



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.9597 of 2016

And

W.M.P.No.8633 of 2016

The Management,
Obli Granites,
Chellapillai Kuttai,
Omalar Taluk,
Salem District
Represented by its Managing Director,
O.Ulaganathan

.. Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Salem.

2.C.Kumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in I.D.No.43 of 2010 and quash its Award dated 25.06.2015 in so far as the direction to the petitioner to reinstate the second respondent in service with continuity of service.

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

For Respondent-1 : Labour Court

For Respondent-2 : No Appearance

ORDER

The Award dated 25.06.2015 passed by the first respondent-Labour Court in I.D.No.43 of 2010, is under challenge in the present writ petition.

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



petitioner is an exporter of decorated granite stones to various countries. Since the export orders should be dispatched in tight schedule, any delay in dispatch due to disruption in production even for a day would result in levy of severe damages or cancellation of the entire order, thus causing huge loss.

3. Due to recessionary trend in the year 2007, the writ petitioner-Management faced financial crisis. Though all along the writ petitioner has been promptly paying salary on 7th of every month, in December 2007, there was delay of few days in payment of salary. On 07.12.2007 and 08.12.2007, the second respondent-employee indulged in riotous and disorderly behaviour and brought down the production activities.

4. The writ petitioner-Management initiated disciplinary action for the above misconducts committed by the second respondent employee, by an order dated 10.05.2008. The second respondent-workman was dismissed from service. The second respondent-workman raised an industrial dispute in I.D.No.43 of 2010 and the Labour Court allowed the Award, granting the benefit of reinstatement with continuity of service without back wages. Thus, the writ petitioner-Management is constrained to file the present writ petition.

5. The learned Senior Counsel appearing on behalf of the writ petitioner-Management made a submission that an enquiry was conducted by providing opportunity to the workman and in compliance with the principles of natural justice. The fairness of the enquiry was not questioned by the workman before the Labour Court concerned.

6. Based on the enquiry report, the workman was terminated from service and therefore, there was no irregularity in the matter of following the procedures and in disciplinary proceedings. The Labour Court also considered all these aspects and arrived a finding that the enquiry was conducted in a just and proper manner and further, in paragraph-22 of the Award, the Labour Court recorded a finding, stating that the charges against the second respondent-workman were proved based on the documents filed. After coming to the conclusion that the charges are proved against the second respondent-workman, the Labour Court made a finding that the order of termination was issued based on the domestic enquiry as well as the findings in the enquiry and therefore, the order of termination is in accordance with the procedures contemplated and held as correct.

7. When the Labour Court arrived a conclusion that the disciplinary proceedings were conducted by following the procedures and the charges were also proved against the second



respondent-workman and further made a finding that the punishment of termination is also correct with reference to the documents filed, finally grant the relief of reinstatement by stating that a lenient view is to be taken.

WEB COPY

8. Perusal of the Award of the Labour Court reveals that no reasons are recorded for granting such leniency.

9. The discretionary powers conferred under Section 11-A of the Industrial Disputes Act, 1947 is to be exercised only by recording the reasons. The reasons recorded for granting the relief by modifying the punishment or cancelling the punishment, must be candid and convincing.

10. The mere usage of the word 'punishment of termination' is disproportionate / is insufficient for modification or cancellation of punishment. While taking a decision for exercising the discretionary powers under Section 11-A of the Industrial Disputes Act, the Labour Court must keep in mind that the reasons are to be recorded and such reasons must be convincing and candid and based on certain principles. Simply by recording that the punishment is disproportionate, the same cannot be modified or cancelled. Such an exercise of discretionary power cannot be construed well within the established principles of law.

11. In the absence of recording any such reasons, the discretionary power exercise is to be construed as an excess or an error in law. Therefore, while exercising the discretionary power, the Labour Court must record reasons, which must be based on certain established legal principles or on the basis of documents available.

12. This being the factum, mere exercise of discretionary power is impermissible and the High Court cannot approve such exercise of discretionary powers by the Labour Courts for cancelling or modifying the orders of punishment imposed by the employer concerned.

13. In the present case on hand, the Labour Court arrived a conclusion that the domestic enquiry was conducted in a just and fair manner. The charges against the second respondent-workman were proved based on the findings of the Enquiry Officer. The punishment imposed was also in accordance with the procedures contemplated and justified.

14. When the order of termination issued by the Management was justified before the Labour Court, there is no



reason whatsoever to allow the Award by granting the relief of reinstatement. Such an exercise is infirm and not in consonance with the established principles of law.

15. Accordingly, this Court has no hesitation in coming to the conclusion that the Award is liable to be set aside. Thus, the Award dated 25.06.2015 passed by the first respondent-Labour Court in I.D.No.43 of 2010 is quashed and consequently, the present writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Salem.

+1 cc to M/s.S.Bazeer Ahamed, Advocate Sr.No. 98162

AKM/06.01.2020/4P-3C /

W.P.No.9597 of 2016