

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03-10-2019

Coram

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2683 of 2015

The Management of
 FORD INDIA PRIVATE LTD.,
 S.P. Koil Post,
 Chengalpattu-603 204
 Kancheepuram District
 Represented by its Legal Manager.

.. Petitioner

Vs.

1.The Assistant Commissioner of Labour
 (Conciliation) 1,
 Sriperumbudur.

2.P.Ramesh

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in Approval Petition No.763 of 2013 and quash the order dated 29.09.2014.

For Petitioner : Mr.Anand Gopalan for
 M/s.T.S.Gopalan and Co.

For Respondent-1 : Mr.J.Ramesh,
 Additional Government Pleader.

For Respondent-2 : Mr.V.Ajoykhose

ORDER

The order dated 29.09.2014 passed in Approval Petition No.763 of 2013 is sought to be quashed in the present writ petition.

2. The writ petitioner is the management of M/s.Ford India Private Limited, set up a factory near Chennai for production of four wheeler automobiles. The second respondent was engaged as a Production Associate from May 13, 2010. In September 2012, within two years from the date of joining in the writ petitioner-Company, the Company came to know that the second respondent and few other workmen were indulging in harassment of female employees, who were working along with them and in this respect, written complaints of two female employees were

received by the writ petitioner-company. The writ petitioner-company issued a show cause notice on 11.10.2012. The second respondent was asked to submit his explanation in respect of the grievous allegations of sexual harassment against the women employees in the writ petitioner-company.

3. On 29.10.2012, the second respondent submitted his explanation with regard to the show cause notice. As the said explanation of the second respondent-workman was not satisfactory, the writ petitioner-management ordered for an enquiry by an independent woman Advocate. The second respondent-workman participated in the enquiry and defended his case. In the enquiry, two women employees were examined in respect of the charges and seven documents were marked. The second respondent-workman examined one witness on his side and marked four documents.

4. On 23.04.2013, the Enquiry Officer submitted his enquiry report holding that second respondent-workman was guilty of the charges levelled against him. Consequently, the second respondent was furnished with the copy of the enquiry report and he was called upon to submit his explanations/objections in respect of the findings of the Enquiry Officer in his report. On 25.6.2013, the second respondent was issued with a second show cause notice, calling for his explanations as to why he should not be dismissed from service in view of the fact that the charges levelled against him were proved in the enquiry. The second respondent submitted his reply and after considering his reply, the writ petitioner-company had terminated the second respondent in proceedings dated 03.07.2013 as the charges of sexual harassment levelled against the second respondent were proved.

5. On the very same day i.e., on 03.07.2013, the writ petitioner-company had filed an Approval Petition before the first respondent, seeking for an approval of termination of the second respondent-workman. On 04.12.2013, the second respondent filed a counter in A.P.No.763 of 2013. On 29.09.2014, the first respondent-Assistant Commissioner of Labour passed an order holding that the enquiry was fair and proper. The second respondent-workman was not victimised. There was a prima facie evidence against the second respondent-workman. However, the first respondent held as per Clause 25(g) of the Certified Standing Orders, the past conduct of the second respondent should have been considered and the writ petitioner-company had failed to consider the past conduct of the second respondent-workman and accordingly rejected the approval petition. Challenging the said order, the present writ petition is filed.

6. The second respondent-workman was appointed as a Company Apprentice on 13.11.2008. Thereafter, the second respondent-workman was appointed as Production Associate with effect from 13.05.2010. The second respondent-workman states that the charge memo dated 26.10.2012 was issued based on false set of allegations and he submitted an explanation on 29.10.2012, denying the charges. The second respondent-workman states that even before the Enquiry Officer, he cross-examined the witnesses and elucidated that the allegations levelled against him were not true. The second respondent-workman himself gave evidences and established that he is innocent of the allegations. In spite of the fact he established before the Enquiry Officer that the charges framed against him were false, the Enquiry Officer without considering any of the evidences, submitted his report holding that the charges were proved. Based on the erroneous enquiry conducted as well as the enquiry report, the second respondent-workman states that he was terminated from services. It is contended that 25(g) of the certified Standing Orders specifically contemplates that the past records of the workmen are to be considered. In the case of the second respondent-workman, his past conduct as well as the records were not considered by the writ petitioner-management and on that ground, the first respondent rejected the approval petition and there is no infirmity or otherwise and therefore, the writ petition is liable to be dismissed.

7. It is contended on behalf of the second respondent that Clause 25(g) of the Certified Standing Order is a mandatory one and therefore, the writ petitioner-management is bound to consider the past conduct and records of the workman, failing which it is to be construed that the termination is improper. This apart, the order of termination is nothing but a victimisation and under these circumstances, the writ petition is to be dismissed.

8. The learned counsel for the writ petitioner-company in respect of the ground raised by the second respondent-workman that the past conduct need not be a material in respect of the proved acts of misconduct. In this regard, the learned counsel for the writ petitioner-company cited a judgment of the Hon'ble Division Bench of this Court in the case of Engine Valves Limited vs. Labour Court, Madras [1991 (1) LLJ 372] and the relevant paragraph-11 of the judgment, cited supra, is extracted hereunder:-

"11. Standing Order No. 15(c) applicable to the present case is as follows :

15(c). No order of dismissal shall

be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

In awarding the punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order made by the Manager shall be supplied to the workman concerned. Having regard to the ratio of the Supreme Court as well as the decisions of this Court referred to by the learned counsel for the appellant, we find no difficulty in arriving at the conclusion that the Standing Order in question does not contemplate the issue of a second show cause notice and that too in a situation and with reference to the passing of an Order under our consideration. To this extent, we are of the view that the learned single Judge was right in his conclusion that neither the provisions of the Standing Order contemplates the issue of a second show cause notice nor Section 12-A of the Industrial Disputes Act can be invoked in this regard. The decision of a Division Bench of this Court in Madras Fertilisers case (supra) will have no application to the present case. That was a case where the learned Judges were of the view, on facts as found referred to in the report, that the past record of service of the employee has itself weighed with the Management on the question of imposition of extreme penalty, and formed along with other charges basis thereof unlike the case before us. From the order dated 5th August, 1975 in the present case, we are of the view that the past record of service was referred to only with a view to find out whether there was any mitigating or extenuating circumstances. Having regard to the peculiar feature of the Order in question in the case before us and the ratio of the Supreme Court, we are of the view that the Standing Order in question

is in the nature of an enabling provision casting an unilateral obligation on the concerned authority to take into account the previous record with no further duty or a corresponding right in favour of the employee to either insist upon the issue of a second show cause notice and an opportunity or consideration by a detailed discussion of the materials contained in such previous record. The factual reference in the Order to the consideration having been made of the previous record, in our view constitutes sufficient compliance with the requirements of the Standing Order in question and the grievance made about the non-consideration of past record of service before the Labour Court as well as the learned single Judge and which found their acceptance is wholly unjustified and unwarranted. The nature of the consideration that is required could be indicative of the manner in which it requires to be considered. In the light of the ratio of the Apex Court that it is meant to be for the unilateral consideration of the Authority, we are obliged to conclude that the manner of consideration of the past record adopted in the case on hand constitutes sufficient consideration as well as compliance with the Standing Order in question and the order of punishment could not be said to have been vitiated on this account. In our view, the Labour Court committed a grave error in coming to the conclusion that the absence of specific reference to Exs. M-33 to M-43 vitiated the Order. We are not persuaded to agree on this aspect with the learned single Judge that the absence of specific reference to those exhibits is indicative of the fact that the punishing authority failed to look into the past record of service before passing of the final orders. At the same time, we are unable to agree with the submission of the learned counsel for the appellant that there is any conflict between the decision of the Division Bench of this Court in Madras Fertilisers Case (supra) and that of the Supreme Court in A.C.C. Ltd.

Case (supra) since, as referred to earlier, the Division Bench of this Court was concerned with a case of an imposition of extreme penalty taking into account the past conduct or record, of service as an act by itself warranting punishment."

9. In the abovesaid case, the Division Bench of this Court considered the fact that the nature of the gravity of the proved misconduct is the factor to be considered with reference to the ground raised. If the allegations of sexual harassment is established in the enquiry, that itself is sufficient for imposing major penalty. Under those circumstances, it may not be required that the past conduct of the workman is to be considered.

10. In the present case on hand, the second respondent was regularly absorbed in the writ petitioner-company in the year 2010 and the complaint was received from two women employees on 13.09.2012 and the show cause notice was issued to the second respondent on 11.10.2012 and the charge memo was also framed, the question of considering the past conduct and records of the workman in this case does not arise as the services are in short span of time. During such short service, the complaints were received from the female employees that the second respondent-workman has committed an act of sexual harassment which is an offence. Under these circumstances, the approval petition cannot be rejected merely on the ground that the past conduct and records of the workman have not been considered at all. The very findings in this regard by the Labour Court is not based on any sound legal principles.

11. Contrarily, it is a mechanical approach adopted by the Labour Court as well as based on lack of application of mind in considering the seriousness of the charges, which all are proved against the workman. All these aspects are to be considered in such kind of matters. The conventional approach in applying certain standing orders and rejecting the approval petition can never be accepted in the current day circumstances. The offences against women in the workplace are considerably ascending. Thus, serious actions are highly warranted, so as to ensure equal opportunity in public employment and to create a conducive atmosphere in work places where women employees to work peacefully.

12. Contrarily, the first respondent cannot adopt a mere fact that the past conduct was not verified. Therefore, the approval petition is to be rejected. Such an approach is

patriarchal one and may not suit in respect of the current day circumstances, wherein the people are mostly using smart phones, electronic equipments for the purpose of committing these kind of heinous offences against the women in the work places.

13. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court of India in the case of Lalla Ram vs. D.C.M. Chemical Works Ltd and Another [(1978) 3 SCC 1]. The guidelines formulated by the Supreme Court with reference to the issues to be considered by the competent authority under the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947. In paragraph-12 of the Supreme Court judgment (cited supra), the following guidelines are issued and the said guidelines are extracted hereunder:-

"12. The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15] , Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking the award of

punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

14. In the case of Mahendra Nissan Allwyns Ltd., Vs. M.P.Sidappa & Ors, in C.A.No.5750/1998, decided on 13.11.1998, the Hon'ble Supreme Court of India held as follows:

"4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the security guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of

the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehaviour was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed. The punishment imposed against the respondent must remain unaltered."

15. In the case of New Shorrock Mills Vs. Maheshbhai T.Rao, in Civil Appeal No.1959 of 1992, decided on 25.10.1996, the Apex Court held as follows:

"9. It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages. The Labour Court was exercising jurisdiction under Section 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions

and had been punished. According to the appellant there were at least three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the Inquiry Officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted."

16. Significantly, in the case of Management of Sundaram Industries Limited and Presiding Officer, Labour Court and another, decided on 20.06.2003, in W.P.No.3551 of 2000, the Hon'ble Supreme Court of India made an observation that Maintenance of discipline and order in the work place is very essential and in this regard, Paragraph 19 is extracted hereunder:

"19. I am inclined to hold that the said reasonings of the Labour Court do not justify invocation of Section 11-A so as to direct reinstatement in a case of this nature. Maintenance of discipline and order in the work place is very essential in any work place, public or private. If an employee could be permitted to use vulgar and filthy words against his superior officers and would also attempt to assault, he does not deserve to be retained in service. Even assuming that he had a justifiable cause, if reinstatement would

result in encouraging indiscipline among the workers, then in the alternative the management can be directed to pay reasonable compensation. Such workers who will not behave in a disciplined manner and do not even specifically or seriously dispute the allegation of violent behaviour and using abusive expression, cannot be thrust upon the management who is not willing to take back the worker. In MAHENDRA NISSAN ALLWYNS LTD. v. M.P.SIDDAPPA (2000 (4) L.L.N., 562), the Supreme Court had to deal with a case of aggressive behaviour by the employee and use of filthy language, and the Supreme Court held that the charges were serious in nature. The Supreme Court also remarked that if such charges are not serious charges against a workman worthy of his dismissal from service they (Court) do not know what else can be."

17. In the case of Michel Selvaraj and Ashok Leyland, Limited, reported in 2004 (1) L.L.N. 294, the Hon'ble Division Bench of this Court observed as follows:

"7.In such circumstances, if these acts on the part of the union leader were not enough to contaminate or pollute the otherwise calm and congenial atmosphere in the industry, there could be no other example and the Labour Court has precisely failed to note the true impact of the acts on the part of the appellant. In our opinion, the attitude of sympathy has to be shown where the person concerned deserves the same. The appellant herein was certainly not a person who deserves such sympathy as on the very advent of his service, he had started behaving in an atrocious manner, exhibiting violent temper, etc., and on a number of occasions he was either cautioned or he had agreed to mend his ways."

18. 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”.

19. 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.

20. 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.

21. 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.

22. This being the view of this Court, the present case is to be considered with reference to such principles.

23. The learned counsel for the second respondent-workman contended that the second show cause notice was issued on 25.06.2013. Even before receiving the explanations from the second respondent-workman, one month salary cheque was made on 25.06.2013, the date on which the show cause notice was issued. Thus, the writ petitioner-management predetermined the final penalty to be imposed and on this ground also, the writ petition is liable to be rejected. In respect of another employee, two set of charges were issued, however, minor punishment was imposed to that employee. Thus, the writ petitioner-management has victimised the second respondent in this writ petition by adopting a different yardstick.

24. In respect of the above submission, this Court is of an opinion that as far as the past conduct is concerned, the second respondent-workman was working not for many years. The services of the second respondent-workman itself for a short period and therefore, it is impracticable to hold that the past conduct of the second respondent-workman is to be considered for the purpose of deciding the quantum of punishment. This apart, the preparation of cheque and other aspects are concerned, even in case, the management has taken a decision that cannot be construed as if they have not considered the issue. Such a second show cause notice arises only after the conduct of full-fledged enquiry and after the findings of the Enquiry Officer. Thus, even in case a decision has been taken by the management in this regard, the same would not cause any prejudice to the workman. It is always a reality when the Enquiry Officer held that the charges are proved, then the authorities competent will

have the same opinion about the quantum of punishment. Such circumstances or such opinions cannot be construed as if they have predetermined the issue without receiving any explanation. At the time of considering the explanation, if new grounds are submitted then alone the authorities is at liberty to consider the same and not otherwise.

25. In respect of the grounds raised that the lesser punishment was imposed to the other employee and the preparation of one month salary cheque by the management, cannot be a point to be considered in the petition filed under Section 33 (2)(b) of the Industrial Disputes Act, 1947. In this regard, the Hon'ble Supreme Court of India in the case of Lalla Ram vs. D.C.M.Chemical Works Ltd and Another [(1978) 3 SCC 1], wherein the settled legal principles are to be followed for the purpose of considering the approval petitions filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 and in respect of all other merits regarding the evidences, the same can be raised in an industrial dispute. In the event of filing a petition and the said merits cannot be adjudicated in the approval petition either by the Labour Court or by the High Court. Thus, all these points may be raised during the appropriate Court in the event of raising an industrial Dispute and not in the present petition.

26. As far as the present writ petition is concerned, the first respondent categorically found that the enquiry was conducted in a fair and proper manner. It is found that the second respondent-workman was not victimised by the writ petitioner-company. It is established that there was a prima facie evidence against the second respondent with reference to the allegations of sexual harassment against the women employees in the workplace. However, the approval petition was rejected by the first respondent only on the ground that as per the Standing Orders Clause 25(g), the past conduct of the workmen has not been considered by the management. Such a ground is untenable in view of the gravity of the proved misconduct, which is nothing but a sexual harassment against women employees in the work place.

27. This apart, the second respondent has served for a short period of time and therefore, considering the past conduct would not serve any practical purpose and further more the proved charges are grave in nature and such offences are to be declared as anti-social activities and there cannot be any misplaced sympathy or leniency in respect of employees, who had involved in such heinous offences in workplaces. In the event of showing any such misplaced sympathy against such offences, the same will send a wrong message to the society at large and will amount to

discouragement of women to work in such places, where they have to work along with the men. Such a discouragement if any encouraged by the Courts, then the same amounts to unconstitutional as the principles of equality, no discrimination and all rights of every citizen of this Great Nation are to be protected and any infringement in this regard can never be viewed leniently.

28. Accordingly, the order passed by the first respondent in Approval Petition No.763 of 2013 dated 29.09.2014 is perverse and is quashed. Consequently, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner of Labour
(Conciliation) 1,
Sriperumbudur.

AKM/24.10.19 /15P-2C/

W.P.No.2683 of 2015

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