

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.29349 of 2014

The Management of Ponni Sugar Mills
(The Management of Ponni Sugars (Erode) Limited),
Pallipalayam, Tiruchendgode Taluk,
Namakkal District.
Rep., by its President - R.Chandramouli. .. Petitioner

-vs-

1.The Presiding Officer,
Labour Officer, Salem.

2.R.Masilamani. ... 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 in I.D.No.20 of 2012 and quash its
Award dated 22.05.2014.

For Petitioner : Mr.S.Ravindran,
Senior Counsel
assisted by
Mr.S.Bazeer Ahamed

For Respondents: R1 - Labour Court
: R2 - No appearance

ORDER

The award dated 22.05.2014, passed by the 1st respondent in
I.D.No.20 of 2012 is under challenge in the present writ
petition.

2.The writ petitioner Management is a company known as
Ponny Sugars (Erode) Limited.

3.The learned Senior Counsel appearing on behalf of the
writ petitioner Management made a submission that the 2nd

respondent was employed in the writ petitioner company with effect from 01.12.1993, as an unskilled worker. He was working as Pump Attendant. The 2nd respondent was a chronic absentee and the Management issued several memos and charge sheet, which resulted in various warning letters to the 2nd respondent workman. During January to December, 2001, the 2nd respondent absented from work for 22 days. Thus, on 21.01.2002, a charge sheet was issued to him. The 2nd respondent submitted his explanation on 23.01.2002, which was not satisfactory and consequently, a domestic enquiry was conducted. The 2nd respondent workman participated in the domestic enquiry and admitted his guilt with reference to the charges of unauthorised absence. On 29.03.2002, the enquiry officer submitted his findings holding that the charges levelled against the 2nd respondent were proved. The 2nd respondent was a chronic absentee right from the year 1990. In view of the fact that the serious misconducts committed by the 2nd respondent are proved, a second show cause notice was served to the 2nd respondent on 22.02.2004, and thereafter, the writ petitioner Management imposed punishment of dismissal from service on 30.12.2002. The 2nd respondent raised an industrial dispute and the Labour Court allowed the disputed and granted reinstatement without back wages.

4.The learned Senior Counsel appearing on behalf of the writ petitioner Management made a submission that the Labour Court had erroneously exercised the discretionary powers conferred under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). There is no reason to exercise such power in view of the fact that the industrial dispute raised by the 2nd respondent itself is not maintainable and liable to be rejected in limine on the ground of delay and laches. In order to substantiate the statutory delay, the learned Senior Counsel solicited the attention of this Court with reference to the amended provision of Section 2A(3) of the Act. Pursuant to the amended provision, the industrial dispute is to be raised within a period of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Thus, the industrial dispute ought to have been raised by the 2nd respondent within a period of three years from the date of termination. In the present writ petition, the 2nd respondent was terminated from service on 30.12.2002, and he raised the industrial dispute in the year 2012, after a lapse of more than nine years. Thus, the dispute itself is liable to be rejected in limine in view of the statutory limitations prescribed in the amended Section 2A(3) of the Act.

5.Even on merits, it is contended that the 2nd respondent

was a habitual absentee and the fairness of the enquiry was also upheld by the Labour Court. The Labour Court further admitted the fact that the charges against the 2nd respondent were held proved and the order of dismissal was also issued based on the proved charges. However, the Labour Court has taken a lenient view in order to mould the prayer invoking Section 11A of the Act. In other words, though the legal requirements had been complied with in the matter of conducting domestic enquiry and following the procedures, the Labour Court invoked Section 11A of the Act and granted the relief of reinstatement without back wages.

6.The question arises whether such a leniency or misplaced sympathy shown by the Labour Court is legally permissible or not. Undoubtedly, the power of discretion is provided in the statute. However, such discretionary powers are to be exercised cautiously only to mitigate the circumstances arisen on account of certain exceptional facts and more specifically, to neutralise the injustice, if any, caused to the working class. The very purpose of such discretionary powers provided to the Labour Court by the legislatures are to ensure that injustice, if any, caused to the employee is redressed in certain external circumstances. Thus, the power of discretion is to be exercised exceptionally and cannot be exercised in a routine manner.

7.In the event of exercising the discretionary powers in a routine manner, then the very spirit of the rule of law is not only diluted but violated. Therefore, violation of rule of law is impermissible and exercising the discretionary power is to be on exceptional circumstances. Therefore, the law requires that while exercising such discretionary powers, the Courts are bound to record reasons in writing. Mere recording of reasons is insufficient, but such reasons must be candid and convincing. In the absence of any such candid and convincing reasons, it is to be presumed that leniency or misplaced sympathy is shown based on certain personal perception of the Presiding Officers/Judicial Officers, which may not be appropriate to uphold the rule of law. Thus, the Courts must be cautious while exercising such discretionary powers. Discretionary powers are to be construed as double-edged weapon and in the absence of any strong reason to exercise such discretionary powers, the Courts have to arrive a conclusion that such discretionary exercise would be exercised and would not have been exercised on account of the fact that the misconducts are otherwise proved by the employees are to be applied for the purpose of maintaining the industrial discipline and industrial peace, which is required and imminent for the purpose of development of the industry which is also a pillar for the development of great nation.

8.The above being the principles to be followed while exercising the powers under Section 11A of the Act, this Court

is of an opinion that when the Labour Court categorically found that the domestic enquiry was conducted in a just and proper manner, and the charges of grave misconduct are proved against the employee concerned, and the employer followed the procedures in compliance with the principles of natural justice, then there is no reason to interfere with the quantum of punishment. Undoubtedly, the theory of proportionality can be adopted only if the facts and circumstances warrant. Even in such circumstances, the facts, circumstances, reasons as well as the logic for complying the discretionary powers are to be recorded in writing in the award so as to understand that the Labour Court also exercised its power prudently and in compliance with the rule of law and the established principles.

9. So far as the present writ petition is concerned, when the Labour Court found that the 2nd respondent is a habitual absentee and the Management issued several warning letters on earlier occasions and finally issued a charge memo for continuous unauthorised absence, conducted domestic enquiry, proved the charges and imposed punishment of dismissal from service, the Labour Court has committed an error apparent in granting the reinstatement without back wages and these being the factum, this Court has no hesitation in coming to the conclusion that the award is perverse and infirm. Thus the award dated 22.05.2014, passed by the 1st respondent in I.D.No.20 of 2012 is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

abr

To

The Presiding Officer,
Labour Officer, Salem.

+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No. 94667
+1cc to Mr.K.Valayapathi, Advocate, S.R.No. 95214

W.P.No.29349 of 2014

NRL (CO)
GN (31/12/2019)