

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.22314 of 2019

V.Baskaran

.... Petitioner

-vs-

The Management of M.R.F.Limited
Ichiputhoor,
Arakkonam Taluk,
Vellore District.

.... Respondent

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records in connection with the preliminary award pronounced on 06.07.2011 and final award pronounced on 28.06.2012 by the Principal Labour Court, Vellore in I.D.No.73 of 2007 and quash the same.

For Petitioner : Mr.K.Sudalai Kannu
For Respondent : Mr.M.Vijayan
for M/s. King & Partridge

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records in connection with the preliminary award pronounced on 06.07.2011 and final award pronounced on 28.06.2012 by the Principal Labour Court, Vellore in I.D.No.73 of 2007 and quash the same.

2. The necessary facts which are required to be noticed from the averments of the affidavit filed in support of the writ petition are as follows:

(i) that the petitioner joined the service of the respondent factory on temporary basis on 12.07.1993, however he was issued an order of appointment, dated 01.11.1994 appointing him as a trainee. But no training was given to him and he was issued with an order of probationer on 01.11.1996 and his service was confirmed by order of the respondent management on 02.05.1997.

(ii) It is the further case of the petitioner that, in the respondent management, there is a trade union called MRF Cycle

Tyre Unit Employees Union, which is the management supported union. Therefore in order to have an active trade union, he was very active in forming a trade union called MRF United Workers Union, which was registered on 29.12.2003 and in order to admit more members in the said union, he was actively canvassing for admission of more members, therefore he issued pamphlets. Got annoyed with the union activities on the part of the petitioner, the respondent management started transferring the petitioner from power house department to water treatment plant department which area the petitioner is not familiar with as he did not know any technical know how about the handling of the said water treatment plant.

(iii) When that being so, on 25.03.2004, a charge memo was issued making certain false allegations against the petitioner and pursuant to the same, the petitioner had given explanation. However purposely the management initiated disciplinary proceedings by appointing an Enquiry Officer to conduct enquiry, before whom, though the petitioner appeared and participated in the enquiry, it is the further case of the petitioner that, enquiry was not conducted properly without violating the procedure especially the principles of natural justice. Therefore, according to the petitioner, the said enquiry was a biased one, pursuant to which, the Enquiry Officer had given a report stating that, the charges framed against the petitioner were proved, based on which, on 15.12.2004, the petitioner was removed from service.

(iv) It is the further case of the petitioner that, as against the said order of termination or dismissal of service made by the respondent management against the petitioner, he has raised an Industrial Dispute in I.D.No.73 of 2007 before the Principal Labour Court, Vellore, Vellore District, where the Labour Court has passed an order deciding the preliminary issue as to whether the domestic enquiry was conducted in consonance with the principles of natural justice, in favour of the employer management and subsequently by final order, dated 28.06.2012, an award was passed by the Labour Court rejecting the Industrial Dispute of the petitioner. Challenging both the orders, the present writ petition has been filed with the aforesaid prayer.

3. On behalf of the respondent management, counter affidavit has been filed, where the respondent, apart from denying the averments made generally, it has been stated that, the respondent company is a registered company under the Companies Act, 1956 and it is having one of the factory at Ichiputhoor, Arakkonam and it engages in manufacturing of tyres, tubes etc., by utilising the sophisticated machineries which should be operated with utmost care and efficiency.

4. It is further stated in the counter of the respondent that, initially the petitioner was enrolled by the respondent company as an apprentice for six months and thereafter he was

engaged as a probationer. After satisfactory completion of apprenticeship, the petitioner was taken on probationer from 01.11.1996, later he was confirmed as permanent workman w.e.f 01.05.1997. His last drawn salary was Rs.7,062/- per month.

5. It is the further case of the respondent that, the allegation made by the petitioner that, the respondent management interfered with the union activities of the workmen and also the action initiated against the petitioner was a victimisation because of his alleged trade union activities, were denied. In this regard, it is the case of the respondent management that, due to the incident, which was in violation of the working conditions and also the action on the part of the petitioner lead to loss to the respondent management, it was decided to initiate disciplinary proceedings against him, accordingly, he was placed under suspension by order, dated 25.03.2004 and a charge memo, dated 26.03.2004 was issued. The charge, according to the respondent, is that, the petitioner failed to follow the procedures and precaution while doing regeneration of the softener which resulted in boiler shut down and thus it was leading to production loss. It was the further charge against the petitioner that, he did not record the hardness of the water and had deliberately committed misconduct with an intention to disturb the regular production. The deliberation on the part of the petitioner was considered on the basis of the company's standing order and since it was considered to be a serious misconduct, the disciplinary action become necessitated, accordingly, charge memo was given as stated above and the explanation of the petitioner was sought for.

6. The further case of the respondent is that, the petitioner had given his explanation on 07.04.2004 denying the charges, however the respondent not satisfied with the said explanation, decided to hold an enquiry, accordingly, one Mr.Vijayaraghavan, an outsider was appointed as an Enquiry Officer, who conducted domestic enquiry between 03.05.2004 and 02.09.2004. During the domestic enquiry, the petitioner was permitted to have the assistance of a co-employee and the management side had examined witnesses and produced documents Ex.M.1 to M.6. The petitioner was allowed to cross-examine the management witnesses in the enquiry. After completing the management evidence, the petitioner was asked to give his statement and also examine his witnesses. The petitioner examined one Syed Ghouse as workman's witness and he also marked documents Ex.W.1 to W.6, accordingly enquiry was concluded. The Enquiry Officer submitted his report, dated 07.09.2004, where he has concluded that, the charges framed against the petitioner was proved.

7. Thereafter a second show cause notice, dated 04.11.2004 was received, however on receipt of the same, the petitioner requested to give the translated copy of the show cause as well as enquiry officers report in Tamil. In this regard it is pointed out that, the petitioner, since was claiming to be a qualified graduate in 2004, he would have been with the knowledge of English, despite the same, in order to prolong the enquiry, he sought for translation in tamil of the second show cause notice as well as the Enquiry Officer's report. However the management though had given the tamil translated version of the show cause notice, had directed the petitioner to make his own arrangement to get translated into Tamil the Enquiry Officer's Report.

8. Ultimately the petitioner has not chosen to give any reply to the second show cause notice on perusal of the Enquiry Officer's report, therefore, based on this procedure as well as the Enquiry Officer's Report, where it was found that the charges framed against the petitioner were proved, the disciplinary authority, i.e., the management of respondent decided to inflict the maximum punishment of removal from service as it found that there was no extenuating circumstances, to take any lenient view and accordingly, on 15.12.2004, order of dismissal was issued by the respondent against the petitioner.

9. It is the further case of the respondent that, as against the order passed by the respondent management dismissing the petitioner from service on 15.12.2004, he raised an Industrial Dispute in I.D.No.73 of 2007 before the Principal Labour Court, Vellore, where the preliminary issue was initially decided and subsequently, the Labour Court passed an award rejecting the I.D. of the petitioner, by order, dated 28.06.2012. However against the said order passed by the Labour Court on preliminary issue on 06.11.2011 as well as the final award, dated 28.06.2012, the petitioner has not chosen to file any writ petition and only after 7 years, the present writ petition has been filed, therefore the same is deserved to be rejected, it was contended on behalf of the respondent.

10. I have heard Mr.K.Sudalai Kannu, learned counsel appearing for the petitioner, before whom, since the learned counsel appearing for the respondent management raised an objection that, the reason cited in paragraph 9 of the affidavit, filed in support of the writ petition stating the reason of delay in approaching this Court after 7 years for filing this writ petition, he would submit that, the reasons stated therein is that, due to his poverty and unemployment he could not move the writ petition immediately, but the fact remains that, the petitioner admittedly got enrolled as an Advocate in the year 2008 and all along he had been the

practising Advocate, therefore even at the time of passing the award which is impugned herein in the year 2012 by the Labour Court, he was a practising lawyer, therefore the question of any unemployment on his part does not arise, therefore the said reason stated by the petitioner side especially at paragraph 9 of the affidavit filed in support of the writ petition is totally a false statement, therefore it can only be construed that, the petitioner by making the false statement and allegation has approached this Court and therefore on that ground itself this writ petition deserves to be dismissed.

11. In respect of the said preliminary objection raised by the respondent management side, this Court wanted to verify whether the petitioner got enrolled as an Advocate in the year 2008 as claimed by the respondent.

12. In this context, the respondent also has filed a typedset of papers, where the details taken from the Bar Council of Tamil Nadu and Puducherry, in respect of the petitioner, has been filed, which reads thus :

" Enrolment No : 1318/2008
Advocate Name : Baskaran V.
Advocate Status : Practising
Date of Birth : 17/03/1972
Date of Enrolment : 13/08/2008
Bar Voting : Ambur
Bar Council Voting :
Address : 1/248, Brahmin Street,
Periyangkuppam, Ambur, Vellore
District - 635 814."

13. Therefore this Court asked the learned counsel appearing for the petitioner to verify the said claim made by the respondent and accordingly when the case is taken up for hearing today, the learned counsel appearing for the petitioner, after having obtained instructions from the petitioner, would submit that, the petitioner having completed B.L., Degree, got enrolled as an Advocate on 13.08.2008 on the roll of the Bar Council of Tamil Nadu and Puducherry and accordingly, he has been practising as a Lawyer for all these years as his practise has not been suspended so far.

14. Apart from the replies given by the learned counsel appearing for the petitioner on the preliminary objection raised on behalf of the management side, the learned counsel appearing for the petitioner would contend that, it was a clear victimisation on the part of the management because of the alleged activities of the petitioner in strengthening the trade union, where the petitioner was transferred to the water plant department instead of electrical department, knowing well that,

the petitioner did not know anything about the know how about the handling of the water plant. He would also submit that, based on the false allegation, charge memo was issued against him, though he had denied the charges, purposely they proceeded to enquire the matter and the enquiry was not properly conducted and the principles of natural justice has not been followed by the enquiry officer and though these issues were raised by the petitioner side, the same were not considered by the Enquiry Officer and ultimately they inflicted the punishment of dismissal from service which is totally unwarranted or not incommensurate with the alleged charges assuming that those charges are proved against the petitioner.

15. The learned counsel appearing for the petitioner would also submit that, all these years between 2012 to 2019 the petitioner has been out of employment and due to his poverty only he could not immediately approach this Court and file this writ petition, therefore that is the reason for the delay of 7 years in approaching this Court for filing the writ petition. Therefore the reason stated in para 9 of the affidavit is genuine reason, hence it can be accepted by this Court and the indulgence can be shown against the impugned order of award passed by the Labour Court where the evidences were not properly appreciated and the case of the petitioner who raised the Industrial Dispute with genuine reasons were not properly considered by the Labour Court and hence the impugned award is liable to be interfered with, he contended.

16. On the other hand, Mr.M.Vijayan, learned counsel appearing for the management, has made his further submissions stating that, if we look at the order passed by the Labour Court while deciding the preliminary issue with regard to the manner in which the domestic enquiry was conducted and also the final award passed by the Labour Court, the issue has been threadbare discussed by the Labour Court, the evidences on both sides have been appreciated by the Labour Court and accordingly, the plea raised in the Industrial Dispute was rejected with valid reasons. Therefore absolutely there can be no interference required from this Court, against the impugned order, he contended.

17. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

18. The preliminary objection made by the respondent management side raising a point that, the averments contained in para 9 of the affidavit filed in support of the writ petition explaining the reason for delay is a false hood is concerned, this Court wants to deal with the same at the later part of this

order, before which, on merits, whether the petitioner has got any case for interference of the award, both the preliminary award and final award passed by the Labour Court, which are impugned herein, has to be gone into.

19. In this context, the relevant discussion made by the Labour Court on the preliminary issue can be first gone into. A separate order on the preliminary issue was passed by the Labour Court on 06.11.2011.

20. In para 9, 10 and 11 of the said order, the Labour Court has dealt with the documents marked on behalf of both the petitioner employee and the respondent management and in the cross-examination, the petitioner has categorically admitted that, he has not stated in the petition that, he was victimized by the management, since he took action in the trade union activities and he has also further admitted that, there was no misunderstanding between the management and himself. Based on these admitted facts on the side of the petitioner, the Labour Court has held that, the allegation against the management that, the management with an intention to victimize him for the trade union activities gave a false charge memo, was rejected.

21. The Labour Court has further gone into the aspects in para 11 and 12 of the order, where the Labour Court has held as follows :

"11. I have perused the copy of the enquiry proceeding containing pages 11 to 55 which was marked as Ex.M.7. It is seen from this proceedings that the Enquiry Officer has given sufficient opportunities to the petitioner, by engaging one Baskaran co-employee of the petitioner to participate in the enquiry proceedings to help the workman. It is also seen from this document that sufficient opportunity was given to the petitioner to cross examination the witness of MW.1 from 30.05.2004 till 29.06.2004. The management filed 11 documents and they were marked as EXs.M.1 to M.11 and the petitioner was provided with the copies of the exhibits and his signature was obtained. After filing of documents and examination of the management witness, the petitioner was given sufficient opportunities to give his evidence, for defence one Sayalu was also examined on behalf of the petitioner. So the allegation that no sufficient opportunity was not given to the petitioner for cross examination is not correct. The copy of the

proceedings were given to the petitioner then and there.

12. So the allegation the sufficient opportunity was not given by the Enquiry Officer to cross examined the witness and to put forth his case is not at all to prove by the petitioner. After the receipt of the findings of the Enquiry Officer second show cause notice was given to the petitioner. But the petitioner in his claim petition has stated that the findings of the Enquiry Officer report is in English and he has asked Tamil Translation but the same was not provided to him for give his reply. He requested the management to sent Tamil Translation copy for the Enquiry Officer findings and the same was marked as Exs.W13 and W14. Further more the petitioner alleged that without submitting explanation and second show cause notice the management terminated the service which is illegal. But the respondent management in paragraph 20 of the counter statement has stated that the respondent management immediately sent after the receipt of the letter of the petitioner dated 13.11.2004 asked the Tamil Translation of show cause notice and advised him to make own arrangements to have translation of the Enquiry Officer report as he is the author of the report and advised him to send his reply. But he did not sent any reply to the respondent. Hence the order of dismissal dated 15.12.2004 was forwarded by the petitioner. The petitioner has filed the claim petition in English, so he can very well obtained Tamil Translation copy through their union and there is no bar to file his explanation."

22. Ultimately the Labour Court has come to the conclusion that, the domestic enquiry conducted by the management was free, fair and in accordance with law and therefore the same was not liable to be set aside on that ground.

23. In fact, against the said order on the preliminary issue passed by the Labour Court, dated 06.07.2011, no appeal by way of writ petition was filed by the petitioner admittedly till filing of this writ petition.

24. Subsequently, the main issue was taken up and final award was passed on 28.06.2012, where also the Labour Court has framed the following issues :

"5. The issues that arise for consideration are :

1. Whether the petitioner was illegally terminated and denied employment from 15-12-2004 as claimed by him ?
2. Whether the petitioner is entitled to reinstatement with continuity of service, back wages and all other attendant benefits ?
3. To what other relief, the petitioner is entitled to ?"

25. Each of the issue was discussed exhaustively by the Labour Court. Certain portion of the said discussion made by the Labour Court on each of the issue are extracted hereunder for easy reference :

"7. Answer to Issue No.1 : Ex.M.3 dated 26.03.2004 is the charge memo in which the charges are levelled against the petitioner that he failed to follow the procedures and precautions while doing regeneration of the softener which resulted in boiler shut down and thus leading to production loss during the third shift on 23.03.2004 and that the petitioner did not record the hardness of the water and he had deliberately committed misconduct to disrupt the regular production due to which the respondent faced a loss of 3.9 lakhs. Ex.W13 is the letter addressed by the petitioner dated 9-11-2004 seeking Tamil Translation of second show cause notice dated 4-11-2004 which was also provided to him and Tamil Translation of Enquiry Officer's report was sought for by the petitioner which was not provided to him and he was advised to make arrangements for getting the same by himself. WW1 in his cross examination has stated that he possesses English knowledge and that he has completed law course in the year 2008 and that he has studied M.A., B.L., and hence his contention that the report of the enquiry officer in English prevented him from giving a suitable reply in time has to be rejected.

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The petitioner was assisted by co-worker Baskaran during the enquiry as per the enquiry proceedings. Suggestion put to him that he has not stated the ground of victimization in his replies but has stated so only in his chief examination was denied by him which denial is not true according to the argument of the respondent's counsel, which argument holds good. It is pertinent to note here that WW1 has admitted in his cross examination that he has not raised any objection against the procedure adopted during domestic enquiry before the enquiry officer which clearly reveals that the domestic enquiry was conducted in accordance with the principles of natural justice and hence was not objected to by the petitioner.

8. The management witness Danial Jai Singh, Powerhouse shift Supervisor has deposed in the domestic enquiry that on 23-03-2004 night shift around 2.30 a.m., Boiler Operator Alexander informed him that the hardness of the boiler feed water was 150 ppm instead of 5 ppm and when he checked it was found to be 2 ppm and the deviation in the water parameters was that the isolation valve was deliberately kept open by the petitioner the regeneration work was done due to which the salt water got mixed with the water in the storage tank and water got spoilt because while doing regeneration work the valve that was required to be closed was kept open and the valve that was required to be kept open was closed and the other management witness Senior Supervisor S. Henry, has deposed in his evidence before the enquiry officer that he took samples of boiler feed water and tested the same and found its hardness at 100 ppm and boiler water hardness at 12 ppm and that if the boiler water hardness was 12 ppm, calcium carbonate scaling would form inside the boiler tubes and heat transfer efficiency will also get reduced and tubes would get ruptured and he found it to be dangerous and asked the shift supervisor Manoj Kumar to reduce the boiler hardness valve and boiler was shut down and on that day WW1 has left without informing him about the performance of the plant which was unusual. It is clear

from the evidence of the management witnessess that WW1 has deliberately failed to follow the regular procedure that has resulted in contamination of water and production loss to the tune of 3.9 lakhs of rupees."

26. The aforesaid discussions made by the Labour Court in the impugned award has clearly disclosed that, there were clear evidences against the petitioner both orally as well as document wise and those evidences produced on behalf of the management were discussed and in this regard clear opportunity was given to the petitioner to cross-examine the witnesses produced on behalf of the management also. The petitioner's case that, the domestic enquiry was not properly conducted and the principles of natural justice has been violated is concerned, the said plea was never raised by the petitioner even in the claim petitioner and only at the time of chief examination he has stated the same, and this was also considered by the Labour Court in the discussion referred to above.

27. That apart, the Labour Court on the strength of the evidence has come to the conclusion that, W.W.1, the petitioner, has deliberately failed to follow the regular procedure that has resulted in contamination of water and production loss to the tune of Rs.3.9 lakhs to the management. In so far as the plea that the management victimised the petitioner for his alleged labour union activities is concerned, that issue also has been discussed by the Labour Court as stated supra and there was no substance to that effect as found by the Labour Court.

28. Therefore the Labour Court after having considered both the issue, i.e., the preliminary issue with regard to the fairness of the domestic enquiry and also the merits of the case based on the evidence adduced by both sides, has come to a reasonable conclusion, after having exhaustively discussed each of the issue based on the evidences adduced before it, and ultimately concluded that, the petitioner had not made out a case in the said Industrial Dispute raised by him and accordingly, the plea of the petitioner was rejected, of course rightly by the Labour Court through the impugned award.

29. In so far as the delay in approaching this Court is concerned, the only reason cited by the petitioner for approaching this Court after seven years in filing this writ petition against the impugned award of the Labour Court which was passed in the year 2012, the petitioner has stated the following at para 9 of the affidavit :

"9. I respectfully submit that after the pronouncement of award I could not file the

above writ petition immediately due to my poverty and unemployment."

30. The petitioner has merely stated that, due to his poverty and unemployment he could not approach this Court by filing the writ petition within a reasonable time. After 7 years he has filed this writ petition stating that he was an unemployed person.

31. However the fact remains that, even before the Labour Court he claimed that, he already completed the Law Degree and he has become a Lawyer. This was also taken note of by the Labour Court. He got enrolled on 13.08.2008 and from that date, in the eye of law, he is a practising lawyer as admittedly he has not suspended his practice, therefore the question of unemployment in the case of the petitioner does not arise. However suppressing all those things he has stated that, due to unemployment, he could not approach the Court in filing this writ petition for 7 years, which, therefore, cannot be an acceptable reason.

32. Moreover in this context, the learned counsel appearing for the respondent management relied upon a Division Bench Judgment, dated 11.10.2017 in W.A.No.367 of 2017 in the matter of Lilly v. District Collector, Tiruvallur.

33. The Division Bench, where, I am one of the party, in the said Judgment, on the point of approaching the Court with unclean hands or distorted facts, has held that, the person who approached the Court with unclean hands or distorted facts is not entitled to get remedy, that too discretionary. It has also supported the view that, one who seeks equity must do equity and also the principle that, Courts have, over the centuries, frowned upon litigants, who, with intend to deceive and mislead the court initiate proceeding without full disclosure and facts, Courts held that, such litigants come with unclean hands are not entitled to be heard on the merits of the case.

34. Therefore if the statement the petitioner has made at para 9 of the affidavit filed in support of the writ petition is fit in with the aforesaid principle, certainly we can also construe that, the petitioner has given a misstatement as if that he is an unemployed person and that detained him from approaching this Court for more than 7 years. But factually it is not so, as admittedly, he has been a practising lawyer right from 2008.

35. Therefore the petitioner, as has been rightly pointed out by the learned counsel appearing for the respondent management, has not approached this Court with correct facts or

correct statement of facts. Therefore for the said reason alone, the plea raised by the petitioner in this writ petition can be rejected. However this Court has not done so and accordingly, on merits, the impugned awards passed by the Labour Court, have been gone into.

36. It is also to be noted that, the petitioner was dismissed from service w.e.f. 15.12.2004 and he enrolled as an Advocate on 13.08.2008, in between there are only three academic years, i.e., 2005-06, 2006-07 and 2007-08. In this context, the learned counsel appearing for the petitioner, on instructions would submit that, the petitioner has completed the Law Degree only after he was terminated from service and got enrolled in August 2008. He also stated that, the petitioner has joined in three years Law course at a college in Tirupathi as a full time student and accordingly completed the Law Degree.

37. If that being so, the petitioner could have joined only during the year 2005-06 and if it is so, he should have pursued the course for three years, which is a full time course, by staying at Tirupathi and then only he could have been successful in completing the Law Degree for getting enrolled as a Lawyer in August 2008.

38. If that factors are taken into account, certainly the petitioner could have pursued the Law course by staying at Tirupathi, for which both the educational expenses and other expenses could have been met by the petitioner, therefore it cannot be stated that, the petitioner has been in poverty or in unemployment.

39. Even before becoming a lawyer, he was able to pursue the course by staying in outstation (other State), however after becoming a Lawyer if the petitioner claims that he is unemployed and due to poverty he could not approach the Court, the said statement cannot be accepted, as it has been made only for the sake of making some statement before this Court to overcome the point of latches as admittedly the petitioner has approached this Court after 7 to 8 years from the date of passing the preliminary award and final award respectively by the Labour Court.

40. All these factors would combinedly go to show that, the petitioner, first of all has not approached this Court with proper reason for making such a belated or delayed attempt in filing this writ petition and also his statement that, he is an unemployed, despite the fact that, he being a practising lawyer all along from 2008, cannot be appreciable.

41. Moreover on the side of the merits of the case also, as has been discussed in the earlier paras of this order, the Labour Court has discussed the issue exhaustively and has come to a right conclusion that, the petitioner is not entitled to get any relief as claimed by him in the Industrial Dispute.

42. For all these reasons and looking from any angle, the petitioner's case cannot be accepted and therefore this Court feel that, the impugned award passed by the Labour Court against the petitioner is fully justifiable and deserves to be sustained.

43. In the result, the writ petition deserves to be dismissed as it fails, hence, the same is, accordingly dismissed. However there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn
To
The Principal Labour Court,
Vellore.

MG(CO)
RMP(01/12/2020)

W.P.No.22314 of 2019

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