

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-09-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10327 of 2017

And

W.M.P.No.11259 of 2017

The Management of Rotork Controls (India)
Private Limited, Represented by the Managing
Director, 63A, SIDCO Industrial Estate (North),
Ambattur,
Chennai-600 098
Represented by its Vice President (Operations) ... Petitioner

vs.

1. The Presiding Officer,
I Additional Labour Court,
Chennai.

2. M.Navin Kumar ... Respondents

PRAYER : 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.25 of 2012 and quash its Award dated 26.02.2016.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondent-1 : Labour Court

For Respondent-2 : Mr.V.Prakash, Senior Counsel
for Mr.K.Sudalaikannu

ORDER

The Award of the first respondent-Labour Court dated
26.02.2016 passed in I.D.No.25 of 2012 is under challenge in the
present writ petition.

2. The writ petitioner is the management of Rotork Controls
(India) Private Limited. The writ petitioner-company was formed
in the year 1979 as a Joint Venture between Best and Crompton
Engineering Limited and Rotork Cokntrols, U.K. The writ

petitioner's factory observes five day a week working with Sunday being a weekly holiday and Saturday being an off day. The workmen are granted paid leave as per the Factories Act, 1947 @ 1 day for every 20 days work performed with no minimum eligibility criteria, sick leave for 12 days and casual leave for 2 days in a year. The father of the second respondent-workman was a worker in the Foundry Division of Best and Crompton Engineering Limited. On the recommendations of the Foundry Manager, the second respondent-workman was taken in the employment of the writ petitioner-company as an Apprentice in the year 1982 at which time the second respondent-workman had only passed SSLC.

3. After completion of apprenticeship, on 06.09.1984, the second respondent-workman was appointed as a Technician. The second respondent-workman was working in the Valve Actuator Assembly. In the meantime, the writ petitioner-company became wholly owned subsidiary of Rotork Controls Limited UK in the year 1985, which is known for its liberal approach towards its human resources.

4. In between the years 2005 and 2010, the second respondent-workman unauthorisedly absented himself frequently. The second respondent had not only absented from work, but also failed to provide any intimation or written communication or any application for the ratification of the absence. The second respondent was issued with a warning letters in respect of the disruption caused to the production due to his unauthorised absence. The reason given by the second respondent-workman was that his wife was suffering from mental illness and that his daughters were going to School/College, he had to attend to them. The second respondent became conscious about the disruption caused by him in the production line and also embarrassed to stay away from work, that in the year 2010, the second respondent-workman gave a letter of resignation appealing to the writ petitioner-management that he should be considered for financial assistance to leave the job voluntarily. The writ petitioner-company could not entertain such representation as in its view, any payment of financial assistance for an irregular absentee would be an insult to the other workmen who are regular in work.

5. Thus, the writ petitioner-Company due to the continued unauthorised absence of the second respondent-workman and also his failure to intimate or ratify such absence, constrained to award punishment of termination by letter dated 08.02.2011. On 08.04.2011, the Ambattur Industrial Estate General Workers Union raised an industrial dispute before the ACL (Conciliation) II, Chennai regarding the illegal termination of the second respondent-workman. As the writ petitioner-company did not

participate in the Conciliation on the ground that it has not recognised the said Union, the second respondent-workman raised an industrial dispute before the same Conciliation Authority.

6. On 08.11.2011, the Conciliation proceedings failed and on 14.12.2011, a conciliation failure report was sent to the Government. The second respondent-workman approached the first respondent raising an industrial dispute and the same was numbered as I.D.No.25 of 2012. The second respondent-workman took a plea that he had met with an accident in the year 2003, which resulted in physical disablement and prevented him from reporting to work.

7. The writ petitioner-company examined one witness. The second respondent-workman examined himself. The second respondent-workman marked Exs.W-1 to W-15 and the writ petitioner-company marked Exs.M-1 to M-20 before the first respondent-Labour Court.

8. During the course of the dispute, the writ petitioner-company also found that the second respondent-workman was a partner in a firm called 'Jayam Retreads' holding 25% share along with three other members. The same was brought to the notice of the first respondent-Labour Court also. In the cross examination, the second respondent-workman admitted the following facts:-

(a) It was the second respondent-workman's case that he had suffered an injury in the year 2003 and only due to that he had frequently absented himself.

(b) When the second respondent-workman applied for leave or in his communications to the management, he did not make any mention about the purported accident or that was the reason for his frequent absence.

(c) The second respondent-workman had not filed any documentary proof to show that he had undergone treatment for the same.

(d) The writ petitioner-Management has given him various warning letters with regard to his unauthorised absence and he had not replied anywhere about the accident or injury suffered by him.

(e) In all the communications of the second respondent-workman, he had only mentioned that his absence was only due to family circumstances and his wife's illness.

(f) The second respondent-workman had not submitted any documentary evidence to the writ petitioner-company regarding the treatment taken by him for his accident.

(g) That the second respondent-workman is not a partner in Jayam Retreads. But he is an employee in that partnership firm from 2011.

(h) That the second respondent-workman was also authorised to sign documents in Jayam Retreads.

(i) To the suggestion that whether the second respondent-workman was carrying out business Sri Meenakshi Trailor Transport, he admitted that the said business was carried on by his brother and he was receiving Rs.6,000/- per month from that business.

9. The Labour Court passed an Award on 26.02.2016 reinstating the second respondent-workman in the writ petitioner's service along with 50% backwages.

10. The learned counsel for the writ petitioner made a submission that the dealer profile details available with the Commercial Tax Department of the Government of Tamil Nadu shows that second respondent-workman's TIN Number as 33561103692 and in the list of partners, the name of the second respondent-workman M.Navin Kumar has been shown. The other partners are the brothers of the second respondent and they are paying the commercial tax and this part, the second respondent-workman is also an income tax assessee having Permanent Account Number (PAN). The second respondent-workman is running the business in the name of 'Jayam Retreads' and the registration date of the dealership with the Commercial Tax Department was on 26.04.2011. The VAT/TNGST commenced with effect from 20.04.2011. It is a partnership firm and the name of the partners are also available with the Commercial Tax Department which was also produced before this Court. The dealer commodities are stated as tyre, tubes, flaps, motor vehicles. The nature of business is stated as manufacturer. When all these details were produced, the same was not considered by the Labour Court and 50% backwages were awarded by the Labour Court without any valid reason at all.

11. The Labour Court had miserably failed to consider the fact that the second respondent-workman had not disputed his unauthorised absence. The only contention of the second respondent-workman was that he was absented for duty on account of an injury suffered by him in the year 2003. The Labour Court had not considered the documents filed by the writ petitioner and the gainful employment of the second respondent-workman as a owner of the partnership firm has not been taken into account at all.

12. The Labour Court failed to appreciate even in cross-examination, the second respondent-workman had admitted is involvement with Jayam Retreads and also receiving money from Sri Meenakshi Trailor Transport. The second respondent-workman having accepted that he is doing the Retreading business, the Labour Court ought not to have granted any relief in the industrial dispute.

13. The learned counsel for the writ petitioner-company in order to sustain the perversity committed by the Labour Court, cited a judgment of the Hon'ble Supreme Court in the case of L&T Komatsu Ltd vs. N.Udayakumar [(2008) 1 SCC 224]. The facts of the case before the Supreme Court in the abovesaid case was that the respondent-workman, who had been working as an employee with M/s.L&T Komatsu Ltd., Bangalore, remained absent unauthorisedly for 105 days between 01.08.2000 and 30.04.2001. The learned Single Judge noted that there were proved cases of misconduct of unauthorised absenteeism for 15 times but the workman had not improved his conduct. Notwithstanding this finding, the learned Single Judge held that at the relevant point of time the workman was not well and was taking treatment at St. Martha Hospital. Accordingly, it was held that the order of termination is harsh under the facts and circumstances of the case but looking into the past history directed reinstatement without continuity of service and without backwages. By the impugned order of the Division Bench allowed the appeal filed by the respondent while dismissing the appeal filed by the present appellant before the Supreme Court.

14. In paragraph-9 of the judgment of the Hon'ble Supreme Court (cited supra), the Supreme Court considered the case of LIC of India vs. R.Dhandapani [(2006) 13 SCC 613], which is extracted hereunder:-

"It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient."

15. Even in the case of L&T Komatsu Ltd vs. N.Udayakumar [(2008) 1 SCC 224], wherein in paragraph-10, the Supreme Court observed as under:-

"10. In Mahindra and Mahindra Ltd. vs. N.B.Narawade [(2005) 3 SCC 134 : 2005 SCC (L&S) 361] it was noted as follows: (SCC p. 141, para 20)

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. [Orissa Cement Ltd. v. Adikanda Sahu, (1960) 1 LLJ 518 (SC)] and New Shorrock Mills [New Shorrock Mills v. Maheshbhai T. Rao, (1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held: 'Punishment of dismissal for using of abusive language cannot be held to be disproportionate.' In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

16. The learned counsel for the writ petitioner-company further produced a document by showing that the second respondent is running the business in the name and style of 'Jayam Retreads, No.136, Parivallal Street, Murugappa Nagar, Ernavoor, Chennai-600 057'

17. The cross-examination of the second respondent also reveals that the second respondent-workman accepted that he is running the business and further admitted the partners. The second respondent-workman admits the facts that he is paying tax and having PAN Card.

18. This being the factum of the case, this Court is of the considered opinion that the findings of the Labour Court. Though admits the facts that the second respondent-workman is doing Retreading business, the Labour Court awarded backwages of 50% with reinstatement is perverse.

19. More specifically in paragraph-7 of the Award, the Labour Court recorded stating that even if the second respondent-workman is doing the Retread business, it is not known how much money he is making from the business and it is also not known when actually the second respondent-workman started his business. Under these circumstances, the Labour Court awarded 50% of the backwages along with reinstatement.

20. In this regard, the learned counsel for the writ petitioner-company provided the dealer profile details available from the Commercial Tax Department Website, the dealer profile of the second respondent-workman categorically enumerates that the registration date was 26.04.2011 and the commencement of VAT/TNGST was 20.04.2011.

21. This being the factum, the second respondent-workman was continuously absent from the year 2005 to 2010 and thereafter commenced his business in complete shape from the year 2011 onwards. Under these circumstances, the factual inference is to be drawn when he remained absent from duty from 2005 to 2010 and prepared himself for the commencement of the business of his own and remained unauthorised absence on various spells and from the year 2011 onwards, the second respondent-workman commenced the business in complete shape and by paying the tax and by following other procedures.

22. The cross-examination of the second respondent/ workman reveals that admittedly, he was working in Jeyaram Company from the year 2011 onwards. The learned Senior Counsel for the second respondent states that the findings of the Labour Court that "the Management has not produced the Attendance Register" is to be considered and in the absence of establishing the fact

regarding the absence of the workman through the Attendance Register, the findings of the Labour Court has become final and accordingly, the award is to be upheld. In reply, the learned counsel for the Management states that along with the order of termination, the statement regarding the absence were furnished to the workman concerned and even in the claim petition, he has not rebutted the days of unauthorized absence. The workman was in unauthorized absence for about 544 days and the entire details by way of statement were enclosed along with the order of termination. The said statement was not disputed nor disproved before the Labour Court by the workman. Contrarily, the workman admitted the fact that he was working in Jeyaram Company, wherein his brothers were partners and the Management has also produced the document to establish that the second respondent/workman himself was a partner in the Jeyaram Company. Under these circumstances, a factual inference is to be drawn that the workman was not an employee in the Jeyaram Company, but he was a partner in the partnership firm and paying the tax as an assessee.

23. The Labour Court found that the Attendance Register has not furnished along with the statements served to the workman along with the order of termination. The workman himself has not disputed the number of days of unauthorized absence and the entire findings reveal that the workman was interested in rebutting his partnership and employment with Jeyaram Company, during the relevant period of time from the year 2005 to 2010. This being the factum, this Court is able to arrive at a conclusion that the workman has also not disputed the fact regarding the unauthorized absence, and the fact that the statement regarding the unauthorized absence was furnished along with Ex.W-5 document was also not disputed.

24. This being the facts now established in clear form, this Court has no hesitation to arrive a conclusion that the findings of the Labour Court is perverse and not in consonance with the facts and circumstances established before the Labour Court. Though the Labour Court is able to visualise the facts and recorded the same, awarded 50% of backwages with reinstatement without recording any acceptable reasons, mere grant of reinstatement with 50% backwages cannot be approved in the absence of any valid reasoning. On the one hand, the Labour Court records that the second respondent-workman is doing Retreading business. On the other hand, the Labour Court says that the second respondent-workman does not know how much money he is making from the business and thirdly, the Labour Court states that the second respondent-workman is entitled for reinstatement with 50% backwages. Such a reasoning is apparently perverse and cannot be sustained. Consequently, the Award of the Labour Court dated 26.02.2016 passed in I.D.No.25 of 2012 is

quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

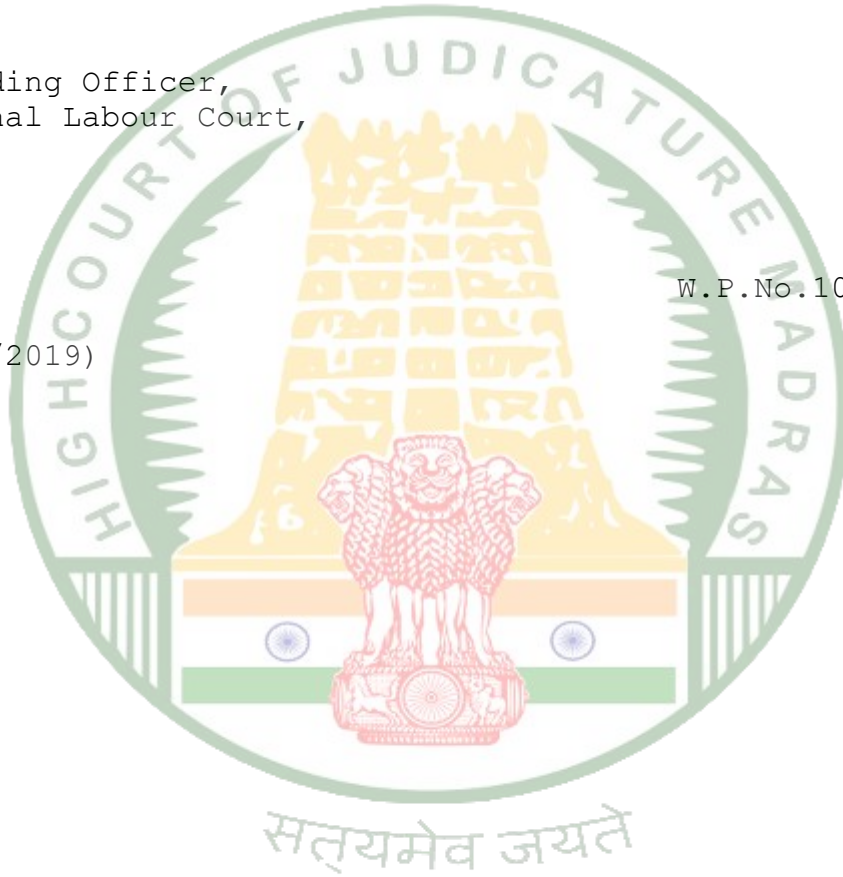
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To

The Presiding Officer,
I Additional Labour Court,
Chennai.

PPA (CO)
SSM(01/11/2019)

W.P.No.10327 of 2017



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