



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. (MD) Nos. 6436 and 9609 of 2010

1.A.Krishnan (died)
2.Sanjeevan
P2 substituted as LR of the deceased
P1 vide order dated 09.09.2019 in W.M.P.
(MD).No.6223 of 2019 in W.P.(MD).No.6436 of 2010.

... Petitioner in W.P.(MD).No.6436 of 2010

V.Rajendran

... Petitioner in W.P.(MD).No.9609 of 2010

Vs.

1.The Management,
A 2762 Pallapatti Milk Producers
Co-operative Society Limited,
Pallapatti, Nilakottai Taluk,
Dindigul District.

2.The Presiding Officer,
Labour Court,
Tiruchirapalli.

... Respondents in both W.Ps.

Prayer in W.P.(MD)No.6436 of 2010: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the termination order passed by the first respondent, dated 24.07.1992 and consequent order passed by the second respondent in his proceedings in I.D.No.175/1995, dated 13.08.2003 and quash the same and direct the first respondent Management to reinstate the petitioner with continuity of service and all monetary benefits.

Prayer in W.P.(MD)No.9609 of 2010: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings in I.D.No.168/1995, dated 08.09.2004 and quash the same and direct the first respondent Management to



reinstate the petitioner with continuity of service and all monetary benefits.

For Petitioner in both W.Ps.: Mr.S.M.Mohan Gandhi
For R1 in both W.Ps. : Mr.S.Seenivasagam

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C O M M O N O R D E R

Challenging the order of termination of the first respondent Management, dated 24.07.1992, the consequential order of the second respondent/Labour Court in I.D.No.175/1995, dated 13.08.2003 and in I.D.No.168/1995, dated 08.09.2004, these writ petitions have been filed.

2. The case of the petitioners is that they worked as Milk Vendor under the first respondent Management. The petitioner in W.P. (MD).No.6436 of 2010 served more than 21 years and the petitioner in W.P.(MD).No.9609 of 2010 served more than 17 years and they received a meagre amount as monthly salary and they are the Members of CITU Trade Union. The CITU Union raised certain demands for the welfare of the Members of the first respondent Management. In view of the above demand, the first respondent Management turned vindictive against the petitioners and suspended the petitioner in W.P.(MD). No.6436 of 2010 on 09.07.1992 and suspended the petitioner in W.P. (MD).No.9609 of 2010 on 09.03.1992. Thereafter, on 26.04.1992, the first respondent Management has issued a charge memo against the petitioners for the reason that they prevented the co-workers from receiving the notices issued by the respondent Management, on 11.06.1991 and they have also attacked the Accountant of the Society viz., Muniyandi, on 08.03.1992, at about 8.30 p.m. by throwing chilli powder in the eyes of the co-rider and thereby the petitioners have created a fear among the employees. Thereafter, an enquiry was conducted and based on the enquiry report, the petitioners were terminated from service. Aggrieved by the said order of termination, the petitioners have raised an industrial dispute in I.D.Nos.175 of 1995 and 168 of 1995 before the Labour Court, Tiruchirapalli. The Labour Court, Tiruchirapalli / the second respondent herein has dismissed the claim petitions filed by the petitioners. Challenging the same, the present writ petitions have been filed.

3. The learned counsel appearing for the petitioners would submit that during the pendency of these matters, the petitioner in W.P.(MD).No.6436 of 2010 died and his legal heir is impleaded as the petitioner. He would further submit that the petitioners did not commit any offence as alleged in the charge memo and after trial, the case was ended in acquittal. However, in order to vindictive action, the petitioners were terminated from service and the Labour Court has also failed to consider the said issue and dismissed the I.D.No.175 of 1995, on 13.08.2003 and I.D.No.168 of 1995, on 08.09.2004. Hence, he prays for allowing these writ petitions.



4. The learned counsel appearing for the first respondent Management would submit that the claim against the petitioners clearly established before the Enquiry Officer and thereafter, the Enquiry Officer has filed a proven report before the disciplinary authority. Thereafter, the petitioners were dismissed from service and the same was confirmed by the Labour Court and if this Court modifies the punishment, it will be encomium to the wrong doers to do further action. Therefore, he prays for dismissal of these writ petitions.

5. Heard the learned counsel for the petitioners, learned counsel for the first respondent and perused the materials available on record.

6. Admittedly, the petitioners are the Members of the CITU Trade Union and the Union has raised certain demands for the welfare of the Members. The petitioners alleged that the first respondent Management turned vindictive against the petitioners and suspended them from service. On 26.04.1992, the first respondent Management has issued the charge memo against the petitioners stating that they have prevented the co-workers from receiving the notices issued by the respondent Management on 11.06.1991 and they have also attacked the Accountant of the Society viz., Muniyandi, on 08.03.1992. All these issues have been established before the Labour Court, Tiruchirapalli and hence, this Court is not inclined to interfere with the order of the Labour Court.

7. However, before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioners is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution has to be considered.

8. 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 delinquency. 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, arbitrary 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)

9. 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 petitioners is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

10. This court has already held that all these issues have been established before the Labour Court, Tiruchirapalli. However, the short issue is whether the said delinquency warrants the punishment of dismissal from service. It is not a case of misappropriation or corruption and the dispute is in between the Management and the Employees and the order of punishment is too excessive. In the fitness of things, this Court is of the considered view that the punishment imposed on the petitioners should be modified to one of compulsory retirement.

11. Accordingly, these Writ Petitions are dismissed, but the punishment imposed on the petitioners is modified from one of dismissal from service to one of compulsory retirement without back wages, however, the petitioners are entitled to continuity of service from the date of their entry into service till the date of their compulsory retirement. The first respondent Management is directed to calculate the monetary benefits payable to the petitioners as a result of the modification of the punishment and



pay the same to the petitioners within a period of eight weeks from the date of this order. However, the petitioners would not be entitled for any interest on the said payment. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Akv

To

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

+1 CC to M/s.S.M.MOHAN GANDHI, Advocate (SR-37[F] dated
05/01/2021)

+1 CC to M/S.S.SEENIVASAGAM, Advocate Sr.No.162

W.P. (MD) Nos. 6436 and 9609 of 2010

04.01.2021

KUN (CO)

NR (04/02/2021) 5P : 4C