



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.869 of 2011
and
M.P.Nos.1 and 2 of 2011

The Hindustan Institute of Engineering
Technology represented by its Registrar,
No.40, GST Road, St.Thomas Mount,
Chennai - 600 016. .. Petitioner

Vs.

1.Presiding Officer,
Principal Labour Court,
Chennai.

2.G.K.Basker .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the first respondent in I.D.No.368/1990 and quash its award dated 30.06.2010.

For Petitioner : Mr.S.Haroon Al Rasheed
For R2 : Mr.S.T.Varadarajulu

O R D E R

The present Writ Petition is filed for issuance of Writ of Certiorari calling for the records of the first respondent in I.D.No.368/1990 and quash the award of the first respondent dated 30.06.2010.

2.The second respondent joined in the petitioner institute as a Clerical Assistant on 07.01.1983, which is a deemed University offering various courses in Engineering Department. The second respondent was suspended by a letter dated 29.04.1989 with effect from 05.05.1989 for deliberately instigating the students to agitate against the Institution on 28.04.1989. The second respondent was found standing in the midst of the students in front of the building, shouting and using abusive language against the Director of the Institute and Management. The second respondent was



instrumental in instigating the staff and students to resort an illegal strike from 23.02.1989 to 02.03.1989. Due to the same, the normal activities of the Institute was affected and the second respondent instigated the students to destroy the properties of the Institute which caused huge loss to the Management.

3.The second respondent was suspended and called upon to submit his explanation and thereafter appear before the Enquiry Committee. No explanation was given by the second respondent. The second respondent did not participate in the enquiry and hence he was set exparte. The Enquiry Committee gave a report holding that charges leveled against the second respondent were proved. The second respondent did not give any explanation and hence he was terminated from service on 09.06.1989. The second respondent initiated conciliation proceedings and the petitioner submitted detailed reply setting out the reasons for termination of the second respondent. After conciliation proceedings ended in failure, the second respondent raised Industrial Dispute in I.D.No.368 of 1990 before the first respondent. The petitioner filed counter statement denying all the allegations made in the claim petition filed by the second respondent.

4.Before the first respondent, the second respondent examined himself as W.W.1 and marked 14 documents as Exs.W1 to W14. The petitioner examined one P.V.Ravindran as M.W.1 and marked 10 documents as Exs.M1 to M10. The first respondent considering the pleadings, oral and documentary evidence held that the domestic enquiry conducted by the petitioner was not fair and proper and not a concluded enquiry following the principles of natural justice. The first respondent further held that the petitioner is not entitled to any opportunity to let in further evidence and to file additional documents to prove the charges leveled against the second respondent as they have not reserved their right to let in evidence, if the first respondent comes to the conclusion that domestic enquiry conducted by them was not held in a fair and proper manner. Based on the above findings, the first respondent by the impugned award set aside the order of termination dated 09.06.1989 terminating the second respondent from service and ordered reinstatement with continuity of service and without back wages. Against the said award dated 30.06.2010 made in I.D.No.368 of 1990 on the file of the first respondent, the petitioner has come out with the present Writ Petition.

5.The learned counsel appearing for the petitioner contended that the first respondent failed to see that the order of termination is dated 09.06.1989 and ought to have



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applied the laws as stood at the time of dismissal and not the laws as on today i.e., date of passing the award. The first respondent has passed the impugned order on presumption and assumption and held that the domestic enquiry conducted by the petitioner was not conducted in a fair and proper manner and in accordance with law and is in violation of principles of natural justice. The petitioner has appointed the Enquiry Committee consisting of senior officers and the second respondent has not made any allegation against any of the members of the Committee. The second respondent without any valid reason did not participate in the enquiry and the first respondent ought to have held that the enquiry was conducted in a impartial manner. The allegations made against the second respondent are serious in nature and the petitioner has lost confidence in the second respondent. The first respondent ought not to have directed reinstatement of the second respondent. The first respondent failed to see that the second respondent worked only for six years and he was terminated from his service by order dated 09.06.1989 and the first respondent ought not to have ordered reinstatement after lapse of considerable time and ought to have modified the award suitably. The first respondent having taken note of the fact that the second respondent was gainfully employed as security guard in M/s.Perigreen Security Pvt. Ltd., and was earning a sum of Rs.4,500/- per month, erred in ordering reinstatement with continuity of service. The first respondent failed to see that order of reinstatement is not automatic and in support of his contention, he relied on the following judgments:

(i) The judgment of the Hon'ble Apex Court reported in (1982) 2 SCC 328 [Anil Kumar Chakraborty and another Vs. M/s.Saraswatipur Tea Company Limited and others], wherein at paragraph No.5, it has been held as follows:

"...5. We, therefore, confirm the setting aside of the Tribunal's Award to the extent it had directed the appellant's reinstatement. The appellant as a Compounder was drawing a monthly salary of Rs.174-60 at the time of his dismissal from service on 15.9.1965. His counsel has informed us that the total amount due to him calculated up to 31st March, 1973 comes to Rs.36,486/-. The present grade payable to a Compounder with the Company is Rs.550/- p.m. Having regard to these facts and the lapse of time involved till now we direct the first



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would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.

No doubt he will not have the advantage of further promotion, but then what are his prospects, given the present relationship? Besides, the chances of promotion can be set off against the risk of a departmental disciplinary proceeding. Factors (i), (ii), (iii) and (iv) are of such great significance that compensation on the basis of 50% of his annual salary and allowances is much more to his advantage. We are thus satisfied that compensation in lieu of reinstatement on the aforesaid basis is more than reasonable. We therefore direct that:

I -- The Respondent Corporation shall reinstate the appellant with full back-wages (including usual allowances), or, at its option, II-- The Respondent Corporation shall pay to the appellant:-

(1) Salary including usual allowances for the period commencing from the date of termination of his service under the impugned order till the date of payment of compensation equivalent to 3.33 years' salary including usual allowances to him.

(2) Provident Fund amount payable to the appellant and retirement benefits computed as on the date of payment as per clause 1 shall be paid to him within 3 months from the said date.

III- The appellant shall vacate and make over possession of the premises provided to the appellant by the respondent company before the expiry of 3 months from the date of this



order or within one month of the day on which payment under clause II is made, whichever is later."

(iii) The judgment of the Hon'ble Apex Court reported in 2001 (2) L.L.N.859 [Sain Steel Products Vs. Naipal Singh and others], wherein at paragraph No.4, it has been held as follows:

"...4.Considering the fact that the respondent has not been in employment of the appellant since 1975 for well over quarter of a century we do not think it appropriate to put him back in service of the appellant. It would be proper that some reasonable compensation be paid to him in lieu of back-wages and reinstatement. We think, in the circumstances of the case, appropriate relief to be granted is a sum of Rs.50,000/- which shall be paid to the respondent or deposited with the Labour Court within a period of one month from today to be drawn by the respondent. Award made by the Labour Court as affirmed by the High Court shall stand modified in terms stated above. The appeal is accordingly allowed in part."

(iv) The judgment of the Hon'ble Apex Court reported in 2009-IV-LLJ-336 (SC) [Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another], wherein at paragraph No.16, it has been held as follows:

"...16.While awarding compensation, the host of factors, inter- alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs.50,000/- to the Appellant by Respondent No.1 shall meet the ends of



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justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum."

The learned counsel appearing for the petitioner relied upon the above judgments and contended that the impugned award is suffering from error and is liable to be set aside and prayed for allowing the Writ Petition.

6.Per contra, the learned counsel appearing for the second respondent contended that the petitioner did not conduct the domestic enquiry as per Law following the principles of natural justice. The request of the second respondent to participate in the domestic enquiry was not considered by the Enquiry Committee and erroneously the second respondent was set exparte. The Enquiry Committee, without there being any evidence let in to prove the charges leveled against the second respondent, held that the charges are proved. The charges leveled against the second respondent are baseless. Only to victimize the second respondent, the charges were framed. The first respondent considering all the materials on record in proper perspective has held that the enquiry conducted by the petitioner was not fair and proper and the petitioner failed to prove the charges leveled against the second respondent. The award of the first respondent is valid and legal and there is no error and prayed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8.From the impugned award of the first respondent it is seen that the first respondent by giving valid reasons for holding that the enquiry conducted by the petitioner was not fair and proper. The petitioner did not reserve their right in the counter statement to let in evidence to prove the charges in the event of first respondent holding that enquiry was not fair and proper. In view of the same, the first respondent rightly held that the petitioner is not entitled to let in evidence to prove the charges leveled against the second respondent.

9.Before the first respondent, the petitioner examined one P.V.Ravindran and marked 10 documents as Exs.M1 to M10. Ex.M10 is the confidential report of investigating agency. In the said report, it has been stated that the second respondent was employed as security guard in M/s.Perigreen



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Security Pvt. Ltd., and was earning a sum of Rs.4,500/- per month. The second respondent has not denied that he was gainfully employed in M/s.Perigreen Security Pvt. Ltd. The first respondent having taken note of the fact that the second respondent was gainfully employed after termination by the petitioner, erred in ordering reinstatement with continuity of service. The contention of the learned counsel appearing for the petitioner that serious allegations were made against the second respondent, i.e., the second respondent had instigated the students and staffs to agitate against the petitioner management and the second respondent was responsible for damages to the property of the petitioner causing huge loss, petitioner has lost confidence in the second respondent and instead of ordering reinstatement, compensation can be granted has considerable force. The second respondent worked as Clerical Assistant in the petitioner management for six years and was earning a sum of Rs.400/- per month and subsequently after the dismissal of the second respondent by the petitioner, he was employed as security guard in M/s.Perigreen Security Pvt. Ltd., and was earning a sum of Rs.4,500/- per month. Further the petitioner has paid last drawn salary as per the order of this Court dated 08.03.2011 made in M.P.Nos.1 and 2 of 2011.

10.Considering all the above facts, the second respondent is gainfully employed after dismissal by petitioner and being dismissed by the petitioner and the judgments relied on by the learned counsel appearing for the petitioner, the impugned award of the first respondent ordering reinstatement with continuity of service is set aside. In lieu of reinstatement with continuity of service, a sum of Rs.2,00,000/- is ordered as full and final settlement. The petitioner is directed to pay a sum of Rs.2,00,000/- as full and final settlement to the second respondent or deposit the same before the first respondent to the credit of I.D.No.368 of 1990, within a period of eight weeks from the date of receipt of a copy of this order.

11.With the above modification, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

krk



To
Presiding Officer,
Principal Labour Court,
Chennai.

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+lcc to Mr.T.S.Gopalan , Advocate SR.No. 56981
+lcc to Mr.S.T.Varadarajulu , Advocate SR.No. 57169

W.P.No.869 of 2011 and
M.P.Nos.1 and 2 of 2011

SPD (CO)
A.SK(21/08/2019)