

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.4482 of 2012

T.Rangarajan

..Petitioner

Vs.

1.Ashok Leyland Limited
rep.by its Plant Director,
Ennore High Road
Ennore, Chennai - 600 057

2.Hon'ble III Additional Labour Judge,
III Additional Labour Court,
Madras High Court Buildings,
Chennai - 600 104

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the impugned award in I.D.No.659 of 2005 dated 22.06.2011 passed by the second respondent and quash the same and consequently direct the first respondent to reinstate the petitioner in service with back wages with continuity of service with all other attendant and consequential benefits as provided under law.

For Petitioner : Mr.C.P.G.Yoganand
For M/s.CPG.Yoganand
and Associates

For Respondent : Mr.S.Haroon AL.Rasheed
For M/s.T.S.Gopalan & Co
[For R1]

R2 - Labour Court

ORDER

The Award dated 22.06.2011 passed in I.D.No.659 of 2005 is under challenge in the present writ petition.

2. The petitioner was employed with the 1st respondent Ashok Leyland Limited at Ennore, Chennai. He was working as a standby Machine Operator.

3. The learned counsel for the writ petitioner states that the petitioner joined in the services of the 1st respondent factory on 01.11.1996. The services of the writ petitioner was confirmed as a permanent employee on 15.09.1998. The petitioner was a regular employee from 01.11.1996 to 14.11.2003. On 14.11.2003, the petitioner was arrested by the Police during night hours and he was remanded on account of registration of a criminal complaint before the Tiruppur Police Station. On 18.11.2003, the 1st respondent Management sent a notice to the writ petitioner's residence directing him to report for duty on or before 25.11.2003, which was returned as undelivered. Again on 27.12.2003, the respondent company sent a reminder letter to the writ petitioner and the letter was sent through the Inspector of Police, Tiruppur and the Police Inspector received the letter on 31.12.2003. In view of the fact that the writ petitioner failed to report for duty, the 1st respondent Management, on 06.01.2004, treated the writ petitioner as 'left the services' on account of his absence from 14.11.2003 to 06.01.2004.

4. The learned counsel for the writ petitioner states that on 30.01.2004, the petitioner could not able to secure bail and was released from Prison. Thereafter, on 01.02.2004, the petitioner approached the 1st respondent Management for reporting to work. The Security personnel at the gates of the 1st respondent factory refused to permit the petitioner to enter into the factory premises. On 11.02.2005, the petitioner issued legal notice through his counsel with a request to reinstate him and pay the dues towards salary, back wages and other allowances.

5. It is contended that the letter sent by the writ petitioner reveals that in the event of not reinstating his benefits is to be settled. The 1st respondent Management sent a reply through their counsel on 19.02.2005, stating that the petitioner himself acquiesced to cessation of employment and was seeking settlement of dues. Under those circumstances, the petitioner was constrained to raise an industrial dispute under Section 2A(1) of the Industrial Disputes Act. The 1st respondent filed a counter and based on the failure report, the dispute was raised under Section 2A of the Industrial Disputes Act. Meanwhile, the criminal case registered against the writ petitioner in Sessions Case No.631 of 2005 ended with an order of acquittal on 06.10.2007. The Labour Court passed an Award on 22.06.2011, rejecting the claim of the writ petitioner for

reinstatement and awarded compensation amount of Rs.50,000/- (Rupees Fifty Thousand only) in lieu of reinstatement.

6. The learned counsel for the writ petitioner is of an opinion that no disciplinary proceedings were initiated against the writ petitioner nor a charge sheet was issued or an enquiry was conducted. Therefore, the discharge of services of the writ petitioner by the 1st respondent Management is untenable. This apart, the criminal case ended with an order of acquittal. Thus, the petitioner is entitled for the relief of reinstatement. In support of the said contentions, he cited the judgment of the Hon'ble Supreme Court of India in the case of L.Robert D'souza Vs. Executive Engineer, Southern Railway and Others, reported in MANU/SC/0152/1982, wherein the Hon'ble Supreme Court of India considered the letter and it has stated that you have absented yourself unauthorizedly from 18.9.1974, hence your services are deemed to have been terminated from the day you have absented yourself. Such a letter was not considered by the Hon'ble Supreme Court of India and the relief of reinstatement was granted. The facts and circumstances in the present writ petition is also similar and therefore, mere discharge by the 1st respondent Management cannot be construed as a valid termination and accordingly, the writ petitioner is entitled for the benefit of termination. On the similar line, regarding the violation of Principles of Natural Justice, the learned counsel for the petitioner cited the judgment in the case of D.K.Yadav Vs. J.M.A.Industries Limited reported in (1993) 3 SCC 259. Undoubtedly, these judgments cited, settling the principles are of binding nature. However, the applicability of the principles with reference to the facts and circumstances are the question to be considered by this Court. Regarding the principles submitted by the learned counsel, certainly there is no quarrel. However, the facts and circumstances are to be considered along with the principles for the purpose of arriving a conclusion and that is to be a paramount importance.

7. It is not as if all the principles to be applied in all the cases irrespective of the fact that there are certain similarities. The gravity, nature of the allegations, nature of the ground on which the acquittal is granted and all other consequences and implications, social impacts, the messages to be communicated to the society, all these aspects are to be considered by the Constitutional Courts especially while dealing writ petitions under Article 226 of the Constitution of India. Of course, the social justice is the concept adopted in the Preamble. Thus, while rendering social justice in a justice

delivery system, the factors leading are to be considered for the purpose of rendering complete justice to the litigants, who all are approaching the Constitutional Courts. Thus, the decision rendered in a criminal case based on certain evidences cannot be of any avail in respect of getting the benefit of reinstatement or otherwise with an employer.

8. The learned counsel appearing on behalf of the 1st respondent disputed the contentions by stating that the allegations as well as the nature of criminal complaint registered against the writ petitioner, were undoubtedly heinous and more specifically, he was charged under Section 302 of Indian Penal Code. In nutshell, the allegation against the writ petitioner in the criminal case was that he was in an illicit relationship with the wife of the person, who was alleged to have been murdered by the writ petitioner and accordingly, arrested and remanded to custody. Admittedly, he was released on bail subsequently. The criminal case ended with an order of acquittal. Under these circumstances, stray application of principle may not be appropriate.

9. As far as the service or Labour jurisprudence are concerned, mere acquittal in a criminal case would not constitute a ground for granting exoneration from the disciplinary actions. In the present case, admittedly, the criminal case was ended with an order of acquittal on benefit of doubt. Therefore, such a judgment may be taken for the purpose of considering the case, but can never be construed as a conclusive factor for the purpose of granting the relief of reinstatement or attendant benefits. Thus, mere acquittal is not a ground. It is relevant to point out that, to convict a person under criminal law. Strict and high standard of proof is required. However, no such strict proof is required to punish a person under the departmental proceedings. Even preponderance of probabilities are sufficient to punish an employee. Even moral turpitude is sufficient. For example, if an employee commits certain act of immorality or affecting the discipline of the institution and if the same is established, that is sufficient to punish an employee. This being the distinct and different procedures to be adopted, both in the criminal proceedings as well as in the departmental proceedings.

10. Keeping these principles in mind, this Court is of an opinion that the charges against the writ petitioner in the criminal case was offence under Section 302 of Indian Penal

Code. Undoubtedly, he was acquitted, but the fact remains that he was considered as a deserter by the Management.

11. The learned counsel for the writ petitioner emphasized that he was terminated from service without following the procedures as contemplated. However, facts and circumstances reveals that no actions were taken against the writ petitioner. No enquiry was conducted and he was simply treated as a deserter. Treating an employee as a deserter is also permissible on certain circumstances. The circumstances forced the Management to treat him as a deserter in view of the fact that the writ petitioner was charged with a criminal case and arrested and kept in judicial custody and lodged in Prison. Under those circumstances, the Management sent two letters to the writ petitioner. One directly to his residence and another through the Police Station and in spite of that, he was not in a position to report for duty. Thus, the Management considered the situation in view of the fact that the writ petitioner was arrested and lodged in a Prison and was not in a position to report for duty. They have discharged him and thereafter, the Management refused the writ petitioner to join duty. The actions of the Management cannot be construed as victimization or an intentional one. The facts and the circumstances at the relevant point of time, made the Management to treat the writ petitioner as a deserter. Once an employee was treated as a deserter on account of the fact that he was arrested in a criminal case and lodged in a Prison, then this Court is of an opinion that the same cannot be construed as an illegality on the part of the Management. Various actions by the Management against its employees are permissible. An employee can be prevented by following the procedures as contemplated. An employee may be removed from service. Even there is a distinction between removal from service and termination from service. It has got different implications. A person terminated, cannot seek for reemployment elsewhere. However, a person removed, can be appointed in some other establishment. This being the distinctions, this Court is of an opinion that every punishment and its nature are distinct and different and the Courts are bound to consider the entire facts and circumstances for arriving a conclusion, whether the actions initiated by the Management is proper or improper.

12. As far as the case of the petitioner is concerned, it is admitted that he served with the Management for about seven years. He had involved in a criminal case and subsequently, acquitted. It is an admitted fact that he refrained himself from

reporting for duty during the period in which he was in Prison. Based on these facts and circumstances, this Court could arrive at a conclusion that it is at the instance of the writ petitioner, the Management could not reinstate the petitioner and on account of the fact that he was involved in a criminal case and during the relevant point of time, the criminal case was pending against him, which is of grave nature. Under these circumstances, the Labour Court also considered the letters communicated to the parties as well as the facts and circumstances and arrived at a conclusion that the reinstatement may not be possible and accordingly, granted the compensation amount of Rs.50,000/- (Rupees Fifty Thousand only) in lieu of reinstatement.

13. As discussed in the aforementioned paragraphs, the writ petitioner was not in service for several years. Near about 16 years passed and under these circumstances, it may not be possible for this Court to grant the benefit of reinstatement and further, the learned counsel for the 1st respondent also made a submission that reinstatement may not be possible as the writ petitioner was treated as a deserter on certain valid grounds and therefore, the Award of the Labour Court is to be confirmed. Taking note of the facts and circumstances, this Court is of an opinion that the compensation amount may be enhanced considering the plight of the writ petitioner as he suffered on account of various factors for about 16 years. Thus, this Court is inclined to enhance the compensation amount from Rs.50,000/- to Rs.1,00,000/- (Rupees Fifty Thousand to Rupees One Lakh only)

14. The 1st respondent Management is directed to pay the compensation amount of Rs.1,00,000/- (Rupees One Lakh only) within a period of four weeks from the date of receipt of a copy of this order.

15. With this modification, the writ petition stands Partly-allowed. However, there shall be no order as to costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The Plant Director,
Ashok Leyland Limited
Ennore High Road
Ennore, Chennai - 600 057

2.Hon'ble III Additional Judge,
III Additional Labour Court,
Madras High Court Buildings,
Chennai - 600 104

+1 cc to M/s.CPG.Yoganand & Associates sr97274

+1 cc to M/s.T.S.Gopalan & Co sr97159

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