

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7084 to 7089 of 2012

and

W.P.Nos.24620 to 24625 of 2011

K.Johnpaul ...Petitioner in WP.No.7084 of 2012
D.Venkatesan ...Petitioner in WP.No.7085 of 2012
M.Mohan ...Petitioner in WP.No.7086 of 2012
P.Murali ...Petitioner in WP.No.7087 of 2012
S.Vindoh Kumar ...Petitioner in WP.No.7088 of 2012
K.Murugavel ...Petitioner in WP.No.7089 of 2012
The Managing Director,
Leo Fasteners Unit II,
Thattanchavady,
Pondicherry. ...Petitioner in WP.Nos.24620 to 24625 of 2011

Vs.

The Presiding Officer,
Labour Court, Pondicherry. ...1st Respondent in All W.Ps.

The Managing Director,
Leo Fasteners Unit II,
Thattanchavady,
Pondicherry. ...2nd Respondent in WP.Nos.7084 to 7089/2012

M.Mohan ...2nd Respondent in WP.No.24620 of 2011
K.Murugavel ...2nd Respondent in WP.No.24621 of 2011
S.Vindoh Kumar ...2nd Respondent in WP.No.24622 of 2011
P.Murali ...2nd Respondent in WP.No.24623 of 2011
K.Johnpaul ...2nd Respondent in WP.No.24624 of 2011
D.Venkatesan ...2nd Respondent in WP.No.24625 of 2011

Prayer in W.P.s.7084 to 7089 of 2012 :- Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the first respondent Labour Court, quash the Award passed by the first respondent Labour Court in I.D.Nos.6,10,8,7,11 and 9 of 2010 respectively dated 17.08.2011

insofar as denying 50% of the backwages and consequently direct the second respondent management to pay the full backwages.

Prayer in WP.Nos.24620 to 24625 of 2011 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent relating to the award made in I.D.Nos.8,9,11,7, 6 and 10 of 2010 respectively dated 17/08/2011 and quash the same.

For Petitioner : Mr.K.Balan Haridas
(in W.P.Nos.7084 to 7089 of 2012)
Mr.R.Parthiban
(in W.P.Nos.24620 to 24625 of 2011)

For Respondents : Mr.R.Parthiban (for R.2)
(in W.P.Nos.7084 to 7089 of 2012)
Mr.K.Balan Haridas (for R.2)
(in W.P.Nos.24620 to 24625 of 2011)
R1 Court

ORDER

These writ petitions were filed challenging the common award dated 17.08.2011 passed in I.D.Nos.6 to 11 of 2010.

2. The six writ petitions were filed by the workmen challenging the award on the ground that the award of the Labour Court restricting backwages to 50% is perverse. In view of the fact that the Labour Court found that the order of termination was illegal, the Labour Court ought to have awarded 100% backwages with reinstatement and continuity of service, contrarily, the Labour Court awarded reinstatement, continuity of service and backwages of 50%. Thus, the workmen filed individual writ petitions questioning the award of the Labour Court restricting the backwages to 50%.

3.The other six writ petitions were filed by the Management challenging the common award stating that on account of the grave misconduct, the workmen were terminated from service and there was no reason to order for reinstatement by the Labour Court. The Management has followed the procedures contemplated and there was no infirmity in respect of the order of termination issued against the workmen. Thus, all these writ petitions are filed challenging the common award.

4.The facts in nut-shell to be considered in these writ petitions are that the workmen were employed as Helpers and during 'Ayudhapooja Festival', they performed Pooja and thereafter, behaved in an indisciplined manner. The Managing Director of the Company noticed that the workmen along with several other employees were whistling and dancing in vulgar

manner on 27.09.2009 after completion of the Pooja and while breakfast was being served to all the employees. On account of an act of indiscipline committed by the workmen, the Management issued charge memorandum on 05.10.2009. Admittedly, no enquiry was conducted. On 20.10.2009, the notice was issued along with a cheque for one month salary. Finally on 14.10.2009, the order of termination was issued, terminating the service of the workmen.

5.The workmen raised Industrial Dispute and the Labour Court found that the workmen were examined as witnesses and they have narrated the entire events. The copy of the appointment order, show-cause notice, explanation and the order of termination were marked as documents. The workmen denied the allegations. The contention of the workmen was that, he had participated in Union Activities and that motivated the Management to terminate the service of the writ petitioner. However, the said statement was denied by the Management and it was contended that on account of the serious misconduct of indiscipline committed by the workmen, the Management had initiated disciplinary action and terminated the service of the workmen. The order of termination was issued based on the proved misconduct and there was no infirmity as such. On the Management side, no witness was examined except R.W.1. The only document marked on the side of the respondent was the copy of the Board Resolution as Ex.R.1, which was no way helpful to establish the case of the respondent.

6.The Labour Court considered the documents as well as the deposition of witnesses and arrived at a finding that these workmen are working for considerable length of years with the Management and there was no past history of the workmen to show that on earlier occasions, these workmen were involved in any misconduct or indiscipline by violating the principles of Labour Enactments. The Labour Court found that no enquiry was conducted by the respondent to prove the alleged charges. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the genuinity of the charges levelled against the workmen. Under those circumstances, the order of termination without conducting any domestic enquiry is in violation of the Labour Legislations. The Labour Court made a categorical finding that no opportunity was provided to the workmen before coming to the conclusion that he was found not suitable or fit for continuance of services with the Management. In view of the fact that no such opportunity was provided to the workmen, the principles of natural justice has been violated. Under those circumstances, the Labour Court came to the conclusion that the order of termination is in violation of the principles of natural justice and accordingly, set aside the order of termination and the Industrial Dispute was allowed. The respondent/Management was directed to reinstate the workmen with 50% backwages and other attendant benefits.

7.The learned counsel appearing on behalf of the Management disputed the contentions of the petitioners by stating that the allegation of misconduct was established, as the Managing Director himself was a witness and he noticed such a serious indiscipline during the Pooja Festival and accordingly, issued a charge memorandum and thereafter an order of termination was issued on receipt of the explanation from the workmen concerned. In view of the fact that the Managing Director himself was a witness to such a misconduct, no enquiry was conducted. He further submits that even in case of no enquiry, the Management is entitled to challenge the allegations of the Labour Court by adducing evidence. But in the present case, the Labour Court finds that no such exercise was done by the Management, nor the Management had established the charges by marking the documents and by adducing evidence.

8.This Court is of the considered opinion that the presence of the Managing Director in the scene of occurrence would not save the procedural violations conducted by the Management. Even in case where the Managing Director is present in the scene of misconduct, an enquiry is a mandatory procedure which has to be followed in compliance with the principles of natural justice. Thus, the enquiry to be conducted cannot be dispensed with. Every employee against whom the charge memorandum was issued must be provided with an opportunity to defend his case in the manner prescribed. A domestic enquiry is to be conducted and an opportunity is to be provided.

9.Even in case where the Management failed to conduct domestic enquiry, then the Labour Court has to adduce evidences and by way of an adjudication to ascertain the genuinity of the charges and to make a finding whether the charges are established or not. Thus, in the event of no enquiry by the Management, the Labour Court has to conduct an enquiry by verifying the documents and by adducing evidences. In the present case, the Labour Court had conducted an enquiry and found that the charges against the workmen were not established beyond doubt. The Labour Court further considered that as per Ex.P.1, the workmen was an employee in the respondent Company for more than 4 years without any interruption and the services of the workmen also had been confirmed. Taking note of the all these factors, the Labour Court passed an award for reinstatement with 50% backwages.

10.The fact remains that during the pendency of the writ petition, last drawn wages were being paid to these workmen in compliance with Section 17B of the Industrial Disputes Act. This fact was not denied by the learned counsel appearing on behalf of the workmen also. The learned counsel appearing on behalf of

the Management also states that on account of overall Economic slow-down, the Company is facing financial crisis and under these circumstances, the Management would not be in a position to pay any backwages at all. Already they are in the process of giving lay off in respect of certain categories. Under these circumstances, he requested that the payment of backwages to be considered by this Court.

11. Taking note of the fact that last drawn wages are being paid to these workmen for the past 8½ years and taking note of the fact that the Company is also facing financial difficulties, this Court is inclined to reduce the backwages from 50% to 10%. In respect of the order of reinstatement and continuity of service and other attendant benefits, no interference is called for.

12. Accordingly, the common award dated 17.08.2011 passed in I.D.Nos.6 to 11 of 2010 is modified as reinstatement with all attendant benefits with 10% backwages. With these modifications, the writ petitions stands partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Labour Court, Pondicherry.

2.The Managing Director,
Leo Fasteners Unit II,
Thattanchavady, Pondicherry.

+1 cc to M/s.Balan Haridas,Advocate Sr.No.79233

AKM/15.10.19/5P- 4C /
AKM/01.11.19

W.P.No.7084 to 7089 of 2012
and

WP.Nos.24620 to 24625 of 2011