



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P(MD)Nos.5862, 6089, 6119, 15015 and 15016 of 2010
and 374 of 2011**

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and

M.P(MD)Nos.1,2 and 2 of 2010 and 1, 1 and 1 of 2012

1.The Management

Madura Sugars, Pandiarajapuram,
Vadipatty Taluk, Madurai District,
Through its Chief Executive.

... Petitioner in W.P(MD)No.
5862 of 2010 and 1st Petitioner in
WP(MD)Nos. 6089 and 6119 of 2010

2.Tamil Nadu Sugar Corporation

690 Anna Salai, Chennai
Through is Chairman

:2nd Petitioner in WP(MD)Nos.6089 &
6119 of 2010

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

: 1st Respondent in WP(MD)
Nos.5862,6089,6119 of 2010

2.G.Manoharan

... 2nd Respondent in W.P(MD)No.5862 of 2010

2.M.Mohan

... 2nd Respondent in W.P(MD)No.6089 of 2010

2.A.Muthanan

... 2nd Respondent in W.P(MD)No.6119 of 2010

Prayer in W.P(MD)Nos.5862, 6089 and 6119 of 2010: Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorari to call for the records in relating to the award passed by the 1st respondent in I.D.Nos.84 of 1995, 41 of 2002 and 72 of 1995 dated 29.04.2009.

For Petitioner	:	Mr.P.Chandrabose
Respondent No.1	:	Labour Court
For Respondent	:	Mr.S.Arunachalam
No.2	:	in W.P(MD)Nos.5862, 6089 and 6119 of 2010

W.P(MD)Nos.15015 and 15016 of 2010 and 374 of 2011

G.Manoharan

... Petitioner in W.P(MD)No.15015of 2010

M.Mohan

... Petitioner in W.P(MD)No.15016 of 2010

A.Muthanan

... Petitioner in W.P(MD)No.374 of 2011



Vs.

1. The Presiding Officer,
Labour Court, Madurai.

2. The Management,
Madurai Sugars,
Pandiaraja Puram,
Vadipatty Taluk,
Madurai District,
represented through its
Chief Executive

...Respondents 1 and 2 in
W.P(MD)Nos.15015 and 15016 of 2010
and 374 of 2011

3. Tamil Nadu Sugar Corporation
690, Anna Salai,
Chennai through its Chairman

... Respondent 3 in
W.P(MD)Nos.15016 of 2010
and 374 of 2011

Prayer in W.P(MD)Nos.15015 and 374 of 2011: Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus calling for the records relating to the award of the Labour Court, Madurai in I.D.Nos.84 of 1995 and 72 of 1995 dated 29.04.2009 respectively and quash the same insofar as it relates to denial of back wages to the petitioners are concerned consequently, directing the 2nd and 3rd respondents management to pay full back wages to the petitioners.

Prayer In W.P(MD)No.15016 of 2010: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned award of the 1st respondent Labour Court, Madurai in I.D.No.41 of 2002 dated 29.04.2009, quash the same insofar as not directing the 2nd and 3rd respondents to treat the petitioner to have attained permanent status from 01.04.1989 and to pay him back wages by notionally reinstating him with continuity of service and all attendant benefits and consequently, direct the 2nd and 3rd respondents to treat him to have attained permanent status with effect from 01.04.1989 as per the settlement dated 11.05.1985 and to pay him back wages for the period from 15.12.1984 to the date of closure of the 2nd respondent Mills by notionally reinstating him in service with continuity of service with attendant benefits, apart from paying other benefits such as compensation, etc., as given to other workers on roll at the time of closure of the 2nd respondent Mill.

[Prayer amended vide order dated 05.02.2021 in W.M.P
(MD)No.429 of 2021 in WP(MD)No.15016/2010)



For Petitioner
For Respondent
No.1

: Mr.S.Arunachalam
: Labour Court

Respondent
No.2

: Mr.P.Chandrabose
in W.P(MD)Nos.15015 and 15016 of 2010
and 374 of 2011

R3

: NA in WP(MD)No.15016/2010 & 374/2011

COMMON ORDER

The petitioner in W.P(MD)Nos.5862, 6089 and 6119 of 2010 is the Chief Executive of Madura Sugars, Pandiarajapuram, Vadipatty Taluk, Madurai District, hereinafter will be referred to as 'the Management' and the petitioner in W.P(MD)Nos.15015 and 15016 of 2010 and 374 of 2011 is the worker of the said Management, hereinafter will be referred to as 'the Employees/ the Employee'.

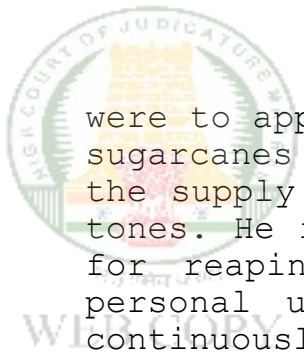
2.Since all these writ petitions are interconnected and are arising out of the Industrial Dispute raised by the Employees in I.D.Nos.84 of 1995, 41 of 2002 and 72 of 1995 dated 29.04.2009 before the Labour Court, Madurai, these writ petitions are heard together and disposed of by way of this common order.

3.The Management challenges the award of the Labour Court passed in favour of the Employees, directing the Management to pay the compensation, gratuity and other monetary benefits, as provided to other employees, by treating the Employees as the Employees of the Management till the closure of the Sugar Mill. The Employees challenge the award of the Labour Court for not awarding backwages.

4.The case of the Management in brief is as follows:

(i) The Management owned Madura Sugar Mills at Pandiarajapuram, Madurai District. From the year 1991 the Sugar Mill incurred heavy loss and was not in a position to run the Mill in full capacity, which resulted in further loss to the Management. However, during the year 2002-2003, the Mill stopped its functioning and it announced temporary closure. While being so, the Government of Tamil Nadu vide G.O.(Ms)No.99, Industrial Department Dated, 27.11.2004 permitted the Management to implement Voluntary Retirement Scheme [VRS] and all the workers, who were working in the Mill at the relevant point of time had opted for Voluntary Retirement Scheme and as such, they all were relieved from service with effect from 28.02.2005 and subsequently, the said Mill was closed permanently.

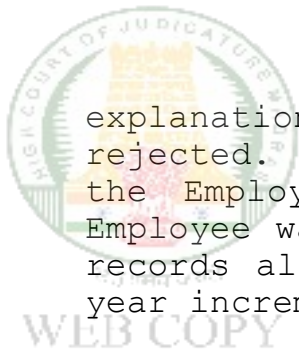
(ii) The Employee [petitioner in W.P(MD)No.15015 of 2010] herein worked as a Cane Assistant in the Cane Department, in the



were to approach the sugarcane growers and get supply of 60 tones of sugarcane daily during cane crushing season. But he was able to get the supply of only 170 tones of sugarcane against his target of 360 tones. He received a sum of Rs.10,000/- from the sugarcane growers, for reaping the sugarcane and misappropriated the same for his personal use. From 02.01.1992 till 21.06.1993, the Employee was continuously absent for duty on various days. Further, he did not participate in the meetings of the Sugarcane Officer held on 09.01.1993 and 11.01.1993, despite direction issued to him. Therefore, for the above misconduct and misappropriation of money, the Employee was issued with a charge memo, dated 21.06.1993 and his explanation was received by the Management on 16.07.1993. Since the explanation offered by the Employee was unsatisfactory, initially he was terminated from service and subsequently, he was reinstated into service and placed under suspension on 28.07.1993. Further domestic enquiry was also ordered and in the domestic enquiry it was found the charges levelled against the Employee were proved. Subsequently, the Employee was issued with a show cause notice, for which the Employee also submitted his explanation and as the explanation was not satisfactory the same was rejected. Further it was concluded that the charges framed against the Employee were proved and based on the enquiry report, the Employee was dismissed from service on 13.07.1988. His past service records also revealed that he was imposed with a punishment of one year increment cut for his earlier misconduct.

(iii) The Employee [petitioner in W.P(MD)No.15016 of 2010] was engaged by the Management as NMR Employee and he was engaged only during the crushing season and he is not entitled for any retaining allowance or the lay off compensation during off season or lay off period. This Employee was subsequently engaged for welding works by the Management. While so, the Management recruited Welders by conducting interview, though this Employee applied and took part in the interview, he was not selected. On 15.12.1994, the NMR employees were called for to work by the Management, but this Employee has not attended the duty. His service was not at all regularised and he is not a permanent employee of the management. But after a period of eight years he has raised a dispute before the Labour Court, as if the Management dismissed him from his employment.

(iv) The Employee [petitioner in W.P(MD)No.374 of 2010] was engaged by the management as Cane Yard Mazdoor. On 21.03.1994, during the work, the Shift Engineer, directed this Employee to place the canes in the cane carrier, but this Employee refused to obey his superior's order and left the Mill without permission and did not turn up to duty. Hence on 28.03.1994 this employee was issued with a memo. However, he did not turn up to duty, but submitted his explanation on 23.06.1994. Since the explanation offered by the Employee was unsatisfactory, domestic enquiry was also ordered and in the domestic enquiry it was found the charges levelled against the Employee were proved. Subsequently, the Employee was issued with a show cause notice, for which the Employee also submitted his



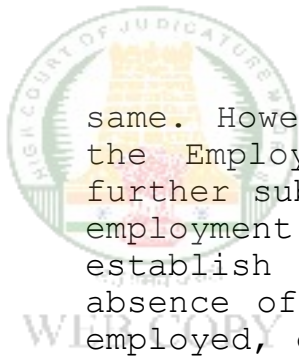
explanation and as the explanation was not satisfactory the same was rejected. Further it was concluded that the charges framed against the Employee were proved and based on the enquiry report, the Employee was dismissed from service on 07.12.1994. His past service records also revealed that he was imposed with a punishment of one year increment cut for his earlier misconduct.

5.As against the order of dismissal from service, the Employees raised Industrial Disputes in I.D.Nos.84 of 1995, 41 of 2002 and 72 of 1995 dated 29.04.2009 respectively before the Labour Court, Madurai and the dispute was tried independently and oral and documentary evidence were placed by the Management as well as the Employees.

6.After analysing oral and documentary evidence, the Labour Court held that the charges levelled against the Employees were not proved and therefore, the Labour Court passed an award directing the Management to pay the compensation, gratuity and other monetary benefits, as provided to other employees, by treating the Employees as the Employees of the Management till the closure of the Sugar Mill. As against the award of the Labour Court, the Management and the Employees have filed these writ petitions as stated in paragraph No.3.

7.The learned Counsel appearing for the Management would submit that though the Employer raised an Industrial Dispute before the Labour Court, the preliminary issue whether such a dispute is maintainable or not, was not at all decided and without deciding the preliminary issue passing award in favour of the Employees is unsustainable. Based on the proven charges, the Employees were dismissed from service. The Management, before the Labour Court had established that the charges levelled against the Employees were proved, by producing exhibits and therefore, the dismissal of the Employees from service was just and sustainable in the eye of law. However, the Labour Court failed to consider the whether there is any infirmity or illegality in dismissing the Employees from service and without considering the oral and documentary evidence placed on the side of the Management before the Labour Court, it had passed award in favour of the Employees, which needs interference of this Court. Therefore, the learned Counsel prayed for allowing the writ petitions filed by the Management.

8.The learned Counsel appearing for the Employees would contend that the Labour Court, after examining the oral and documentary evidence held that the Management was not at all able to establish the charges levelled against the Employees by producing evidence. Further the Labour Court held that only because of the conduct of the Employees the Mill incurred heavy loss leading to permanent closure of the Mill. Though the Management and Employees were not examined with regard to the gainful employment of the Employees, it is discretion to the Labour Court to decide the



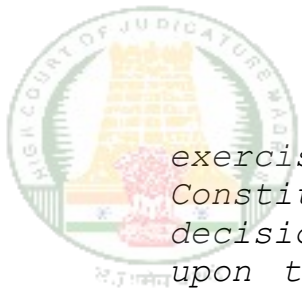
same. However, the Labour Court failed to award any back wages to the Employees. The learned Counsel appearing for the Employees further submitted that the Employees had not involved in any gainful employment in the interregnum period and the management did not establish that the Employees were gainfully employed and in the absence of any evidence to prove that the Employees were gainfully employed, denying back wages to the Employees is not sustainable in the eye of law and therefore, the learned Counsel prayed for allowing the writ petitions filed by the Employees and thereby ordering for back wages.

9. Heard the learned Counsel on either side and carefully perused the materials placed 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 substitute 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 Management was able to exactly establish the alleged misdeed by Employees and whether there was evidence to show that the Employees concerned are responsible for the loss caused to the Management.

11. Admittedly, the Employees were working under the Management in various categories and were issued with a charge memo for their misconduct and misappropriation and subsequently, were dismissed from service based on the proven minutes in the domestic enquiry. The main contention of the management is that the Employees are the cause for the heavy loss incurred by the Management, because of their misconduct and non performance and the said loss lead to permanent closure of the Mill.

12. This leads us to a question as to whether the Labour Court would be justified in exercising its discretion under Section 11-A of the Industrial Disputes Act, 1947 to modify the punishment of dismissal imposed by the Management. While considering the scope of judicial review in respect of a punishment imposed by the disciplinary authority, it has been now well settled by the judgment of the Supreme Court in Government of India and another V. George Philip, AIR 2007 SC, 705, where the Hon'ble Supreme Court, in



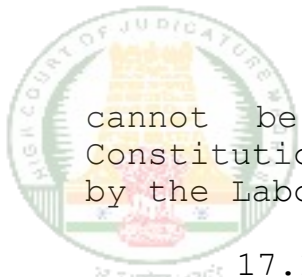
"9.It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that here has been a substantial non-compliance of the rules of procedure or a gross violation of rules of natural justice, which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charges."

13.In fact in the above judgment, the Hon'ble Supreme Court had quoted with approval the following judgments in B.C.Chaturvedi Vs Union of India, (1995) 6 SCC 749, Om Kumar Vs Union of India (2001) 2 SCC 386 and Damoh Panna Sagar Rural Regional Bank and another Vs Munna Lal, (2005) 10 SCC 84.

14.The Labour Court has elaborately considered and discussed the issue and held that there were other workers, whose performance were also not upto the mark and therefore, it cannot be said that these Employees alone are the reason for the loss caused to the Management and the reasons assigned by the management were not accepted by the Labour Court in this regard and further held that the charges levelled against the employees were not proved and therefore, passed the award in favour of the Employees to pay them the benefits by treating them as employees of the management till the closure of the Mill. Therefore, this Court does not find any infirmity or illegality in the award passed by the Labour Court.

15.The main contention of the Employees is that the employees have not gainfully employed during the suspension and the Management has also failed to establish that the Employees were in gainful employment. It is for the Employees to prove that they were not in gainful employment in the interregnum period, but they have failed to prove the same.

16.Therefore, this Court is of the view that in the absence of any evidence placed by the Management, before the Labour Court to show that this Employees alone are responsible for the loss caused to the Management, leading to permanent closure of the Mill, the award to pay the compensation, gratuity and other monetary benefits, as provided to other employees, by treating the Employees as the Employees of the Management till the closure of the Sugar Mill by the Labour Court cannot be interfered with and in the absence of the Employees proving by letting in evidence that they had not involved in any gainful employment during the interregnum period, the issue



cannot be decided by this Court under Article 226 of the Constitution of India and therefore, the non awarding of back wages by the Labour Court also cannot be interfered with.

17.In the light of the above discussion, I am not inclined to interfere with the order of the Labour Court, Madurai passed in I.D.Nos.84 of 1995, 41 of 2002 and 72 of 1995 dated 29.04.2009 and therefore, all these writ petitions are dismissed. However, the Employee [petitioner in W.P(MD)No.15016 of 2010] is permitted to file documents before the management claiming permanent status and the permanent status aspect shall be considered by the Management as claimed by the said Employee and the benefits as awarded by the Labour Court shall be paid. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

To: -

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Chairman
Tamil Nadu Sugar Corporation
690 Anna Salai, Chennai.

+1 CC to Mr.S.ARUNACHALAM, Advocate (SR-3823[F] dated 08/02/2021)

+1 CC to Mr.P.CHANDRABOSE, Advocate (SR-3893[F] dated 09/02/2021)

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VB (25.03.2021) 8P 5C