

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HONOURABLE MR JUSTICE S. VAIDYANATHAN

W.P.No.28102 of 2013

The Managing Director,
Hidesign India Pvt.Ltd.,
244/1, Odhiampet Village
Villianur, Puducherry-605 110

... Petitioner

-vs-

1.The Presiding Officer
Labour Court, Puducherry.

2.B.Rock Marine

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for the records relating to the Preliminary Award dt.18.04.2013 made in I.D.No.39/2011 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.T.P.Manoharan

For Respondents : Mr.Muniapparaj for R2

O R D E R

Challenging the award of the Labour Court dated 18.04.2013, the present writ petition has been filed contending that the employee was involved in a misconduct and has abused his superiors for which charge sheet was issued. A detailed enquiry was conducted and the Enquiry Officer held that charge is proved. According to him, when the employee was involved in a serious misconduct of threatening the co-workers and there was no satisfactory explanation, there cannot be a conducive atmosphere to permit an employee in service. The offer of employment by the employer was also turned down by the employee. The Labour Court granted reinstatement within a period of one month with continuity of service but however, deprived back wages from the 03.09.2011 till the date of joining. As offer of employment was not accepted by the petitioner, the Labour Court

in to rejected the claim of the employee and ought not to have granted the relief sought for by the petitioner.

2. The contention of the worker was that he joined the services on 01.12.2006 and he never committed any misconduct and that there is no question of shouting in a work place and that he was enquiring about the transfer of his wife to some other section from the present section, where she was working. Even assuming that the charge was proved, the dismissal from services is bad and that the domestic enquiry was not at all conducted in all fairness and the Labour Court ought to have granted the relief of reinstatement not only with continuity of service but also with full back wages. But however, insofar as, the deprivation of the relief to the workman, the workman has not filed any writ petition.

3. The workman's contention is that though the submission of the management that he was offered alternative employment is correct, he was asked to work in a sister concern, which may or may not survive and in that process he may also be disengaged from that place. His request for reinstatement, after the award by means of a communication dated 07.06.2013 & 10.06.2013, did not yield any response and that he has moved the Authority for recovering the amount payable to the employee under Sub-Section (1) of Section 33 of the Industrial Dispute Act ('I.D. Act' for brevity).

4. The allegation of the management that the workman has been running a hotel is incorrect and that he is without employment and there is no need for him to send a letter requesting for the job. Admittedly, no application was filed claiming wages under Section 17B of the I.D.Act during the pendency of the writ petition.

5. The learned counsel for workman would submit that there is no fault on his part and the Labour Court came to the conclusion that there was no complaint and that the charges are not grave in nature. Therefore, the punishment of discharge has been modified by the Labour Court under Section 11A of the I.D.Act, which does not require any interference.

6. In reply, the learned counsel appearing for the management would contend that the application under Section Sub-Section (1) of Section 33 C is not at all maintainable as he is claiming the disputed wages, apart from the fact that when there is an offer by an employer to provide alternative employment, turning down the offer not accepting the same would disentitle him from wages from the date of rejection, even assuming for the

sake of argument that the employee is entitled to be reinstated.

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

8. It is not in dispute that the petitioner has joined the services on 01.12.2006 and he was disengaged by means of an order dated 09.09.2010 which is the subject matter of an Industrial Dispute No.39 of 2011, which resulted in award and the relevant para is extracted below:

"15. In the result, the Industrial Dispute is partly allowed and the respondent is hereby directed to reinstate the petitioner within one month with continuity of service, other benefits and back wages from the date of dismissal to the date of failure report i.e.02.09.2011, however the petitioner is not entitled for back wages from 03.09.2011 till the date of joining. No costs."

9. The sum and substance of the issue on hand is as to whether the employee would be entitled to the relief granted by the Labour Court or it has to be interfered with. Further, the issue, with regard to maintainability of the application under Sub-Section (1) of Section 33 C and the fairness of the enquiry needs a detailed adjudication.

10. The Labour Court came to the conclusion that the enquiry conducted by the Management was not fair and proper. In such an event, the employer should have taken a plea in counter, as has been laid down by the Supreme Court in Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. and others, reported in (1979) 3 SCC 371 that the employer should be given liberty to establish the charges before the Labour Court. Labour Court came to the conclusion that the Management had failed to establish the charges against the workman and in support of its findings, the deposition adduced by R.W.1 has been strongly relied upon and the said deposition of R.W.1 reads as follows:

"உள்விசாரணையின் போது புகார் கொடுத்த சரவணன் என்பவர் மனுதாரர் தன்னிடம் ஒழுங்கீனமாக நடக்கவில்லை என்றும், சத்தமாக பேசவில்லை என்றும் சொல்லியுள்ளார் என்றால் சரிதான்."

11. From the above, it is clear that no such incident had occurred as found mentioned in the charge sheet. However, though the Labour Court had directed the respondent / Management to reinstate the workman, no back wages was granted from 03.09.2011 till the date of joining, as could be seen from the Paragraph No.15 of the Award. It is pertinent to state here that as per the decision of the Apex Court in the case of Deepali Gundu

Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others, reported in (2013)10 SCC 324, the order of reinstatement means reinstatement in the post from where the person was discharged thereafter there should be accelerated benefits based on continuity of service, as has been granted by the Labour Court and the relevant portion of the said judgment is extracted hereunder:

"16. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. II, 3rd Edition, the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstate" means to reinstall; to reestablish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.'

17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings

continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. 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."

12. The decision referred by the Management in the case of Management of RAS Theatre vs. Presiding Officer, Labour Court and others, reported in (2004) III LLJ 511 (Mad) may not be applicable to the facts of this case, as the employee has not been refrained from joining duty in the present case, whereas he has refrained himself to join duty in the sister concern and was willing to join in the same place from where he was discharged.

13. That apart, as stated in the pleadings, there was no response to the communications dated 07.06.2013 and 10.06.2013 by the management. Nothing prevented the management from sending a letter by means of speed post or registered post or in person taking acknowledgment asking him to report for work from the same place and post without prejudice to their rights. This has not been done in the present case. Moreover, the burden is on the employer to establish that the employee was gainfully employed, so as to effectively defend their case.

14. A Three Judges' Bench of the Hon'ble Supreme Court in the case of B.C.Chaturvedi vs. Union of India and others, reported in 1996 AIR 484, had clearly held that the Labour court has got wide powers and is entitled to interfere with the punishment and the scope of interference with the punishment by this Court in regard to the charges, which are severe and grave in nature, is very minimal. For the purpose of clarity, the observations made by the Supreme Court are extracted below:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is

made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

15. The Labour Court, taking note of the complaint, set aside the charges holding that they are not so serious in nature, thereby interfered with the punishment of discharge from service and granted the relief of reinstatement, with a direction to reinstate within one month with continuity in service and back wages from the date of dismissal to the date of conciliation failure report and that he will not be entitled to back wages from 03.09.2011 till the date of joining.

16. In fact, a reading of the Award in Paragraph No.15 shows that it is in favour of the employer. Firstly, the employee has not filed any petition under Section 17B of the I.D.Act,

claiming wages which shows his interest to report for work, after he had made a communication as early as in 2013. Thereafter, there is no evidence as to whether he has followed it up or not. Hence, it is open to the petitioner to allow the employee to report for work by sending communication within a period of 30 days from the date of receipt of a copy of this order in the same place and in the same post and thereafter consider the accelerated benefits taking note of the fact that he has been granted benefit of continuity of service and other benefits and putting him in service with the present salary applicable to his counterparts.

17. It is needless to mention that on receipt of this order, it is open to the employee to make a representation to provide employment and if no employment is provided within thirty days as stated supra even after his representation, he will be entitled to wages from today. It is made clear that there is no demand made by the employee for benefits under Section 17B of the I.D.Act.

18. With the above observation and direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ska

To:

The Presiding Officer
Labour Court,
Puducherry.

+1cc to Mr.K.P.Jotheeswaran, Advocate SR.67144

+1cc to M/s.RMR Indian Law Firm, Advocate SR.67173(11/12/19)

W.P.No.28102 of 2013

MG(CO)
CB(29/11/2019)
CB(11/12/2019)

WEB COPY