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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

W.P.NO.18716 OF 2011

&

M.P.NO.1 OF 2011

The Managing Director,
M/s.P.ORR & Sons Pvt.Ltd.,
No.855, Anna Salai,
Chennai - 600 002.

... Petitioner

Vs.

1.The Presiding Officer,
The Principal Labour Court,
Chennai.

2.S.Latha

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorari, calling for the records of the award passed by the first respondent herein made in I.D.No.245 of 2004 dated 10.05.2011 and quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents : Mr.R.Subramanian [for R2]

O R D E R

The present writ petition has been preferred against the award of Labour Court directing reinstatement of the 2nd respondent without back wages and other attendant benefits and imposed punishment of withholding the increment for a period of



three years with cumulative effect.

2. According to the management, the Labour Court has given a categorical finding by its order dated 14.09.2010 that the Domestic Enquiry was conducted in a very fair and proper manner. Later, while discussing the charges as well as the punishment, it was held that the charge with regard to negligence as well as production of false certificate has been proved. However, it was held that dishonesty has not been proved and it cannot be held the employee has stolen the watch from the management. On the above finding, the Labour Court has considered the proportionality of the punishment. The Labour Court has considered the age, length of service and the family circumstances of the 2nd respondent imposed the above said punishment of reinstatement of continuity of service, but without back wages and other attendant benefits and also imposed punishment of withholding of increment without cumulative effect.

3. According to the learned counsel appearing for the petitioner, the Labour Court has failed to discuss the judgments placed before it on the issue of proportionality of the punishment as well as the loss of confidence by the management for the purpose of deciding reinstatement. According to him, as per the judgment reported in 1980 (1) MLJ 425 [Gordon Woodroffe Employees Vs. The State of Tamil Nadu], it was categorically held that length of service is not a license to commit misconduct. Insofar as the negligence is concerned, it is proved beyond doubt and for the proved misconduct, imposing major punishment is not disproportionate. At any cost, the reinstatement cannot be ordered.

4. According to the learned counsel appearing for the 2nd respondent, the action of the 2nd respondent cannot be considered as misconduct since there is substantial evidence to show that the loss of watch cannot be directly attributed to the worker. The drawer from where the watch was found missing has 2 keys and one of the key was held by the management. When there are two views possible, the misconduct cannot be attributed to the 2nd respondent and therefore, the Labour Court has rightly held that she has not stolen the watch. In respect of the second charge, the categorical finding is that the management has failed to prove that the post which was held by the 2nd respondent requires degree qualification. Since she has completed 15 years of service in the course, it cannot be construed that she has given false information for the purpose of joining the service. Therefore, the finding that the punishment is shockingly disproportionate to the conscience is not without reason, but it is based on acceptable and valid reasons.



5. Heard the submissions and perused the materials.

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6. At the outset, as admitted by the parties, the finding of the Labour Court on the conduct of domestic enquiry being fair and proper, there are no questions. Once it is found that the domestic enquiry was held fair and proper, it only remains to find as to whether the punishment imposed is shockingly disproportionate.

7. In so far as the charges with regard to charges of negligence and theft is concerned, the Labour Court based on the material evidence has held that negligence is categorically proved, but the charge of theft has not been proved. The perusal of oral evidence goes to show that there were two keys available to the drawer in which the Rolex watch was kept. The employee took stand that there was a possibility for anyone who is in management or having access to workplace can access the drawer. As rightly found by the Labour Court, in the absence of direct evidence attributable to the employee, and when there are no two views possible, the view which is beneficial to the employee shall be adopted. In that view of the matter the finding of the Labour Court that the capital punishment on the charge of theft is harsh and disproportionate is legally tenable.

8. In so far as the furnishing of false information as agreed to the educational qualification and non-production of certificate is concerned, the totality of the circumstances, and the factual background shall be taken with consideration. The delinquent employee was posted in the clerical cadre. She had put in 15 years of service. For the post which was held by the employee, degree qualification is not a must. But the employer prescribed such qualification. It is not the case of the management that lack of qualification affected the discharge of the employees duties or the employer suffered any loss. At this distance of time, clinging on the qualification and non production of the credentials would be irrelevant. It may cast a spell on the employee, but by no stretch of imagination warrant capital punishment. Hence the finding the punishment imposed on the employee on this Court is disproportionate to the charge is sustainable.



9. Thus the findings of the Labour Court on the proportionality of the punishment is absolutely justified and sustainable. However the Labour Court failed to apply its mind as the loss of reputation and financial loss suffered by the management. Further it is noted that the employee had already suffered a punishment in another incident of misconduct. The loss of face and reputation with the customer and the another view of possibility of theft by the delinquent employee will ultimately result in loss of confidence on the employee. In order to prevent further incidents and spreading of this habit to other employees, the management will always propose to remove the bad roots. The management may not want to continue the services of the delinquent employee who is under cloud. In such circumstances, reinstatement, even without backwages is not acceptable. On the other had, awarding of monetary compensation would meet the ends of justice.

10. The award of the Labour Court came to be passed on 10.05.2011. The management challenged the award in the present writ petition and a stay of operation of the award was also granted in their favour. Due to the pendency of stay the second respondent could not rejoin duty. Though the second respondent sworn an affidavit on 26.01.2012 in support of the petition for payment of last drawn wages u/s. 17 B of the Industrial Disputes Act, it was actually filed only on 30.06.2014. It is also informed to this Court, during the interregnum the second respondent had undergone a professional degree course in Bachelor of Law's and got enrolled on 14.07.2015. Therefore, she will not be entitled to backwages from 14.07.2015. In the affidavit filed in support of the Sec.17 B petition, it is stated that the second respondent was not gainfully employed. But the management has not taken any steps to object of disprove the factual statement. At the time of termination, the second respondent was earning a sum of Rs.6,200/- as monthly wages. She is entitled to the benefit of award from 20.05.2011 till she got enrolled on 14.07.2015.

11. As already premised in the previous portion of the order the award of the Labour Court directing reinstatement of the second respondent without backwages but with continuity of service is modified into one of payment of compensation in how reinstatement. Considering the totality of circumstances, this Court considers it fit to pass a reasonable compensation of Rs.1,00,000/- (Rupees one lakh only) as full and final settlement . The award thus modified to the above effect.



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12. In so far as the payment of gratuity is concerned, it is open to the 2nd respondent to approach the concerned authority under Payment of Gratuity Act.

13. With the above modification, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

bri

To

The Presiding Officer,
The Principal Labour Court,
Chennai.

+1cc to Mr.R. SUBRAMANIAN, Advocate, S.R.No.19670
+1cc to Mr.R. PARTHIBAN, Advocate, S.R.No.19826

W.P.No.18716 of 2011
&
M.P.No.1 of 2011

AK-II(CO)
AJ(06/06/2022)