

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2019

Pronounced on : 31 .10.2019

Coram

THE HONOURABLE MR. JUSTICE SUBRAMONIUM PRASAD

WP No.8900 of 2013

B.Barathi

.. Petitioner

v.

1. The Presiding Officer,
Principal Labour Court,
Vellore.

2. The Management of Greaves Cotton Ltd.,
Light Engine Unit II,
Plot No.72, SIPCOT,
Ranipet.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the 1st respondent in connection with award pronounced in ID No.1 of 2011 dated 07.08.2012 as well as the preliminary findings of 11.04.2011 relating to the validity of the domestic enquiry and quash the same.

For Petitioner : Mr.V.Prakash, Sr. Counsel
for Mr.K.Sudalaikannu

For Respondents : Mr.Anand Gopal (for R2)
for M/s.T.S.Gopalan & Co

R1- Labour Court

ORDER

The instant writ petition is one for a certiorari, calling for records of the Presiding Officer, Labour Court, Vellore, in connection with award passed in ID No.1 of 2011 dated 07.08.2012 and quash the same and for further directions.

2. The 2nd respondent, Greaves Cotton Limited was originally, M/s.Enfield India Limited. It was purchased by Greaves Cotton in 1994. An Industrial dispute was pending

between the workmen and the management on wage settlement. It is stated by the petitioner that he represented the workmen in the negotiation between the management and the workmen and therefore, the management has always been inimical to the petitioner.

3. On 04.11.2008, the petitioner [B.Bharathy] received a show cause notice, alleging that Engines which were sent to a customer, were returned with complaints. When the engine was inspected, it was found that a B-8 Spring washer was in the engine. It is alleged in the complaint that this washer was deliberately put inside the engine by the petitioner.

4. The petitioner gave his reply on 12.11.2008. In the reply the petitioner, took a specific stand that after the testing is done by the petitioner, more persons deal with the engine and therefore, he alone cannot be singled out for this. Not convinced with the reasons, a show cause notice was given to the petitioner and an enquiry was proposed to be initiated under Standing Order No.17(1)(c) for indulging in the conduct against honesty) as per clause 16(4) and deliberate or irresponsible negligence in the work, being a misconduct under clause 16 (15).

5. The petitioner was also suspended, pending the enquiry. Enquiry was conducted. The enquiry officer, after hearing the employee found that only the petitioner could have placed the B6 spring washer. The enquiry officer found that after testing is done by the petitioner, the inlets and outlets of the engine are sealed by a plastic strip and therefore, there is no possibility of the B8 spring washer to go into the engine after the testing is done by the petitioner.

6. A second show cause notice was issued to the petitioner proposing to dismiss the services of the petitioner. Explanation was given and the petitioner was dismissed from service by an order dated 05.10.2009. The dismissal was challenged in ID No.1 of 2011. During the enquiry proceedings a preliminary issue was raised stating that there is no evidence against the petitioner at all and that the entire case is based on surmises and conjectures. The tribunal framed two issues as to whether the domestic enquiry was conducted in accordance with the principles of natural justice and whether the petitioner was granted full and fair opportunity to defend his case. The tribunal by order dated 11.04.2012, found that the decision making procedure was defect free and the enquiry was conducted in a free and fair manner.

7. After the Tribunal dismissed the preliminary objections,

the Principal Labour Court, Vellore District heard the matter on merits. Two issues were framed by the District Court viz.,

(1) Whether the charge against the petitioner that in the two engines tested by the petitioner, B8 spring washers were found in the combustion chamber of the engines and this act of sabotage was committed by him has been proved by the management?

(2) Whether the petitioner is entitled to reinstatement with continuity of service, backwages and all other attendant benefits?

8. The Labour Court after going through the entire report, came to a conclusion that there is substantial evidence and proof for the finding that the charges of sabotage has been proved against the petitioner. The Labour Court has also opined that since once there was a finding of such charge then it is a case of loss of faith and confidence and therefore, punishment of dismissal is commensurate with the gravity of misconduct. This writ petition is against the said order.

9. Mr.V.Prakash, learned senior counsel took this Court in detail to the cross examination of MW1 Thiru.Arumugam, Manager, Assembly Department. Mr.V.Prakash, would stress that though in the chief, it is stated that after the testing is done by the petitioner, the holes are closed and there is no chance of washer being put into machine, in the cross examination, the said officer has given the following replies for question.

Question No.1: After the testing is completed by me before the packing of the engine, what are all the works carried out in this company?

Answer : P.D.I. and dispatch works are being carried out.

Question No.2: What is the nature of work in P.D.I.

Answer: Pre-Delivery Inspection is carried out. There, Torque coil pan, Sly Wheel, Cylinder Head and Oil Pan are being done. Further Rocker Cover - Gap - Check up installation is also done.

Question No.3: Except the above said works any other work is not done?

Answer: Inlet Manifold is being installed.

Question No.4: How the above said Inlet Manifold is being installed?

Answer: Two B8 spring washer and M8 nut are being fixed. Further in order to fix manifold they will close the manifold with the plastic cover. After closing it the Manifold will be tightened by B8 spring washer and nut.

Question No.5: That being so, how the show cause notice was issued to me for the presence of washer in the engine?

Answer: When the manifold is being fixed, as it is being fixed after losing with the plastic cover, and before the engine test as the inlet manifold is being closed immediately after opening, and after the test is being carried out the inlet and exhaust both are closed there is no chance of B8 spring washer getting into the Engine Combustion Chamber. [As there is chance of removing the dummy covers, which covered the inlet exhaust manifold, there is chance of putting the B8 spring washer in the Combustion Chamber.]

Question No.6: If as said by you if a spring or any material could be caught in between the cylinder head and piston, could the fly wheel be rotated?

Answer: It could not be rotated.

Question No.7: The engine tested by me is worked in the P.D.I. Department by the four workers and in the auditive department Officer is working and thereafter the engine checked by me is being sent to customer End after the sticking of OK sticker by the quality control officer and thereafter after it was sent to packing department, how can I may be held liable for the presence of washer?

Answer: As already said by me, if it is in a small gap position, the material such as B8 spring washer, will not come out even though the engine is being kept slant from the combustion chamber cavity. As in the place of gap setting as the engine is kept straight and done the spring washer etc., which is in the Com Chamber Cavity could not come out through the rotation of the worker by hand. Therefore, the materials such washer used to go inside the cavity.

Question No.8: You having answered that only through the inlet exhaust the spring washer could get inside at the testing place for the question asked by me earlier, is now saying that there is no chance. How is it possible?

Answer: In the testing place, as the engine is kept for about 30 minutes, and that as he is there alone, there is chance of B8 spring washer being put inside. Further after the testing when the manifold is closed with the plastic cover in P.D.I. it is being fixed in the inlet hole, there is no chance of B8 spring washer being put in.

Question No.9: When the above said dummy is removed and manifold is fixed and tightened with B washer and M8 nut, is there chance of the B8 spring washer getting in.

Answer: There is chance.

Mr.V.Prakash, learned senior counsel would therefore state that the answers given by the departmental representative would show that there is a possibility of the washer being inserted, even at a stage after the petitioner conducted the test. Mr.V.Prakash, would state that in such a case, the petitioner could not have been held responsible for the B 6 workers who were found in the Engine. He would further state that when the inspection of the machine was done, the petitioner was not present and therefore, the petitioner is not aware under what circumstances the engine which were returned back were inspected.

10. Mr.V.Prakash, learned counsel also would contend that therefore the entire process, is violative of principles of natural justice. Mr.V.Prakash would state that the management has always been inimical to the petitioner and therefore, it is a case of victimisation. Mr.V.Prakash, relied on two judgments of the Supreme Court.

(i) The KCP Employees' Association Vs. The Management of KCP Ltd., Madras, reported in 1978 (2) SCC 42, wherein, the Hon'ble Supreme Court has held that industrial law should be interpreted and applied in the perspective of Part IV of the Constitution, and if there is a doubt, the benefit of reasonable doubt on law and facts, must go to the weaker section labour.

(ii) Mr.V.Prakash, would also rely on a judgment of the Hon'ble Supreme Court in Workmen Vs. M/s.Williamson Magor & Co. Ltd. and Another, reported in 1982 (1) SCC 117, where the Hon'ble Supreme Court has taken a view that the victimisation should be interpreted in a way to ensure that an employee must not face, the wrath of the management for the reasons of his trade union activities. In the said judgment, the Hon'ble Supreme Court has also placed reliance on KCP Employees' Association's case, stated supra.

11. On the other hand, Mr. Anand Gopal, learned counsel appearing for the 2nd respondent would contend that the entire decision making process has been conducted in a fair manner. He would state that findings in domestic enquiry are based on principles of preponderance of probabilities and strict rules and evidence are not applicable. He would state that the enquiry officer has given a categorical finding that once the petitioner inspects the engine, it is sealed. There is no possibility of this B8 spring washer entering into the engine after that stage. He would also state that the facts prove that it is a case of deliberately placing the washer inside the engine and that it is a case of loss of confidence and dismissal from service, cannot be said to be excessive.

12. Heard the learned counsel for both sides and perused the materials available on record.

13. It is well settled law that labour Court or industrial tribunal is the final Court on facts. Only if finding of facts is perverse and not based on legal evidence, High Courts exercising jurisdiction under Articles 226 and 227 of the Constitution of India, should interfere with such finding.

14. The Hon'ble Supreme Court in catena of judgments has held that an High Court must not sit as an appellate Court on facts and reconsider each item of evidence and then come to a different conclusion.

15. The Hon'ble Supreme Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, reported in 2009 (13) SCC 374 has observed as under.

"47. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot re-appreciate evidence. The findings of fact recorded by a fact finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered in writ jurisdiction merely on the ground that the material on which the tribunal had acted was insufficient or not credible.

48. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal

records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal."

16. Similarly in G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, reported in 2008 (12) SCC 575, has observed as under.

15. We have examined the arguments advanced by the learned counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in Trambak Rubber Industries Ltd. case [(2003) 6 SCC 416 : 2003 SCC (L&S) 890] are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an award of an Industrial Court on account of a patent illegality. In Seema Ghosh case [(2006) 7 SCC 722 : 2006 SCC (L&S) 1758] this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an award of the Labour Court was justified as the award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr Dave lay down similar principles and need not be dealt with individually. It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. On the contrary, Mr Sanyal's reliance on Sadhu Ram case[(1983) 4 SCC 156 : 1983 SCC (L&S) 507 : AIR 1984 SC 1467] is more appropriate to the circumstances herein. It has been observed as under: (SCC p. 158, para 3)

"3. ... The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to

jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management."

16. We are therefore of the opinion that in the light of the facts that have come on record we find no perversity or patent illegality in the award of the Industrial Tribunal and on the contrary must appreciate that it has minutely examined the evidence in arriving at its decision. In this view of the matter, it was inappropriate for the learned Single Judge to have reappraised the evidence and come to a different conclusion. "

17. In *Usha Breco Mazdoor Sangh Vs. Management of M/s.Usha Breco Ltd. & Another*, reported in 2008 (5) SCC 554, the Hon'ble Supreme Court while deciding the scope of an Industrial Court to interfere with the domestic enquiry, has observed as under.

"29. Indisputably, in the event, fresh evidence is adduced before the Labour Court by the management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the enquiry officer fall for reappraisal by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court shall not interfere with the findings of the enquiry officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the enquiry officer, it would exercise appropriate restraint. It must bear in mind that the enquiry officer also acts as a quasi-

judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the enquiry officer can also summon witnesses to determine the truth. The enquiry officer can call for even other records. It must indisputably comply with the basic principles of natural justice."

In the instant case, the Government does not find that the findings in the domestic enquiry or the findings of the labour Court are perverse, warranting interference, under Article 227 of the Constitution of India.

18. Once there is a finding that the B8 Spring washer could not have been put by anybody else other than the petitioner and once it has been held that putting a B8 spring washer inside the engine is not a part of the work to be done, then, the only question which remains is as to whether the petitioner has suffered from acts of victimisation by the management.

19. The learned counsel for the respondent has correctly relied on the judgment of the Hon'ble Supreme Court in M/s.Bharat Iron Works Vs. Bhagubhai Balubhai Patel & Others, reported in 1976 (1) SCC 518, wherein the Hon'ble Supreme Court has observed as under

"8. Ordinarily a person is victimised, if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own, in the manner, as it were, of a sacrificial victim. It is, therefore, manifest that if actual fault or guilt meriting the punishment is established, such action will be rid of the taint of victimisation.

9. It is apparent that victimisation may partake of various types, to cite one or two only, for example pressurising an employee to leave the union or union activities; treating an employee unequally or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.

10. A word of caution is necessary. Victimisation is a serious charge by an employee against an employer,

and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is, per se, no crucial instance. Collective bargaining being the order of the day in a democratic social welfare State, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activity can flow in healthy channel only on mutual cooperation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.

11. The onus of establishing a plea of victimisation will be upon the person pleading it. Since a charge of victimisation is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced.

12. Again victimisation must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. The question to be asked is: Is the reason for the punishment attributable to a gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a tense atmosphere prevailing in a company because of a strike consequent upon raising of certain demands by the union, each party calling the other highly unreasonable or even provocative, the tribunal will not readily accept a plea of victimisation as answer to a gross misconduct

even when an employee, be he an active office-bearer of the union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that effect. In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimisation as a defence will fall flat. This is why once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimisation will not carry the case of the employee any further. A proved misconduct is antithesis of victimisation as understood in industrial relations. This is not to say that the Tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimisation.

20. The said judgment applies to the facts of this case. It is to be mentioned that it is equally settled that when there is a case of loss of confidence, the management, is well within its right to dismiss the employee.

21. The Hon'ble Supreme Court in Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Ors. Vs. K.Meerabai, reported in 2006 (2) SCC 255, has observed as under

"29. Mr. Francis also submitted that a sum of Rs.34,436.85 being 5% of the total loss of Rs.6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence as the primary factor and not the amount of money mis-appropriated. In the instant case, respondent employee is found guilty of mis-appropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or mis-placed

sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and appellate authority."

22. Similarly in Depot Manager, APSRTC Vs. Raghuda Siva Sankar Prasad, reported in 2007 (1) SCC 222, the Hon'ble Supreme Court at para 23 has held as follows:

"Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment."

23. In view of the above discussion and decisions, the writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer,
Principal Labour Court,
Vellore.

+1 cc to M/s.T.S.Gopalan & Co, Sr.No. 90179

+1 cc to M/s.K.Sudalaikannu, Advocate Sr.No. 90344

AKM/05.12.19/12P-4 C /

order in
WP No.8900 of 2013