

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.20226 of 2014 & 29703 of 2015
and
M.P.No.1 of 2014 & M.P.No.1 of 2015

W.P.No.20226 of 2014

M/s.Renowned Auto Products Manufacturers
Limited., now known as M/s.Tenneco Automotive
India Pvt., Ltd., Rep.by its Director, Mr.J.Ambrose,
Having its Regd.Office at No.122, SIPCOT,
Industrial Campus, Hosur,
Tamil Nadu - 635 126 ...Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem
Tamil Nadu.

2.L.Ellappa ...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling upon the 1st respondent to produce the records in respect
of I.D.No.289 of 2005 and quash the impugned order dated
03.12.2013 passed in I.D.No.289 of 2005 by the 1st respondent.

For Petitioner : Mr.S.Ravindran, Senior counsel
For Mr.V.M.Narayanan

For Respondent : R1 - Court
R2 - Mr.R.Bharath kumar

W.P.No.29703 of 2015
L.Ellappa ...Petitioner

Vs.

1. M/s.Renowned Auto Products Manufacturers
Limited., now known as M/s.Tenneco Automotive
India Pvt., Ltd., Rep.by its Director, Mr.J.Ambrose,
Having its Regd.Office at No.122, SIPCOT,

Industrial Campus, Hosur,
Tamil Nadu - 635 126

2. The Presiding Officer,
Labour Court, Salem
Tamil Nadu.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records from the files of the 2nd respondent in I.D.No.289 of 2005 and quash its impugned Award made therein dated 03.12.2013 insofar as it has denied and negative petitioner's claim for full back wages and other attendant and consequential benefits.

For Petitioner : Mr.R.Bharath kumar
For Respondent : R1 - No appearance
R2 - Court

C O M M O N O R D E R

The Award dated 03.12.2013 passed in I.D.No.289/2005 is under challenge in the present writ petitions.

2. In W.P.No.20226 of 2014, the writ petitioner is the Management of M/s.Renowned Auto Products Manufacturers Limited. In W.P.No.29703 of 2015, the writ petitioner is the workman, namely Mr.L.Ellappa.

3. The learned Senior counsel appearing on behalf of the writ petitioner Management made a submission that the 2nd respondent workman joined in the writ petitioner company as a trainee and thereafter, appointed as a Probationer and his services were confirmed by the company as a regular employee on 15.12.2000 in the Post of Operator unskilled. He was promoted to the staff category as Member-Manufacturing under specific order of appointment dated 12.11.2003 with terms and conditions of employment, which were agreed and accepted by the 2nd respondent workmen.

4. The learned Senior counsel made a submission that the 2nd respondent was a habitual absentee without any prior permission from the Management. He was continuously absent for a period of 10 days and more. During the year 2002, he was in unauthorizedly absent for about 39 days and during the year 2003, 48.5 days. As per the standing orders, charge sheet was issued against the 2nd respondent regarding the misconduct of unauthorized absence and thereafter, the order of termination was issued directly. The order of termination was taken by way of a dispute in I.D.No.289/2005 under Section 2A(2) of the ID Act.

5. The learned Senior counsel made a submission that there was a delay in raising the dispute itself. The learned Senior counsel contended that admittedly, no Domestic enquiry was conducted. However, before the Labour Court, the Enquiry was conducted and the Labour Court examined the witnesses and made a finding in this regard. Once, the Labour Court conducted an enquiry in lieu of the Domestic Enquiry to be conducted by the Management, then the said enquiry should be construed as compliance of Principles of Natural Justice and therefore, there is no infirmity as such in respect of the proved charges. Thus, the Labour Court conducted an enquiry, examined the witnesses and arrived a finding regarding the charges of unauthorized absence. Such being the findings, there is no reason whatsoever to interfere with the quantum of punishment. When the unauthorized absence is a grave misconduct as per the Standing orders of the company and the company is able to establish that the 2nd respondent workman committed the misconduct of unauthorized absence, then there is no reason for the Labour Court to set aside the order of punishment. The Labour Court arrived a finding in clear terms that the 2nd respondent workman was a absentee during the relevant period of time. The documents regarding the unauthorized absence were filed by the Management. The 2nd respondent workman also was examined by the Labour Court and the Management could able to prove the allegation of unauthorized absence against the 2nd respondent workman. Regarding all these factors, the Labour Court made a conclusion that no enquiry was conducted and therefore, the order of punishment is in violation of the Principles of Natural Justice.

6. The learned Senior counsel seriously objected the above findings of the Labour Court mainly on the ground that admittedly no Domestic enquiry was conducted. However, when the Labour Court conducted the enquiry by way of a full fledged trial and arrive a finding in respect of the charges framed against the workman, then the order of punishment cannot be set aside on the ground that no enquiry was conducted. In other words, trial was conducted in lieu of the Domestic enquiry to be conducted by the Management. In such cases, the Labour Court cannot made a finding that no enquiry was conducted and therefore, the order of punishment is in violation of the Principles of Natural Justice.

7. The learned counsel appearing on behalf of the 2nd respondent workman disputed the contentions raised by the writ petitioner by stating that the unauthorized absence is very minimal and the workman was working for a considerable length of time with the Management. All along, he was working sincerely and on account of certain serious illness, he could not able to report for duty during the year 2002 and 2003 alone. The

Management ought to have granted some concession in such circumstance to the workman. Contrarily, they have dismissed the 2nd respondent workman even without conducted any domestic enquiry. Such action initiated is in violation of the Principles of Natural justice. Though the Labour Court conducted an enquiry, the Labour Court arrived a conclusion that the Principles of Natural justice has been violated in this case and accordingly, granted the relief of reinstatement without back wages. In view of the fact that the unauthorized absence are established, the Labour Court has not granted back wages. However, the Labour Court granted reinstatement with continuity of service. This being the award, there is no infirmity or perversity and accordingly, the award is to be upheld.

8. The learned counsel for the workman further reiterated that the workman filed another Writ Petition for grant of back wages on the ground that once the Labour Court arrived a conclusion that the order of dismissal was issued not in compliance with the Principles of Natural Justice, then the workman is entitled for back wages and therefore, the Labour Court has committed an error in that aspect alone. Therefore, the Award is to be modified to the extent of granting reinstatement with back wages and continuity of service.

9. This Court is of the considered opinion that as per the Standing orders, unauthorized absence is a misconduct. Admittedly, a Domestic Enquiry was not conducted by the writ petitioner Management. At the first instance, the Management had violated the Principles of Natural Justice by issuing the order of termination without conducting any enquiry. However, the Labour Court conducted an enquiry by examining the witnesses and the 2nd respondent workman himself participated in the trial and his statements were also recorded by the Labour Court. Once the Labour Court conducted a trial and arrived a conclusion that the charges of unauthorized absence are established, then the Labour Court cannot come to the conclusion that the Principles of Natural Justice had been violated. Undoubtedly, the Principles of Natural Justice had been violated by the Management, which was rectified by the Labour Court by conducting a trial. In the present case, admittedly, the Labour Court conducted the trial and arrived a conclusion that the charges are proved by the Management. However, the Labour Court passed an order of reinstatement with continuity of service and without back wages.

10. This Court is of the considered opinion that the 2nd respondent workman is working for a considerable length of time with the writ petitioner / Management. There was no previous allegations of unauthorized absence against this workman. When his previous services were unblemished and there is no such allegations unauthorized absence till the year 2002, then his

contention that he was ill during the particular period is to be considered by the Court. He was unauthorizedly absent only during the year 2002 and 2003, for which, he made a submission that he was not well during the relevant point of time. When the workman all along served with the Management, without any such allegations of misconduct of unauthorized absence and the number of days are also not huge, this Court is of the considered opinion that the theory of proportionality is to be applied in respect of the facts and circumstances of the present case.

11. Considering the fact that the unauthorized absence is a misconduct, this Court is inclined to consider the past services of the workman with the writ petitioner Management. In view of the fact that the workman had clean records of service for about 6 years, his case is to be considered in respect of the quantum of punishment.

12. Accordingly, the following orders are passed:

(1) The Award of the Labour Court, directing the writ petitioner Management to reinstate the 2nd respondent in service with continuity of service stands confirmed.

(2) However, the 2nd respondent is not entitled for back wages as 'No work No Pay' principles are to be applied in this case. The 2nd respondent workman is not entitled to claim any back wages and the Management is directed to reinstate the 2nd respondent workman within a period of two weeks from the date of receipt of a copy of this order. On reinstatement, the Management is directed to pay the benefit of continuity of service and current charges.

13. With these directions, both the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(J)

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Sub-Assistant Registrar

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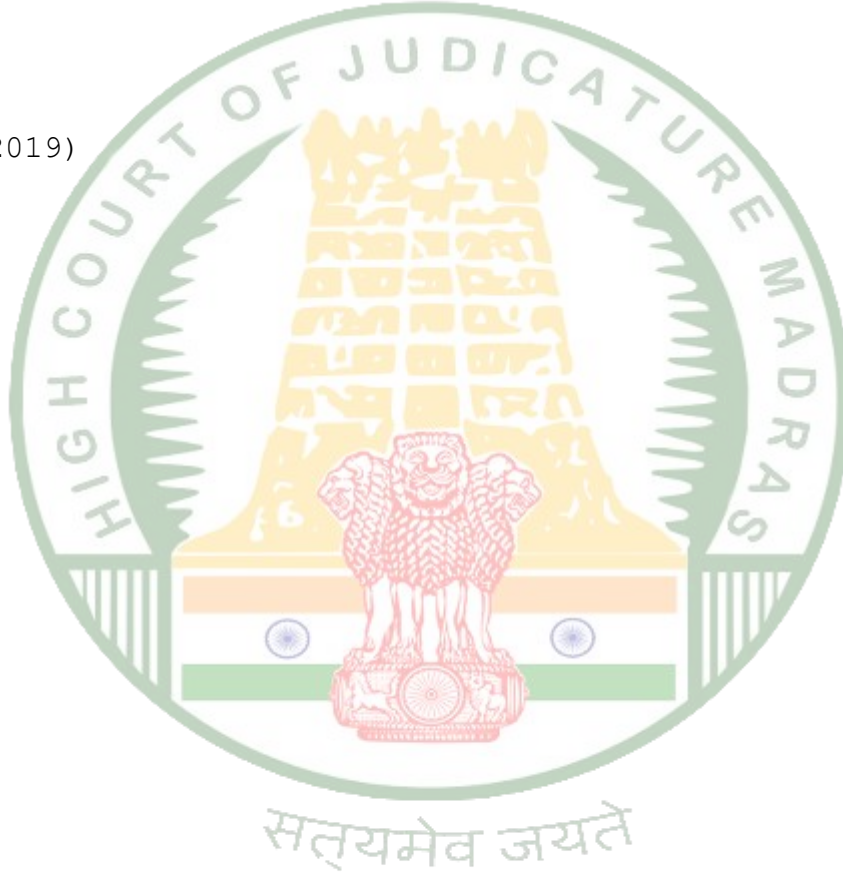
The Presiding Officer,
Labour Court, Salem
Tamil Nadu.

+2 Ccs to Mr.S.Venkata Raman, Advocate sr 96651, 96652.

+1 CC to Mr.R.Bharath Kumar, Advocate sr 95521.

W.P.Nos.20226 of 2014 & 29703 of 2015

SP(12/12/2019)



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