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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.28855 OF 2005

The Management,
Thiruvalluvar Textiles (P) Ltd.,
5, Anna Salai,
Post Box No.6,
Rasipuram - 637 408.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. Y.Selvaraj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari to call for the records in I.D.No.467 of 2000, on the file of the Labour Court, Salem, the 1st Respondent herein and to quash the Award dated 25.01.2005 passed therein.

For Petitioner : Mr.M.R.Raghavan

For 2nd Respondent : Mr.K.V.Shanmuganathan

O R D E R

Petitioner/Management has come up with this Writ Petition challenging the Award dated 25.01.2005 passed by the Labour Court, Salem in I.D.No.467 of 2000, in granting reinstatement to the 2nd Respondent/employee without backwages, but with continuity of service.

2. Heard the learned counsel on either side and perused the material documents available on record.

3. The 1st Respondent/Labour Court has held that, the charge alleged against the 2nd Respondent/employee that, he scolded the Supervisor with filthy language, is proved. However, the Labour Court interfered with the punishment imposed on the employee, under Section 11-A of the Industrial Disputes



Act, 1947 and awarded reinstatement with continuity of service and other attendant benefits within three months from the date of receipt of the order, but without backwages.

4. Though the learned counsel for the Petitioner/Management contended that, once the charges are proved, the Labour Court ought not to have interfered with the punishment, the same cannot be accepted, as it would amount to taking away the powers of the Tribunal and making Section 11-A of the Industrial Disputes Act, 1947, itself redundant.

5. At this juncture, it is worth referring to a judgment of the Gujarat High Court in the case of R.M. Parmar vs Gujarat Electricity Board reported in (1983) ILLJ 261 Guj, wherein, the powers of the Tribunal in adjudication proceedings relating to discharge or dismissal of a workman, have been discussed. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceedings relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it think fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purposes, a new section 11A is proposed to be inserted in the Industrial Disputes Act, 1947."

The matter regarding imposition of penalty on employees (it was so realized by International Labour Organization, an international body) could not be left solely to the discretion of the management even if the employee concerned is found to be guilty of the charge levelled against him, presumably because of the conditioned approach of the disciplinary authority with this inbuilt and inherent pro-employer-anti-employee bias. That is why in obeisance to the felt needs of the time it was considered necessary to entrust this most vital



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function to a neutral body. With the end in view that the employees were not treated more harshly than they deserved in the context of facts and circumstances of the case, and that the employee could get the protection of the Labour Court which could be trusted to make a just and fair approach, the provision was introduced by way of an amendment. It is a benevolent power conferred on the Labour Court and has to be exercised in the spirit in which the provision has been enacted in order to further the intent and purpose of the legislation, Keeping aglow before the mental eye some very important dimensions of the matter, viz. :

(1) There is widespread unemployment in our country and it is difficult to secure a job to earn enough to keep body and soul together unlike in developed countries.

(2) The State does not provide social benefits like unemployment allowance to enable a discharged employee to sustain himself and his family to some extent, as is being done in the developed countries.

(3) In imposing punishment on an erring employee an enlightened approach informed with the demands of the situation and the philosophy and spirit of the times requires to be made. It cannot be a matter of the ipse dixit of the disciplinary authority depending on his whim or caprice.

(4) Be it administration of criminal law or the exercise of disciplinary jurisdiction in departmental proceedings, punishment is not and cannot be the 'end' in itself. Punishment for the sake of punishment cannot be the motto."

6. Merely because, abusive language is used, an employee cannot be dismissed from service, and it cannot be said to be a serious one, more so, in the light of R.M.Parmar's case cited supra. However, in the present case on hand, the employee's past record is bad and he has been frequently absenting himself and hence, putting him back in service, may not be correct.



7. It is represented that, during the pendency of the Writ Petition, the 2nd Respondent/employee was drawing wages under Section 17-B of the Industrial Disputes Act, 1947, which according to the Petitioner/Management, works out to more than Rs.4 lakhs. Also, it is represented by the Petitioner/Management that, the present monthly wages of the employee works out to a sum of Rs.12,637/- and gratuity has been calculated based on the amount payable to the employee from the date of entry into service till the date of this order. It is seen that, the employee has not filed any Writ Petition challenging the Award of the Labour Court that has deprived him backwages.

8. In view of the factual averments available on record and taking into account the past records of the 2nd Respondent/employee, the Petitioner/Management is directed to pay the 2nd Respondent/employee a sum of Rs.3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand only) including the Gratuity amount. The Award passed by the 1st Respondent/Labour is modified accordingly.

In fine, the Writ Petition is ordered is accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Labour Court, Salem.

Copy To

The Management,
Thiruvalluvar Textiles (P) Ltd.,
5, Anna Salai, Post Box No.6,
Rasipuram - 637 408.

+1cc to Mr.M.R.Raghavan, Advocate, S.R.No.34899

W.P.No.28855 of 2005

PMK (CO)
CS/09/09/2021