



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.(MD)Nos.10146 and 10147 of 2010

W.P.(MD)No.10146 of 2010:-

Bharathi Co-operative Spinning Mills Limited,
represented by its Administrator,
Ettayapuram, Tuticorin District. : Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.V.Ganapathy : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records in the award dated 28.04.2009 made in I.D.No.67 of 2005 on the file of the first respondent Labour Court and quash the same.

For Petitioner
For R2

:Mr.K.Hemakarthiskeyan
:Mr.D.Srinivasa Ragavan

W.P.(MD)No.10147 of 2010:-

Bharathi Co-operative Spinning Mills Limited,
represented by its Administrator,
Ettayapuram, Tuticorin District. : Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.S.Kandasamy : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records in the award dated 22.04.2009 made in I.D.No.70 of 2005 on the file of the first respondent Labour Court and quash the same.

For Petitioner
For R2

:Mr.K.Hemakarthiskeyan
:Mr.D.Srinivasa Ragavan



COMMON ORDER

Challenging the Award passed by the first respondent, in I.D.Nos.67 and 70 of 2005, dated 28.04.2009 and 22.04.2009, respectively, these Writ Petitions have been filed.

2. Since the issues involved in these Writ Petitions are similar, these Writ Petitions are disposed of by way of this common order.

3. It is the case of the petitioner that the second respondents were working as Slider in the petitioner Management from the year 1983 and 1984, onwards, respectively. Their last drawn salary is Rs.5,203/- and Rs.5,165/- respectively. While so, disciplinary action was initiated against the second respondents alleging that they are defaming the reputation of the petitioner management and its officials. The second respondents/workmen have submitted their respective explanation. Since their explanation was not satisfactory, an Enquiry Officer was appointed. The Enquiry Officer, after hearing the second respondents and the petitioner management, has submitted his report that the charges levelled against the second respondents were found to be proved and based on which, the petitioner management has passed the order of dismissal from their employment against the second respondents.

4. As against the order of dismissal, the second respondents have raised industrial disputes before the Labour Court, Tirunelveli, in I.D.Nos.67 and 70 of 2005, respectively. The Labour Court, Tirunelveli, by considering the gravity of charges levelled against the second respondents and the punishment imposed by the petitioner management, set aside the order of dismissal and directed the petitioner management to reinstate the second respondents into service. Challenging the award passed by the first respondent, the present Writ Petitions are filed by the petitioner Management.

5. The learned Counsel for the petitioner, on instructions, would submit that pending these Writ Petitions, the second respondent in W.P.(MD)No.10146 of 2010 was reinstated into service with continuity of service, but without back wages and he has also retired from service in December'2020. Hence, nothing survives for further adjudication in W.P.(MD)No.10146 of 2010.

6. In respect of W.P.(MD)No.10147 of 2010 is concerned, the learned Counsel for the petitioner would submit that subsequent to the dismissal from service, the second respondent has got gainful employment as LIC agent and with regard to the payment of wages as per Section 17B of the Industrial Disputes Act, 1947, the second respondent has filed a Miscellaneous Petition in M.P.(MD)No.1 of 2011 in W.P.(MD)No.10147 of 2010, for payment of 17B wages and this Court has also granted an order directing the petitioner management to pay 17B wages. However, aggrieved by the said order, the



petitioner Management filed an appeal before this Court in W.A.(MD) No.501 of 2011. The Honourable Division Bench of this Court, by judgment, dated 06.09.2011, allowed appeal by holding that the second respondent was gainfully employed in the LIC and denied payment of wages. Hence, the learned Counsel for the petitioner would submit that this Court may modify the award of the Labour Court into one as compulsory retirement without back wages.

7.The learned Counsel for second respondent vehemently opposed the contentions raised by the learned Counsel for the petitioner, contending that even though the second respondent was an LIC agent, he has received only a meagre amount and therefore, it cannot be termed that the second respondent was in gainful employment and was earning out of it. He would also submit that the second respondent is the only breadwinner of his family and he prays for dismissal of this Writ Petition.

8.Heard Mr.K.Hemakarthyayan, learned Counsel for the petitioner and Mr.D.Srinivasa Ragavan, learned Counsel for the second respondent and perused the materials placed on record.

9.It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, and disproportionate to the gravity of the



proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

10.This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the second respondent is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

11.According to the petitioner, the second respondent in W.P. (MD)No.10146 of 2010, was reinstated into service during the pendency of the Writ Petition and got retirement in 2020 and this was also affirmed by the learned Counsel for the second respondent. Hence, the order of Labour Court, in I.D.No.67 of 2005, dated 28.04.2009, is modified to that of a reinstatement of the second respondent without back wages.

12.Insofar W.P.(MD)No.10147 of 2010 is concerned, the fact that the second respondent was gainfully employed, subsequent to the order of termination was established before the Honourable Division Bench of this Court in W.A.(MD)No.501 of 2011, which was filed by the petitioner Management against the order of this Court in M.P. (MD)No.1 of 2011, for payment of wages as per Section 17B of the Industrial Disputes Act, 1947. It is proved that the second respondent, after the dismissal from service, was in gainful employment. It appears that the workman reached the superannuation. Ordering reinstatement may not solve the issue. Hence, I am inclined to modify the order of reinstatement to that of compulsory retirement. The second respondent workman is entitled to monetary benefits including the continuity of service from the date of entering into service till the date of his superannuation without any back wages.

13.Accordingly, the award of the first respondent in I.D.No.70 of 2005, dated 22.04.2009, is modified into one as compulsory retirement without back wages. However, the second respondent workman is entitled to monetary benefits including the continuity of service from the date of entering into service till the date of his superannuation without any back wages.



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W.P.(MD)Nos.10146 and 10147 of 2010

14. With the above modifications, these Writ Petitions are disposed of. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

The Presiding Officer,
Labour Court, Tirunelveli.

+1 CC to M/s.D.SRINIVSA RAGAVAN, Advocate (SR-578[F] dated
08/01/2021)

+1 CC to M/s.K.HEMA KERTHIKEYAN, Advocate (SR-553[F] dated
08/01/2021)

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KG (CO)

KB (03.02.2021) 5P 4C