



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.01.2021

CORAM:

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

W.P. (MD)Nos.2710 and 12161 of 2010

and

M.P. (MD) No.1 of 2010

in

WP(MD.No.2710 of 2010

W.P. (MD)No.2710 of 2010

The Management,
The Tuticorin Spinning Mills Ltd.,
Rep. by its Managing Director G.Vettivel,
106, Palayamkottai Road,
Tuticorin, Thoothukudi District. ... Petitioner

- vs -

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.A.George ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned final Award dated 29.12.2008 passed by the first respondent and received on 20.07.2009 in I.D.No.129/1998 and quash the same as illegal insofar as it relates to the awarding of 50% of back-wages to the second respondent in lieu of his reinstatement.

For Petitioner	: Mr.Jerin Mathew for M/s.Ajmal Associates
For Respondent 2	: Mrs.D.Geetha

W.P. (MD)No.12161 of 2010

A.George ... Petitioner

- vs -

1.The Management,
The Tuticorin Spinning Mills Ltd.,
106, Palayamkottai Road,
Tuticorin,
Represented by its Managing Director.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned orders, viz., the Preliminary Award in I.D.No.129 of 1998, dated 26.12.2007 and Final Award in I.D.No.129 of 1998 dated 29.12.2008 passed by the second respondent and quash the same and consequently direct the first respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner	: Mrs.D.Geetha
For Respondent 1	: Mr.Jerin Mathew for M/s.Ajmal Associates

COMMON ORDER

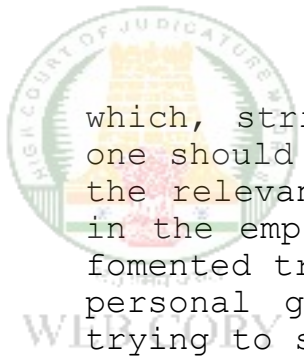
In view of the fact that the issue involved in both the Writ Petition is one and the same, both the Writ Petitions are taken up together and disposed of by this common order.

2.The Writ Petition in W.P.(MD)No.2710 of 2010 has been filed challenging the final Award dated 29.12.2008 passed by the first respondent in I.D.No.129/1998 on the ground that awarding 50% of back-wages to the second respondent/workman in lieu of his reinstatement is quiet unwarranted.

3.The Writ Petition in W.P.(MD) No.12161 of 2010 has been filed challenging the Preliminary Award dated 26.12.2007 and Final Award dated 29.12.2008 in I.D.No.129 of 1998 passed by the second respondent and consequently to direct the first respondent management to reinstate the petitioner/workman in service with all attendant benefits.

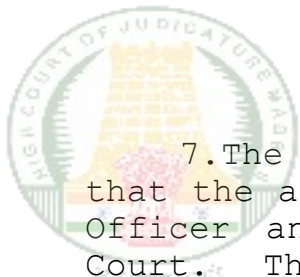
4.For easy reference, the petitioner in W.P.(MD)No.2710 of 2010 hereinafter referred to as 'Employer' and the petitioner in W.P.(MD) No.12161 of 2010 hereinafter referred to as 'Workman'.

5.The case of the employer is that it is a Public Limited Company incorporated under the provisions of Companies Act, 1956, engaged in manufacturing and selling of yarn and its factory is situated at Tuticorin. There are about 270 workmen employed under various categories. The workman was engaged in the simplex department of the employer which plays a vital role in the process of manufacturing yarn, wherein cotton sliver is converted into simplex roving. According to the employer, humidity has to be maintained at a particular level for effective manufacture of yarn and if any variation in humidity, it will ultimately affect the quality of the end product. Therefore, in order to avoid such hazards, a polymer door has been fixed at the eastern side gate of the simplex department which should be kept closed during working hours to prevent draughts of air gushing into the department, for



which, strict instructions have been issued to the workmen that no one should open the polymer door during working hours. While so, at the relevant point of time, there were five recognised trade unions in the employer factory and one more rival union was started which fomented trouble inside the factory with ulterior motive and for its personal gains in which the workman was a member, who was also trying to sabotage the smooth and normal functioning of the employer factory whenever possible. The workman used to open the polymer door deliberately and surreptitiously without the knowledge of his supervisor and department maistry and he was taken to task on several occasions for having acted in breach of the standing order. While so, when the workman reported for work in the simplex department during first shift on 12.08.1997 and during working hours, contrary to the standing instructions, he kept open the polymer door and tide the polymer door with the wall so that it would not close. As a result, the air was gushing into the department causing damage to the simplex operation. On 01.09.1997 also, the workman repeated the same act of misconduct and when the same was questioned by the supervisor, the workman misbehaved with him and conducted himself in a disorderly manner. Therefore, the employer issued two charge memos dated 19.08.1997 and 03.09.1997 to the workman. As the explanation submitted by the workman was not at all satisfactory, domestic enquiries were conducted by an outside practicing Advocate wherein the workman had fully participated. After enquiry, the Enquiry Officer held that the charges levelled against the workman stood proved. Upon receipt of the enquiry reports and findings, the employer issued a second show cause notice on 03.11.1997 to the workman enclosing the copies of the enquiry report and findings. Thereafter, the workman had submitted his explanation. However, being not satisfied with the explanation, the employer passed an order of dismissal from service on 21.11.1997 against the workman.

6.It is the further case of the employer that aggrieved against the dismissal order, the workman raised an industrial dispute which culminated in I.D.No.129 of 1998 on the file of the Presiding Officer, Labour Court, Tirunelveli. Though the Labour Court, after enquiry, had arrived at a conclusion that the domestic enquiry conducted into the charges levelled against the workman was fair and proper and that the report and findings submitted by the Enquiry Officer were just and reasonable, however, it had erroneously ordered 50% back-wages to the workman under Section 11A of the Industrial Dispute Act, 1947, in lieu of reinstatement of the workman into service. Further, the first respondent Labour Court held that the punishment of dismissal was quite disproportionate to the gravity of the misconduct committed by the workman. Aggrieved by the said order, the employer Management has filed the Writ Petition in W.P.(MD)No.2710 of 2010 and for non-reinstatement, the workman is before this Court in W.P.(MD)No.12161 of 2010.

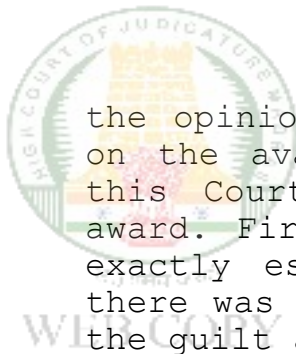


7.The learned Counsel appearing for the employer would submit that the attitude of the workman was established before the Enquiry Officer and the same was further established before the Labour Court. The employer mill is a profit making unit at the relevant point of time and there was a standing order to the effect that the workmen has to close the polymer doors during working hours. However, contrary to the standing orders, the workman kept open the door for long time and thereby the outside air gushing into the department causing irreparable loss to the employer management. As it was frequently happened, the management identified the workman and for which, the employer management initiated disciplinary proceedings which culminated in the order of dismissal of the workman from service. Accordingly, she prayed for dismissal of the writ petition filed by the employee viz., W.P.(MD)No.12161 of 2010 and allowing the writ petition filed by the workman viz., W.P.(MD) No.2710 of 2010.

8.Per contra, the learned Counsel appearing for the workman submitted that the workman was issued with the charge memo and there was no proper enquiry conducted by the Enquiry Officer and no fair opportunity was given to the workman. Further, the trial Court having accepted the punishment is disproportionate modified the punishment, however, not awarded the full back-wages for which he is entitled to. Further, he would submit that the charge memo is not correct as the standing order did not disclose any instruction that the workman has to close the door while the machine is in operation. Therefore, in the absence of any instructions in the standing order, the issuance of charge memo itself is unwarranted. He would further submit that the order of the Enquiry Officer and the award of the Labour Court granting the workman 50% of back-wages in lieu of reinstatement are perverse and liable to be interfered with. Accordingly, he prayed for allowing the Writ Petition filed by the workman in W.P.(MD)No.12161 of 2010.

9.This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

10. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and draw its own conclusions, merely because this Court is of



the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award. First, it has to be seen, whether the Employer was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is committed the guilt and the same is affected the reputation of the Employer.

11. In the present case, admittedly, the workman entered into service in the year 1996 and the said dismissal order was passed by the employer on 21.11.1997 on the premise that the workman has not followed the instructions given under Clause 21(1) and 21(34) of the Standing Orders of the employer Mill. However, the specific claim that there is no strict instruction in the Standing Order that the workman has to close the door while the machines are in operation. However, this Court perused the Standing Orders which was marked as Ex.32. A perusal of Clause 21(1) shows that the workman whether individually or jointly has to obey the direction issued by the higher officials and in respect of Clause 21(34), it relates to the workman to protect the property of the management and wear the safety equipment. However, there is no clause available in the Standing Order as if the workman has to close the door. Therefore, this Court is of the view that on the sole ground itself the charge memo and the punishment are liable to be set aside. However, considering the submission of learned Counsel for the employer that the workman has to comply with the instructions given by the employer management and the conduct of the workman caused the loss to the management, admittedly, there was a loss for which the employer management issued show-cause notice and finally passed an order dismissing the workman from service. The Labour Court, after thorough consideration of material facts, has arrived at conclusion by awarding 50% of back wages in lieu of reinstatement in favour of the employee, which does not warrant any interference.

12. For the reasons aforesaid, both the writ petitions *san* merits and accordingly, the same are dismissed. There shall be no order as to costs. The employer is directed to pay 50% of back wages as awarded by the Labour Court to the employee along with simple interest at the rate of 6% p.a., from the date of the award till the date of realisation.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



TO

The Presiding Officer,
Labour Court,
Tirunelveli.

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+1CC to Mrs.D.Geetha, Advocate SR.No.509 dated 07.01.2021

W.P (MD) Nos.2710 and 12161 of 2010
06.01.2021

SVN (CO)

KB (29.04.2021) 6P 3C