

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-09-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.33658 of 2017
and
W.M.P.No.37249 of 2017

The General Manager,
Pankaja Mills,
(A Unit of National Textile Corporation Ltd),
30, Pankaja Mills Road,
Post Box No.7109,
Coimbatore-641 045.

..Petitioner

vs.

1.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court,
Chennai-600 006.

2.The General Secretary,
Coimbatore and Periyar District Dravida Panchalai
Thozhilar Munnetra Sangam,
135/154, Pankaja Colony,
Ramanathapuram,
Coimbatore-641 045.

.. 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 dated 18.05.2017 in I.D.No.8 of 2016 and quash the same.

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

For Respondent-2: Mr.A.Balakumar

O R D E R

The Award dated 18.05.2017 passed by the first respondent-Tribunal in I.D.No.8 of 2016 is sought to be quashed.

2. The writ petitioner is one of the seven Spinning Mills of

National Textile Corporation Limited functioning in the State of Tamil Nadu. The writ petitioner states that prior to 2013, it was having an Attendance Recording System in which each workman will punch the Attendance Recording Card given to him/her and once the workman concerned punches his/her card, the machine will print the time of his/her entry as well as exit on the days he/she reports for work. In addition, there is a practice of simultaneous marking of attendance of the workmen in their respective Departments where the workman concerned is working. The attendance recorded in the punching cards at the Gate will be compared with the attendance recorded in the Departments and if there was any discrepancy, the same will be corrected depending on their actual attendance of workmen.

3. In the year 2013, this system of recording attendance was replaced by a Digital Attendance Recording System by which the workman concerned, at the time of reporting for work will be required to record his/her attendance in the digital attendance recording system by affixing his/her finger print impression and when once the concerned workman does so, the computerised Attendance Recording Machine will automatically record his/her attendance by identifying the respective ticket number allotted to him/her.

4. In addition, when a workman reports for work in the concerned Department, after allocation of work, the Maistry will note down the ticket number of each workman reporting for work on daily basis in a separate register and the same will be forwarded to the Time Office for tallying with the register maintained in the Time Office. If the entries in these two registers tallies, the attendance of the concerned workman will be recorded in the register maintained for the purpose. The Mill used to disburse wages only on 7th of calendar month following the month for which wages are payable.

5. One or two days prior to the date of disbursement of wages, the particulars of attendance of workmen will be published to enable workman to ascertain the number of days worked by him/her in the month. If there is any difference or mistake in the entry between the attendance register recorded in the Gate and in the Department, the concerned workman should bring it to the notice of Time Office for correction. Further, at the time of disbursement of wages, the Time Office will also issue a wage slip containing the entire attendance particulars of workmen in the month.

6. In January 2014, it came to light that the attendance of one K.Ravi was recorded as having attended work on days when he had not actually worked and the Management decided to verify the attendance recording of all the workmen from November 2012 to

January 2014. The Management found found that one Amalraj, a Shift Time Keeper, was manipulating the Attendance Record of workmen Balasubramaniam, Radhika, Poongodi, Ravi and Senthilnathan. The said Ravi and Senthilnathan being casual workmen, they were not engaged after the manipulation came to light. Disciplinary action was initiated against Balasubramaniam, Radhika, Poongodi and Amalraj and each of them were proceeded with by way of disciplinary action and a charge sheet was issued and a separate domestic enquiry was conducted. The beneficiary workmen, including Smt.Radhika and Smt.Poongodi were received Rs.52,582/- by way of wages for the days when they had not reported for duty. In the enquiry, the delinquent employees were given adequate opportunity to vindicate their stand. All of them were awarded punishment of dismissal from service on 01.08.2014. The second respondent took up the cause of Smt.Radhika and raised an industrial dispute and got it referred to the first respondent for adjudication in I.D. No.8 of 2016.

7. The delinquent employee Smt.Radhika examined herself and she admitted that she had fully participated in the domestic enquiry and the office bearer of the Union represented her in the enquiry and her husband was also working in the petitioner-Mills and was allotted with quarters and they are residing in the same quarters.

8. In respect of the proved charges, Mr.Amalraj, Smt.Poongodi and Mr.Balasubramaniam all of them were dismissed from service. The orders of dismissal of Smt.Poongodi, Mr.Balasubramaniam and Mr.Amalraj were marked as Exs.M-66, M-67 and M-68 respectively. The termination order became final in respect of all these three employees.

9. The industrial disputes raised by the second respondent was adjudicated and an Award was passed on 18.05.2017. The delinquent employee admitted that she had received excess wages for those days for which she was absent and she was aware of it . The Labour Court also in an unequivocal terms held that the employee was fully aware of the fact what has happened and she received excess wages not for just one day of her absence or for a few days in a month in which case it could be described as oversight on her part and for almost 12 months continuously, the delinquent employee was receiving wages for those days on which she was absent. During all these months, a check list has been published in the Notice Board and the concerned workmen was an educated woman and her knowledge and her involvement in the matter is a certainty and that there are no reasons to change the conclusion of the Enquiry Officer.

10. The learned counsel appearing on behalf of the writ

petitioner solicited the attention of this Court in respect of the findings of the Labour Court, more specifically, in paragraphs 14 and 15, which reads as under:-

"14. Even during the proceedings before this Tribunal the concerned employee had not taken the stand that the case of Management that she had received wages for days on which she was absent is not correct. The General Secretary of the Union has been examined as WW1. What he has stated in the Proof Affidavit is that the manipulation was done by Time-Keeper Amalraj and not by the concerned workman. It is further stated in the affidavit that the concerned employee does not have any access to the Attendance Register which is under the control of said Time-Keeper and the employee could not be expected to have any hand in the manipulation. Even in the Proof Affidavit of the concerned employee examined as WW2 it is impliedly admitted that she had received wages for the days on which she was absent. What she has stated in the Affidavit is that the Management was negligent and did not notice the manipulation for about 13 months. She has further stated that there is nothing to show that she had paid any amount as bribe to Amalraj, she being the beneficiary of manipulation.

15. It is very much apparent that the concerned employee was fully aware of what was happening. She has received excess wages not for just one day of her absence or for a few days in a month in which case it could probably be described as oversight on her part. For almost 12 months continuously she was receiving wages for those days on which she was absent. During all these months a check-list has been published in the Notice Board and she must have gone through the Check-List also. The concerned employee is an educated woman, she had done B.Com. Course, though she had not passed the examination. So her knowledge and involvement in the matter is a certainty. There is no reason to change the view taken by the Enquiry Officer in this respect."

11. Citing the findings of the Labour Court, the learned counsel for the writ petitioner states that the Labour Court has taken an erroneous view by imposing a lesser punishment of misplaced sympathy, which is in violation of the established principles. Once the grave misconduct is established and the Management is able to establish free and fair enquiry, then the Labour Court cannot exercise its jurisdiction for the purpose of modifying the punishment, which is otherwise disproportionate to the gravity of the charges proved in the domestic enquiry.

12. In other words, it is contended that the Enquiry Officer in his findings has categorically held that the charges against the delinquent employees were proved and the Labour Court also found that the enquiry was conducted in a free and fair manner and the charges were also proved against the delinquent employees.

13. Having found such facts and circumstances, there is no reason whatsoever to modify the punishment by invoking Section 11-A of the Industrial Disputes Act, 1947. Such an exercise of power is excessive and in violation of the established principles of law. The Labour Court, while exercising its powers under Section 11-A of the Industrial Disputes Act, must be cautious and a balanced approach is to be adopted in order to mitigate the circumstances by considering the documents and evidences established before the Labour Court.

14. Contrarily, the punishment of removal from service cannot be modified to that of the lesser punishment despite the fact that the Management is able to establish that the grave charges were proved against the delinquent employee. Such a course adopted is not in consonance with the established principles of law. The Labour Court after recording the findings, more specifically in paragraphs 14 and 15 of the Award, states that a lesser punishment would have been sufficient for the concerned workman. Accordingly, the punishment of downgrading to lower pay scale and put her in the bottom of the seniority list in the category was awarded.

15. This Court is of the considered opinion that the Labour Court has failed to consider the documents filed by the Management, more specifically, Exs.M-66, M-67 and M-68 in respect of the co-delinquents. The order of termination was confirmed and the same was not disputed by the delinquent employee before the Labour Court. Once the charges were proved against all the four delinquent employees and when the other three employees were imposed with the punishment of dismissal from service, there is no reason whatsoever to take a different yardstick in respect of one delinquent employee against whom charge memo was issued and the domestic Enquiry Officer also found that the charges are proved beyond any doubts.

16. This being the factum, this Court is of the opinion that the modified punishment imposed by the Labour Court is perverse and not in consonance with the established principles of law and the exercise of powers under Section 11-A of the Industrial Disputes Act, is excessive and the Labour Court has not adopted a balanced approach in modifying the punishment imposed already. Consequently, the Award dated 18.05.2017 passed by the first respondent-Tribunal in I.D. No.8 of 2016 is quashed and accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

svn

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court,
Chennai-600 006.

+1cc to M/s.T.S.Gopalan & Co. Advocate, SR.No.80034
+1cc to Mr.A.Balakumar, Advocate, SR.No.79661

W.P.No.33658 of 2017

Kak(22/10/2019)