and according to the learned counsel appearing for the 2nd Respondent/workman, the workman has been victimized. Though, it is the contention of the learned counsel appearing for the 2nd Respondent/workman that the past records of the employee need not be looked into before imposing a punishment, as the present charge is a serious one, this Court is of the view that it is the duty cast upon the Petitioner/Company to take into account the past records of the employee before imposing punishment. This Court had an occasion to deal with a similar situation in the case of National Carbon Company, Madras vs. Labour Court, Madras reported in 1987 (1) LLN 405.

17. In the case on hand, the 2nd Respondent/workman has stated that he was not gainfully employed since the date of dismissal from service, based on which, wages under Section 17-B have been paid and the burden that the employee is gainfully

employed shifts on the employer, once the plea is taken by the employee that he is not gainfully employed.

18. The finding rendered by the Labour Court is the finding of fact. This Court cannot re-appreciate the evidence and come to a different conclusion. It is worth referring to a Kerala High Court decision in the case of Instrumentation Employees' Union vs. Labour Court, Kozhikode reported in 1993 (1) LLN 75, wherein, it is held that even assuming that there is a wrong interpretation of facts, the same need not be interfered. For better appreciation, relevant portion of the said decision is extracted hereunder:

"16. As pointed out by the Supreme Court in Syed Yakoob vs. K.S.Radhakrishnan (AIR 1964 SC 477), the jurisdiction of the High Court to issue to writ of certiorari or direction under Article 226 or Article 227 of the Constitution of India is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. Findings of fact reached by the inferior Court of Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari under Article 226 or Article 227 of the Constitution of India. ..."

19. It is also worth referring to a decision of the Apex Court in the case of W.M.Agnani vs. Badri Das reported in (1963) 1 LLJ 684, wherein, the Industrial Tribunal put one interpretation upon the resolution of the Management and the High Court thought it better to put another. The Apex Court held that it cannot be said to introduce an error apparent on the face of the record in the order of the Industrial Tribunal and it can be said that the view taken by the Tribunal is not even reasonably possible, perhaps an argument can be urged that

the error is apparent on the face of the record. In the said case, the Apex Court held that the High Court exceeded in its writ jurisdiction in interfering with the finding of the Industrial Tribunal based on the construction put by it upon the resolution of the Management.

20. In view of the foregoing, this Court is of the view that there is no perversity in the Award, as the finality arrived at by the Labour Court is a finding of fact, when there is no nexus for the incident said to have taken place within the precincts of the Factory. Hence, the Award dated 31.05.2013 passed by the Labour Court in I.D.No.350 of 2000 needs no interference and it is accordingly confirmed.

In fine, the Writ Petition fails and stands dismissed. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

(aeb)

To:

1.The Presiding Officer,
Principal Labour Court,
Chennai.

+1cc to M/s.S.Ramasubramaniam, Advocate, SR.No.73332

SJ(CO)
CB(30/09/2019)

W.P.No.24408 of 2013

WEB COPY