

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.10.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.223 of 2020

S.Sivan ...Appellant/2nd Respondent

Vs

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

2.M/s.Royal Enfield,
A Unit of Eicher Motors Limited,
(Formerly known as Enfield India Ltd)
Tiruvottiyur, Chennai-600 019.
Represented by its Chief Executive

...Respondents/1st Respondent
Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent,
to allow the writ appeal and set aside the order made in W.P.
No.8824 of 2011 dated 16.08.2019.

Prayer in WP No.8824 of 2011: Writ Petition filed under Article
226 of the Constitution of India praying for Issuance of writ of
Certiorari calling for the records of the First respondent in ID
No.104 of 1996 and quash the award dated:13.10.2010.

For Appellant : Mr.S.Senthilnathan
For Respondents : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co. for R2

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

By this intra-court appeal, the order dated 16.08.2019 in
W.P. No.8824 of 2011 is impugned. The said writ petition was
filed by the second Respondent (the Management) to quash the
order dated 13.10.2010 of the first Respondent/Labour Court in
I.D. No.104 of 1996. The workman is the Appellant herein. By the
impugned order, the learned single Judge allowed the writ
petition of the Management and thereby set aside the grant of

back wages, continuity of service and attendant benefits, but directed the second Respondent/Management to pay a sum of Rs.2 lakhs to the Appellant within a period of twelve weeks from the date of receipt of a copy of the order.

2. The Appellant was appointed as a trainee in the machine shop of the second Respondent on 01.09.1968. Upon completion of training, he was put on probation for six months as a Junior Operator Grade-B with effect from 01.09.1969. Upon completion of such probation, by order dated 05.09.1969, he was absorbed as a Junior Operator Grade - B with effect from 01.09.1969. Subsequently, by order dated 20.10.1973, he was promoted as an Operator C&T in Grade C. In the year 1975, it appears that there was a fire accident in the factory of the second Respondent and the Appellant sustained injuries during the said fire accident. In the year 1978, the Appellant's attendance was poor and he had availed about 48 ½ days leave between February and July of 1978. Therefore, he was given a warning. Thereafter, in the year 1981, a memo was issued to him on account of the fact that he had worked for less than 240 days. Once again, in the year 1985, a memo was issued to him for poor productivity, and this pattern of poor attendance and poor productivity continued between 1985 and 1991. Eventually, a charge sheet was issued to him on 20.11.1991 for unauthorized absenteeism. The said charge sheet set out the details of unauthorized absenteeism by the Appellant for a period of about 81 ½ days in the year 1988, 68 ½ days in the year 1989, 70 ½ days in the year 1990 and 109 ½ days in the year 1991. By the said charge sheet, the Appellant was charged with the violation of clause 12(c) of the certified Standing Orders of the second Respondent which, if proved, would constitute misconduct within the meaning of clause 15(viii) of the Standing Orders.

3. In response to the said charge sheet, the Appellant provided an explanation dated 22.11.1991. In the said explanation, he stated that he was injured in the fire accident in the year 1975. Therefore, he underwent three operations on his jaw between 1985 and 1990. On account of not being satisfied with the explanation provided by the Appellant, the Management initiated a domestic inquiry by issuing notice of enquiry on 31.01.1992. The said enquiry took place between 31.01.1992 and 26.03.1992. Eventually, by enquiry report dated 10.04.1992, the enquiry officer concluded that the Appellant/delinquent was absent without authorization and that the charge of unauthorized absenteeism had been proved. Thereafter, the second Respondent/Management requested the consultant doctor of the second Respondent to examine the Appellant and provide a report as to his medical condition. The said consultant doctor provided such report on 06.05.1992. After considering the enquiry officer's report dated 10.04.1992 and the report of the

medical consultant dated 06.05.1992, a second show cause notice was issued on 04.06.1992 to the Appellant wherein it was proposed to impose the punishment of dismissal from service for the misconduct of unauthorized absenteeism. In response, the Appellant submitted a reply dated 20.06.1992. On account of being dissatisfied with the said reply, he was dismissed from service on 10.11.1992. He thereafter raised an industrial dispute before the Labour Court in I.D. No.104 of 1996. By Award dated 13.10.2010, the Labour Court concluded that the Appellant suffered injuries on account of the fire accident at the second Respondent's factory and, as a consequence thereof, he had undergone treatment over an extended period of time. The Labour Court further concluded that the Management had suppressed these facts. On the basis of the said findings, the Labour Court directed that the second Respondent/Management should reinstate the Appellant with continuity of service, back wages and attendant benefits. This Award was challenged by the Management in the writ petition and, as stated earlier, the said writ petition was allowed subject to the condition that the Management should pay a sum of Rs.2 lakhs to the Appellant.

4. We heard Mr.Senthilnathan, the learned counsel for the Appellant, and Mr.Anand Gopalan, the learned counsel for the second Respondent/ Management.

5. Mr.Senthilnathan contended that the Labour Court examined the evidence adduced by the two parties and recorded factual findings on that basis. In particular, the Labour Court entered the finding that a fire broke out at the second Respondent's factory in the year 1975 and that the Appellant sustained severe injuries during the fire accident. In addition, the Labour Court recorded the factual finding that the Appellant had to undergo extensive treatment over a long period of time as a consequence of injuries sustained during the fire accident. Based on the above finding, the Labour Court directed that the Appellant be reinstated with continuity of service, back wages and attendant benefits. Once the Labour Court appraises the evidence of record and enters findings on such basis, he contended that the learned single Judge should not have examined the Award as if it were a court of appeal. For this proposition, he relied upon paragraph 17 of the judgment of the Hon'ble Supreme Court in Indian Overseas Bank v. IOB Staff Canteen Workers Union (2000) 4 SCC 245 (Indian Overseas Bank), wherein it was held as under:

"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards

passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

In addition, he relied on paragraph 18 of the judgment of the Hon'ble Supreme Court in *Krushnakant B. Parmar v. Union of India* (2012) 3 SCC 178 (*Krushnakant Parmar*), which reads as under:

"18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."

6. In light of the fact that the Labour Court had appraised the evidence and entered findings of fact, on such basis, which resulted in the Award dated 13.10.2020, and bearing in mind that willful absenteeism was not proved, the learned counsel contended that the learned single Judge should not have set aside the Award of the Labour Court. Therefore, he submitted that the order of the learned single Judge is liable to be set aside and the Award is liable to be restored.

7. On the contrary, Mr. Anand Gopalan submitted that the learned single Judge was fully justified in setting aside the

Award of the Labour Court inasmuch as the Award was not rendered on the basis of evidence and, indeed, disregarded material evidence. In order to substantiate this contention, the learned counsel referred to the enquiry officer's report. With specific reference to paragraphs 21, 22 and 24 thereof, he submitted that the enquiry officer considered the contention of the Appellant that his absenteeism was on medical grounds. In specific, he took note of the fact that the Appellant would have been entitled to accident benefit and disablement benefit under the ESI Scheme but the Appellant failed to submit necessary proof of availing benefits under the aforesaid Scheme. With reference to paragraph-24 of the enquiry officer's report, Mr. Anand Gopalan submitted that the enquiry officer had concluded that the Appellant failed to provide any evidence as to the name of the hospital in which he underwent surgery, the exact period when he underwent surgery, the duration of hospitalization, etc. Equally, the enquiry officer noted that the absenteeism was at regular intervals of every 5 days or so and that all these facts do not corroborate the claim that the absenteeism was linked to hospitalization.

8. Mr. Anand Gopalan also invited the attention of the Court to the report of the medical consultant dated 06.05.1992. He pointed out that the Management requested the medical consultant to examine the Appellant and provide a report in respect of his medical condition. Upon examining the Appellant, the doctor stated that the Appellant had a tooth extraction in the year 1987 and that there appears to have been trauma in the facial region on account of a fracture of the right mandible but that this was not likely to have had a serious impact on his health 17 years later. After duly taking note of the enquiry officer's report as well as the report of the medical consultant, a show cause notice was issued in respect of the proposed punishment of dismissal from service and, eventually, the Appellant was dismissed from service because he could not provide a satisfactory explanation. In spite of the availability of such evidence, the learned counsel submitted that the Labour Court arrived at a conclusion, which had no basis in evidence, and that the Labour Court proceeded to conclude that his absenteeism in the year 1988 to 1991 was justifiable merely because the Appellant had sustained injuries during the fire accident in 1975. Therefore, he submitted that the award of the Labour Court is clearly perverse and that the order of the learned single Judge was, therefore, justifiable.

9. We considered the submissions of the learned counsel for the respective parties and examined the materials placed on record.

10. The principal question that arises for consideration is whether the Award of the Labour Court warranted interference under Article 226 of the Constitution. The legal position, in this regard, is no longer res integra and the settled position, as held in Indian Overseas Bank (cited supra), is that the Writ Court does not sit in appeal over the award of the Labour Court. Nevertheless, such award can be interfered with if it is based on no evidence or if irrelevant evidence was relied upon or if material evidence was disregarded. To put it differently, the award of the Labour Court can be interfered with if it were perverse.

11. Hence, the scope of enquiry in this appeal would be to assess whether the Award is perverse. For this purpose, the report of the enquiry officer dated 10.04.1992, which was exhibited before the Labour Court, should be examined because it was the primary basis of the disciplinary proceedings of the second Respondent. Upon perusal thereof, we find that the enquiry officer conducted an enquiry into the charge framed under the charge memo dated 20.11.1991, and such charge pertained to unauthorized and not wilful absenteeism. During the enquiry, evidence was adduced through two witnesses by the Management whereas the delinquent examined himself as a witness. Through these witnesses, the Management exhibited 21 documents and the Appellant exhibited 4 documents. We find that the Appellant did not produce medical certificates or other evidence of hospitalization or of undergoing surgery. Instead, the 4 documents that were exhibited by the Appellant appear to be letters in respect of the enquiry. From paragraph 24 of the enquiry officer's report, it is clear that the enquiry officer concluded that the Appellant failed to provide details with regard to the exact period when he underwent surgery, the name of the hospital in which he underwent surgery, the duration of hospitalization, etc. The enquiry officer also noted that he was absent at regular intervals of 5 days and that the said evidence did not support an inference of hospitalization. By examining the evidence, in paragraph 27 of the report, the enquiry officer noted that the Appellant was absent for about 48 ½ days in 1984, 57 days in 1985, 75 days in 1986, 57 days in 1987, 81 ½ days in 1988, 68 ½ days in 1989, 73 ½ days in 1990 and 118 ½ days in 1991, without duly availing leave. On this basis, the enquiry officer concluded that misconduct was proved. Upon examining the Award dated 13.10.2010, we find that the Appellant examined himself as a witness and exhibited 11 documents. Except for Ex.W-3, which is the medical certificate dated 06.05.1992, all the other documents related to the enquiry proceedings. The medical certificate dated 06.05.1992 corresponds to the certificate provided by the medical consultant of the second Respondent/Management after examining the Appellant wherein it was certified that the fracture of the

mandible and the surgery in connection there with is not likely to cause a major impact on the health of the Appellant after 17 years.

12. Thus, it is clear that the Appellant did not provide any evidence to prove that his absence from work between 1988 and 1991 was on account of hospitalization either in connection with the alleged three surgeries or even otherwise, and the conclusions of the Labour Court should be viewed in this context. When so viewed, it is clear that the fire accident took place in the year 1975, whereas the charge of unauthorized absence pertained to the period between 1988 and 1991. In spite of these undisputed facts, the Labour Court arrived at conclusions that were not supported by evidence and, indeed, were contrary to material evidence on record. Although the Supreme Court concluded in *Krushnakant Parmar* that evidence of wilful absenteeism is necessary to prove misconduct, in contrast to this case, in that case, there was compelling evidence to justify absenteeism. In our view, the Award of the Labour Court, in this case, satisfies the test of perversity and makes out a case for interference by the writ court, as per principles laid down in this regard. On the contrary, in *Indian Overseas Bank*, the Supreme Court concluded that the award was based on ample and sufficient material, and, therefore, should not have been interfered with. On interference in case of perversity, it is not necessary to multiply authorities; therefore, we set out below paragraph 12 of the judgment in *Madurantakam Cooperative Sugar Mills Limited v. S.Viswanathan*, (2005) 3 SCC 193:

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no

justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

13. Notwithstanding the above conclusion, we take note of the following facts. The Appellant completed his probation and was absorbed as a Junior Operator Grade B in the second Respondent Company with effect from 01.09.1969. Therefore, even as a regular employee, he was employed from 1969 until his services were terminated on 10.11.1992. It is also the agreed position that he attained the age of superannuation on 14.06.2005. After his termination in 1992, he approached the Labour Court by raising the Industrial Dispute in March 1996. Thus, if reinstated, the Appellant could have continued in service for about 9 years from the date of raising the Industrial Dispute to the date of attaining the age of superannuation. Keeping in mind the fact that the Appellant was employed for a considerable period of time and admittedly sustained injuries while working at the second Respondent's factory, we find that the ends of justice warrant the payment of compensation to the Appellant. We were informed by the learned counsel for both the parties that he is entitled to and has probably received both gratuity and provident fund dues. As stated above, we are of the view that he is also entitled to compensation for the afore-mentioned nine year period, i.e. the date of initiation of I.D. to date of superannuation. In order to arrive at a reasonable basis to compute such compensation, if his last drawn wages are used as a benchmark, his full wages for the period from March 1996 to June 2005 would amount to approximately Rs.5 lakhs. Given the admitted position that he did not actually work during this period, it would not be justifiable to pay full wages for such period as compensation. Instead, to meet the ends of justice, if 50% of the above amount is reckoned, it would aggregate to about Rs.2.5 lakhs, and we direct the second Respondent to pay this amount to the Appellant within 15 days from the date of receipt of a copy of this judgment.

14. In the result, we affirm the order of the learned Single Judge subject to the minor modification whereby it is directed that the second Respondent shall pay a sum of Rs.2,50,000/- instead of Rs.2,00,000 to the Appellant within 15 days from the date of receipt of a copy of the judgment. This writ appeal is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

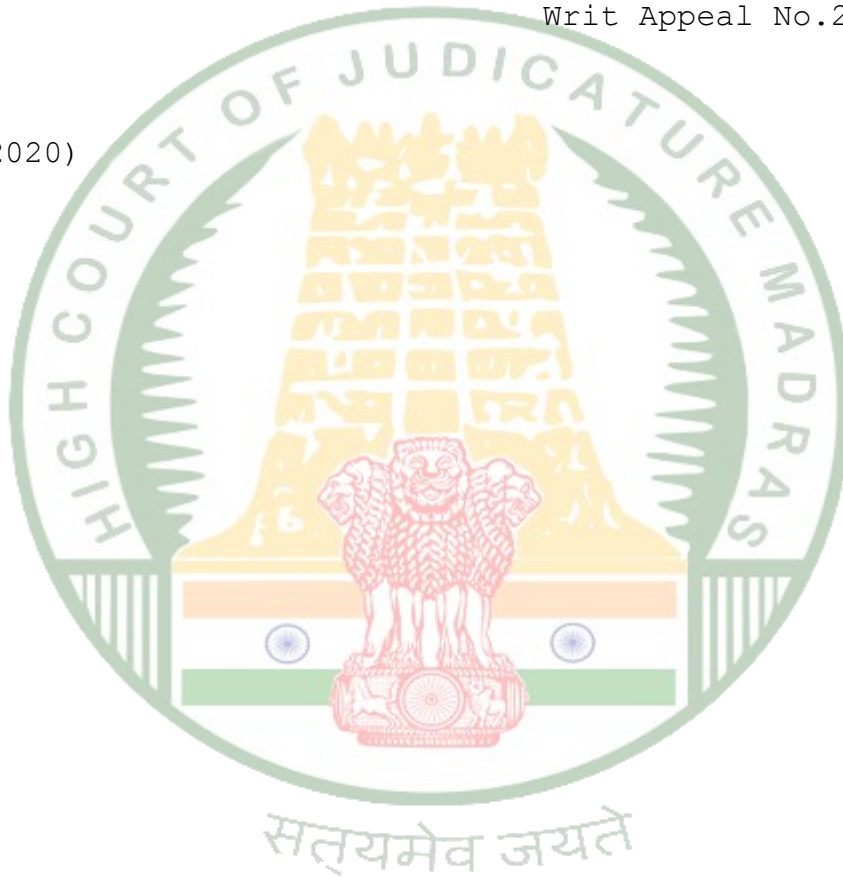
1. The Presiding Officer,
II Additional Labour Court,
Chennai.

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No.35064

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.34914

Writ Appeal No.223 of 2020

NMI (CO)
RV(18/11/2020)



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