

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.741 of 2006

R.Krishnan

... Petitioner

Vs.

1.The Management of Craigmere Estate,
Kullakam (Post),
Nilgiris - 643 218.

2.The Presiding Officer,
Labour Court,
Coimbatore - 18.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent relating to the preliminary order dated 11.02.2003 and the Award dated 07.08.2003 in I.D.No.204 of 2000, and quash the same and consequently direct the first respondent to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.T.S.Gopalan & Co., for R-1

R-2 (Labour Court) Coimbatore

O R D E R

This writ petition has been filed by the petitioner / workman, challenging the award passed by the Labour Court dated 07.08.2003, made in I.D.No.204 of 2000, confirming the finding of the first respondent, leading to the dismissal of the petitioner from service.

2. The brief facts leading to file the present writ petition is as follows:-

2.1. The petitioner was appointed as a night watchman in the first respondent-Estate Dripping Irrigation Systems on

01.07.1985. There were three workers looking after the Dripping Irrigation Systems on shift basis. The petitioner was an active member in the H.M.S. Union and the members of the said Union were disliked by the Management, and hence, the Management began picking up the Union activists and victimizing them.

2.2. It is case of the petitioner that on 01.05.1999, when he went for duty at 5. p.m., one Govindarajan, who attended the prior shift was not present to hand over the duty to the petitioner and he found that dripping irrigation system was damaged in many places and he reported the same to the higher authority. The Higher Authority enquired the two watchmen in charge of the day time duty and the petitioner regarding the damage caused to the Estate Dripping Irrigation System.

2.3. Thereafter, a Charge Memo, dated 03.05.1999 came to be issued to the petitioner and other two employees, viz., Govindaraj and Gunasekar and alleging (i) wilful insubordination to the lawful orders of the superiors, by not following the instructions regarding taking over of the system over a period of time; (ii) Dishonesty affecting the property of the employer by the same act by not carrying out the work in a proper way by being alert; (iii) Breach of instructions in maintaining the system operated by him; (iv) Bad work causing damage to the property of the Estate as stated by not taking due care of the system he has paved the way for the stem to get damages and thereby, (v) committed acts subversive of discipline.

2.4. An enquiry was initiated and witnesses were examined on both sides. Documents were also filed on both sides. The Enquiry Officer gave his report finding that the petitioner was guilty of all the charges framed against him on 17.05.1999. The second show-cause notice was issued to the petitioner on the basis of the Enquiry Officer's finding on 18.05.1999 and asked to show cause within 72 hours from the receipt hereof. The petitioner gave his reply on 24.05.1999. Thereafter, the first respondent, passed an order on 26.05.1999, terminating the services of the petitioner with effect from 27.05.1999.

3. In the counter filed by the first respondent, it is alleged that on account of the negligence of the petitioner, and other two employees, viz., Govindaraj and Gunasekar, in duty, irrigation system equipment worth Rs.15,000/- was damaged, as a result of which, the system was valued at Rs.5,00,000/- was not in a position to be operated. The other employees, viz., Gunasekar and Govindaraj, approached the first respondent during September, 1999, seeking reinstatement and after bipartite discussion, they were reinstated into service on 01.10.1999. However, the petitioner did not choose to approach the first respondent, either by himself or through any of the recognized

Union, and on the contrary raised a dispute, challenging the order of termination.

4. Before the Labour Court, on the side of the workman/petitioner, eight documents were marked and no witnesses have been examined by either side. The second respondent-Labour Court, after considering documentary evidence let in on behalf of the writ petitioner, by the impugned order, confirmed the order of dismissal order passed by the first respondent.

5. The learned counsel for the petitioner would mainly contend that the domestic enquiry was unfair and illegal, since the petitioner was not given enough time to prepare for the cross-examination of the witnesses by the first respondent-Management, which is violation of principles of natural justice and even in the Industrial Dispute raised by the workman, the same was not considered by the Labour Court. Further, non-furnishing of documents and list of witnesses with the charge sheet amounted to depriving the petitioner of a proper opportunities, and hence, the enquiry proceedings was unjust and unfair and prayed for setting aside the order of the Labour Court. It is the further submission of the learned counsel that there is no evidence to prove that other two security staff were present till the petitioner came and reported for duty on 01.05.1999 and it is not proved that they handed over the duty to the petitioner. It is also submitted that the order of dismissal of the service of the petitioner jeopardizes his livelihood and the livelihood of the dependants. It is further contended that similarly placed persons have already been reinstated into service, but the petitioner was forced to get remedy through legal forum. Hence, the learned counsel prays for setting aside the order of the Labour Court.

6. The learned counsel, in support of his contentions, has cited the following judgments:-

(i) Deli Cloth and General Mills Vs Ludh Budh Singh [(1972) 1 SCC 595]

(ii) C.Kumaraswami v. Third Additional Labour Court [1993-I LLN 785]

(iii) Colour-Chem. Ltd., V. Alaspurkar A.L.& Ors. [C.A.No.510 of 1992]

(iv) Mgmt. Cheran Trs. Corpn. V. G.Balasubramaniam [2003 (3) LLN 301]

(v) Tata Engineering & Locomotive Co. Ltd., Vs. Jitendra PD Singh and another [(2001) 10 SCC 530]

(vi) State of Uttar Pradesh and others Vs. Rajpal Singh [(2010) 5 SCC 783]

(vii) Madura Coats. Ltd., V. P.O., Labour Court [2004 (1) LLN 767]

(viii) M.V.Bijlani V. Union of India and others [(2006) 5 SCC 88]

(ix) Collector Singh Vs. L.M.L. Limited, [(2015) 2 SCC 410]

7. The learned counsel appearing for the second respondent, on the other hand submitted that the Labour Court had rightly come to the conclusion that the acts indulged by the workman was negligent, which resulted loss of several lakhs to the Management and therefore, order of dismissal passed by the first respondent, was confirmed by the Labour court, which warrants no interference.

8. Heard the learned counsel on either side and perused the materials placed on record.

9.1. The first contention of the learned counsel for the petitioner is that the action of the Management in asking the petitioner to cross-examine the witnesses on the same day without giving him time to prepare and when he was not afforded any assistance in the enquiry was highly unfair and unjust, which is in violation of principles of natural justice.

9.2. A charge memo came to be issued to the petitioner dated 03.05.1999, stating that the petitioner was negligent in discharging duties, which resulted in unknown persons entering the premises and caused damage to the property of the Management, and the petitioner was asked to appear before the Enquiry Officer on 07.05.1999, at 10. a.m. Thereafter, on 07.05.1999, an Enquiry was conducted. On 07.05.1999, the Management examined one Asirvatham, the complainant, who was the Assistant Field Officer and P.K.Manoj, Assistant Manager and the petitioner was asked to cross-examine these two witnesses. Thereafter, the enquiry was adjourned to 08.05.1999 and on that day, the petitioner had to continue the cross examination of P.K.Manoj and the Management's next witness Kutthi Natha, the supervisor. Subsequently, the Enquiry was adjourned to 11.05.1999. Thereafter, on 17.05.1999, the Enquiry Officer filed a report that the petitioner was guilty of all the charges framed against him. Subsequently, based on the Enquiry Officer's finding, second show-cause notice was issued on 18.05.1999, and after receipt of petitioner's reply dated 24.05.1999, dismissal order was passed on 26.05.1999.

9.3. Simply because of the fact that the enquiry officer did not adjourn the matter for longer dates or had concluded the evidence on a single date cannot lead to draw an inference that the principles of natural justice were not followed by the enquiry officer. It is well settled that the rules of natural justice are not embodied rules. The question whether in a given case the principles have been violated or not has to be found

out on consideration as to whether the procedure adopted by the appropriate authority is fair and proper or not. In other words, what is required to be examined is whether the delinquent knew the nature of accusation against him whether he was given sufficient opportunity to state his case and whether the enquiry officer adopted a fair procedure during the proceedings. If these requirements are satisfied then it cannot be said that the principle of natural justice were violated. Be that as it may, mere duration or length of Disciplinary enquiry is not sufficient to prove that the principles of natural justice were violated rather the entire circumstances have to be taken into consideration to reach to any conclusion. It is now a settled principle of law that rules of natural justice ought not to be applied in an abstract manner or as a straight-jacket formula. The main test is whether any real prejudice has been caused to the respondent workman or not. In the present case, it cannot be said that any real prejudice has been caused to the petitioner workman that he was asked to cross-examine the management witnesses on 11.05.1999 itself, when the Management had produced the witness on the same day, i.e., on 11.05.1999. It would be thus evident that no haste was shown by the enquiry officer in conducting the enquiry proceedings, rather sufficient opportunity was given to the respondent which opportunity was not availed by the petitioner himself. I, therefore, do not find that the enquiry officer did not observe the principles of natural justice in conducting the enquiry proceedings and simply because of the fact that enquiry proceedings culminated in a short span that would not lead to the conclusion that principles of natural justice were violated by the enquiry officer.

10.1 The next contention of the learned counsel for the petitioner is that during domestic enquiry, the petitioner had asked for the list of witnesses, however, the same were not furnished to him and therefore, without giving sufficient opportunity, the enquiry was conducted.

10.2. The Labour Court, on proper appreciation of evidence, held that the plea of the petitioner that neither the list of witnesses nor documents were produced, was not considered for the reason that admittedly, the petitioner has signed in all the documents for having received the same. It is to be noted that during enquiry, the petitioner was assisted by an observer, Sri Senthil Kumar C/R 1827 and cross-examined the list of witnesses adduced by the first respondent. Further, on the conclusion of the enquiry, the petitioner examined one Ganesan and also gave a detailed statement. On a consideration of the materials produced during the enquiry, the Enquiry Officer gave cogent reasons finding the petitioner guilty of the charges and only thereafter, the petitioner was dismissed from service.

11. The other contention with regard to the petitioner had not taken charge properly from the two workmen of the earlier shift, the Labour Court, on appreciation of the pleadings and evidence rightly came to the conclusion that the petitioner had not taken charge properly from the two workmen of the earlier shift and the petitioner having not proved that, the damage to the equipment had occurred prior to his taking charge, it would appear that the damage to the equipment had only taken place during the time when the petitioner was on duty.

12. Insofar as quantum of punishment is concerned, the Labour Court had rightly observed that it was not possible to reinstate the petitioner who caused loss of several lakhs and only if a severe punishment imposed on persons, the same would act as a deterrent and held that the mistake committed by the petitioner was grave and held that the dismissal of the petitioner was perfectly justified.

13. The final contention of the learned counsel for the petitioner is that the other employees, viz., Gunasekar and Govindaraj have been reinstated into service, for the same set of charges, however, in the case of petitioner, it was denied. As it could be seen from the counter affidavit, as against the dismissal order passed by the first respondent, the other employees, viz, Gunasekar and Govindaraj have approached the first respondent-Management and accepted their guilt and tendered their apology. On the basis of their representation, the Management-, reinstated them into service. However, the petitioner has resorted out to get his grievance by raising an Industrial Dispute. The Labour Court, on proper appreciation of evidence, confirmed the order of dismissal passed by the first respondent.

14. The learned counsel for the petitioner has cited catena of decisions. There is no quarrel over the principles laid down therein, but in the considered view of this case, the discussions referred supra, the decisions relied on by the learned Senior Counsel for the petitioner, have no application to the facts of this case, as they are distinguishable on facts.

15. It is settled legal principles that High Court under Article 226 and 227 of Constitution of India is very wide and extensive to control over the courts and Tribunals throughout territories and in relation to exercise jurisdiction. Such power must be exercised within limits of law. The High Court does not act as a court of appeal or a court of error and take neither review or re-appreciate nor reweigh the evidence upon

which the determination of the Subordinate Court or inferior Tribunal, or correct the error of facts or even the law and to substitute its own decision as that of inferior tribunal or Court. It is also settled legal principles that, this Court, unless there was miscarriage of justice or fragrant violation of law calling for intervention, cannot interfere under Article 226 or 227 of the Constitution of India. Under Article 226, the High Court is required to enforce the Rule of Law and ensure that the Authorities and Organs of the State should be directed only to act in accordance with law. Ordinarily, Writ Jurisdiction cannot be invoked for directing the Authorities to act contrary to law.

16. In view of the above observation and discussions, this court cannot interfere with the Award of the Tribunal as there was no miscarriage of justice or the award has been passed on no evidence or the findings are perverse. Moreover to invoke Articles 226 and 227 of the Constitution of India, the parties have to make out extraordinary case pointing out error apparent on the face of the record. In this case, no such case has been made out.

17. In fine, the Writ Petition fails, and accordingly, it is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

r n s
To

The Presiding Officer,
Labour Court,
Coimbatore - 18.

+1cc to Mr.V.Ajay Khose, Advocate Sr.6632
+1cc to Mr.T.S.Gopalan & Co, Advocate Sr.6570

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