

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.23334 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

M/s.Renowned Auto Products Manufacturers Ltd.,
Now known as M/s.Tenneco Automotive
India Pvt. Ltd., Rep., by its Director, Mr.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.K.Amarnarayan ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records of the 1st respondent to produce the records in respect
of I.D.No.9 of 2007 and quash the impugned Award dated
17.03.2014 passed in I.D.No.9 of 2007 by the 1st respondent.

For Petitioner : Mr.S.Ravindran,
Senior Counsel
assisted by
Mr.T.Madhusudhan Reddy

For Respondents: R1 - Labour Court
: R2 - Mr.G.M.Ananthakumar

ORDER

The award dated 17.03.2014, passed by the 1st respondent,
Labour Court, Salem, in I.D.No.9 of 2007 is sought to be quashed
in the present writ petition.

2.The petitioner states that their company is engaged in the
business of manufacturing shock absorbers and other ancillaries

for automobiles. It has its registered office/factory, both at SIPCOT Industrial Campus, Hosur, besides factories also at Pondicherry and Gurgoan.

3.The 2nd respondent was employed as Trainee - Operator in the writ petitioner company on 01.08.1984, under an order of appointment dated 02.08.1984. Subsequently, he was appointed as a Probationary Operator on 01.08.1985, and thereafter, his services with the writ petitioner company was confirmed on 01.08.1986, as an Operator - Assembly in the unskilled category and thereafter, promoted to the post of staff category as Member - Stores, under a specific order of appointment, which terms and conditions of employment were agreed to and accepted by him.

4.The learned Senior Counsel appearing on behalf of the writ petitioner Management made a submission that the 2nd respondent workman had admittedly been "habitually indisciplined" employee. He has been issued with warning and reprimand letters on (i) 08.04.1985 for having been absent without prior and proper authorization from 01.04.1985 to 06.04.1985; (ii) 16.11.1985 again for having been absent without prior and proper authorisation from 07.11.1985 to 16.11.1985; (iii) 10.11.1987 for gossiping with fellow workers in the toilet on 07.11.1987 at about 09.45 hours; (iv) 03.03.1988 for having been absent from the work spot from 03.15 p.m. to 03.40 p.m., on 02.03.1998 without any prior permission; (v) 12.09.1992 for having been sleeping in the toilet from 10.40 p.m. to 11.10. p.m., on 11.09.1992; (iv) on 19.07.1996 for indulging in riotous and disorderly behaviour at 06.00 a.m., and (vii) on 19.07.1996 and on 21.08.1997 for not keeping with the productivity schedules on 11.08.1997 and 12.08.1997.

5.With reference to "habitually indisciplined" and the misconducts committed by the 2nd respondent as well as the letters of warning issued, the learned Senior Counsel appearing on behalf of the writ petitioner Management solicited the attention of this Court to the order of suspension issued by the Management in proceedings dated 26.03.2005. Prior to the order of suspension, the writ petitioner Management passed an order on 24.03.2005 directing the 2nd respondent workman to proceed to Gurgoan on or before 25.03.2005, to assist the company's auditors for physical verification of stocks in that factory between 31st March, 2005 and 4th April, 2005, when the auditors are expected to be present.

6.The writ petitioner company assigned a specific work to be carried out in their plant at Gurgoan and the Management directed the 2nd respondent to start in and around 25th March,

2005, as the auditors are also expected to be present during that period. The said letter was addressed to the 2nd respondent and the learned Senior Counsel for the petitioner reiterated that the said letter was communicated to the 2nd respondent employee. Again another letter was sent on 8th April, 2005 stating that a detailed charge memo is enclosed. The charge memo dated 08.04.2005, reveals that the writ petitioner Management instituted disciplinary proceedings against the 2nd respondent with reference to his misconducts, wilful insubordination or disobedience, negligence or neglect of work and deliberately making false, vicious or malicious statements against the industrial establishment.

7.The 2nd respondent employee sent a letter dated 29.03.2005, which was marked as Ex.M5 before the Labour Court. The said letter states that the 2nd respondent came to know about the order of suspension through the other workmen, as the said order of suspension was affixed in the notice board of the factory. Further, it is stated by the 2nd respondent that he had approached the personnel department of the writ petitioner company and received the said order of suspension on 26.03.2005 itself. Thus, it was admitted by the 2nd respondent that he had received the order of suspension as well as he was aware of the fact that he was deputed to go to Gurgoan on account of certain specific work assigned to him to assist the company auditors. On 19.04.2005, the 2nd respondent submitted his explanation to the charge memo issued to him. The contention of the 2nd respondent was that the writ petitioner management placed him under suspension in order to victimise him and therefore, the false allegations set out against him are to be withdrawn and made further request to cancel the order of suspension.

8.The writ petitioner Management having not satisfied with the explanation submitted by the workman, conducted a domestic enquiry and the enquiry officer submitted his report holding that the charges against the 2nd respondent are proved. Based on the proved charges, a second show cause notice was issued in September, 2005 and thereafter, the 2nd respondent was terminated from services. The 2nd respondent raised an industrial dispute in I.D.No.9 of 2007, which was allowed by the Labour Court, Salem on 17.03.2014, which is under challenge in the present writ petition.

9.The learned Senior Counsel appearing on behalf of the writ petitioner Management contended that the findings of the Labour Court are absolutely in contradiction with the documents marked before the Labour Court. In other words, the Labour Court erroneously interpreted the contentions of the admission letters sent by the 2nd respondent workman to the Management and presumed

the facts, which all are not in consonance with the explanation as well as the letters submitted by the workman to the Management. To substantiate the said contention, the learned Senior Counsel referred to the documents marked as Ex.M3 to Ex.M6, which all are the documents showing that the 2nd respondent was deputed to assist the company auditors in Gurgoan for a specific period. Yet another document states that the 2nd respondent himself had sent a letter that he received the order of suspension from the personnel branch of the writ petitioner Management on 26.03.2005 itself. The other document shows that the 2nd respondent was placed under suspension and he had sent a letter stating that the Management had victimised him. All these documents marked before the Labour Court reveal that the 2nd respondent was deputed to complete certain assignments at the Gurgoan factory and in view of the fact that he was not obeyed the orders of the company, he was placed under suspension and in his reply letter, he has admitted that he has received the order of suspension and further submitted his explanation with reference to the charge memo issued to him. The charges framed against the 2nd respondent were grave in nature and the Management also conducted an enquiry and the fairness of the enquiry was not disputed by the workman even before the Labour Court. The Labour Court made an observation that the domestic enquiry conducted by the Management was in compliance of the principles of natural justice and there is no infirmity as such.

10. Though the documents marked as Ex.M3 to Ex.M6 reveal these facts, the Labour Court in contradiction to these documents made a finding that the 2nd respondent was not even aware of the assignment granted to him at Gurgoan factory to assist the company auditors. The statement, made by the Labour Court that the 2nd respondent was not aware of the order, was accepted by the labour as it is, which is found to be incorrect with reference to the orders passed by the writ petitioner Management. However, the Labour Court made a finding that the 2nd respondent refused to receive that letter and the said letter marked as Ex.M3, was affixed in the notice board. The fact regarding placing the order in the notice board was admitted by the 2nd respondent before the Labour Court. However, the Labour Court made a factual inference by stating that the Management had failed to prove that the order deputing the 2nd respondent to Gurgoan was not communicated to him. Therefore, the misconduct of insubordination and disobedience are not proved. The Labour Court arrived a conclusion that insubordination and indiscipline are not established before the enquiry officer.

11.This Court is of an opinion that the writ petition is mainly filed on the ground of incorrect appreciation of documents by the Labour Court more specifically, the documents marked as Ex.M3 to Ex.M6. Those documents are enclosed in the typed set of papers along with the present writ petition and the documents reveal that the copy was communicated to the 2nd respondent employee. Even in case the employee had not admitted the fact that it was communicated, in his own letter, the employee has admitted that he came to know about the orders through his colleagues, as the said orders were affixed in the notice board and subsequently, he approached the personnel department of the company and received those orders. When such an admission is made by the employee concerned, then there is no reason to arrive a conclusion that the employee has no knowledge about such order deputing him to Gurgoan or the order of suspension issued by the Management.

12.This Court is of a considered opinion that the Labour Court made an attempt to draw a factual inference in order to take a lenient view in this issue. The Labour Court came to the conclusion that the enquiry was conducted in a just and proper manner. The Labour Court on erroneous appreciation of the documents and its contents, arrived a conclusion that the charges are not proved before the enquiry officer. However, the documents filed would show that the 2nd respondent was very much aware of those orders passed by the Management and he had admitted the fact that he had received those documents by approaching the personnel department of the writ petitioner company. This being the admission made by the 2nd respondent workman in his letter dated 29.03.2005, there is no reason for the Labour Court to arrive a conclusion that the charges are not proved. The Labour Court has erroneously interpreted the facts in order to show some misplaced sympathy in favour of the 2nd respondent workman. However, the fact reveals that the charges against the 2nd respondent are proved and the fairness of the domestic enquiry was not disputed and undoubtedly, the allegations against the 2nd respondent workman were grave in nature.

13.The above being the facts and circumstances, this Court has no hesitation in coming to the conclusion that the award of the Labour Court is perverse and in contradiction with the documents filed before the Labour Court and accordingly, the

award dated 17.03.2014, passed in I.D.No.9 of 2007, is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(abr)

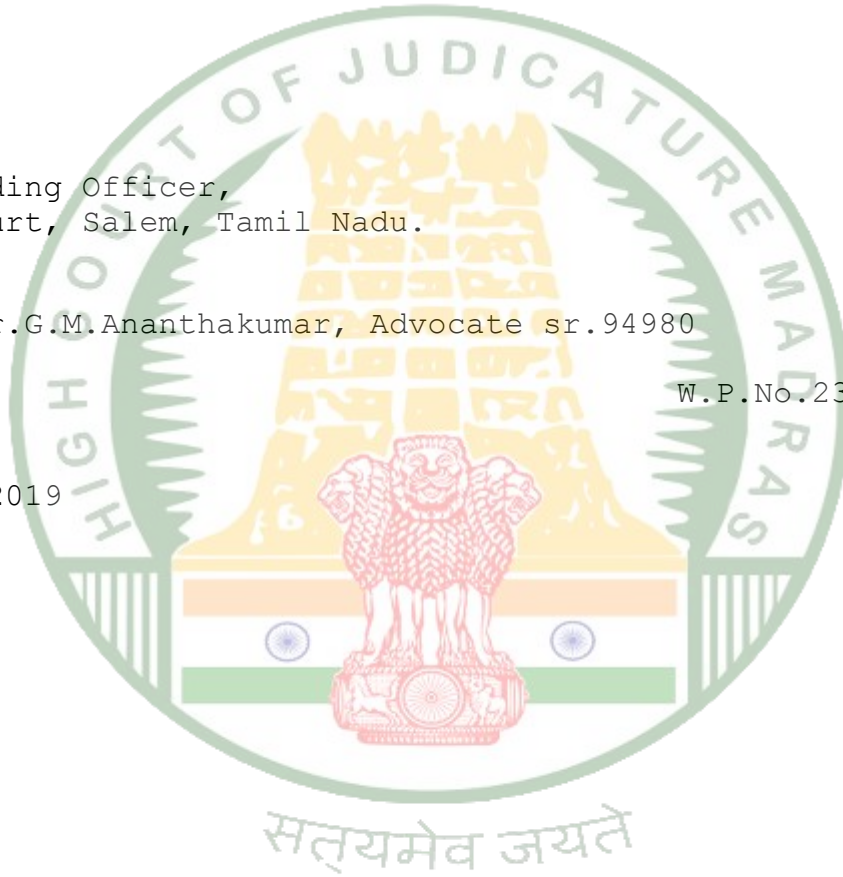
To

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

+1cc to Mr.G.M.Ananthakumar, Advocate sr.94980

W.P.No.23334 of 2014

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