



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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Writ Petition (MD)Nos.8504 and 10533 of 2010

and

M.P.(MD).No.1 of 2010 & M.P.(MD).Nos.1 and 2 of 2011

W.P.(MD)No.8504 of 2010

Nandha Gas Agency
represented by its Proprietor
K.Senthilvel,
No.1, Gandhi Main Road,
Srirangam, Trichy - 6.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tiruchirapalli.

2.N.Shanmugam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned award dated 19.11.2009 made in I.D.No.58 of 1997 on the file of the first respondent and quash the same.

For Petitioner	:	Mr.G.Mohankumar for Mr.R.Vijayakumar
For R2	:	Mr.G.Ethirajulu for M/s. K.Hemakarathikeyan

W.P.(MD)No.10533 of 2010

N.Shanmugam

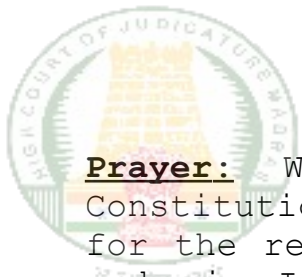
... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tiruchirapalli.

2.The Management,
Nanda Gas Agency,
No.I, Gandhi Main Road,
Srirangam,
Trichy -6.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned award dated 19.11.2009 made in I.D.No.58 of 1997 on the file of the first respondent Labour Court in respect of rejection of back wages and other benefits to the petitioner herein and quash the same and consequently direct the second respondent herein to pay the back wages and other benefits to the petitioner.

For Petitioner : Mr.G.Ethirajulu
for M/s. K.Hemakarthikeyan
For R2 : Mr.G.Mohankumar
for Mr.R.Vijayakumar

C O M M O N O R D E R

W.P.(MD).No.8504 of 2010 has been preferred by Nandha Gas Agency, challenging the award of the Labour Court, Trichy passed in I.D.No.58 of 1997 dated 19.11.2009.

2. W.P.(MD).No.10533 of 2010 has been preferred by the workman, challenging the award of the Labour Court, Trichy passed in I.D.No.58 of 1997 dated 19.11.2009, in respect of the rejection of back wages and other benefits to the petitioner.

3. Since the issue involved in both the writ petitions is one and the same, they have been taken up together and disposed of by this common order.

4. The case of the petitioner Management is that the second respondent / workman was employed as a Cylinder Delivery Boy in the petitioner Management. The Management has appointed one Murugaiyan as a delivery boy. Aggrieved by the said new appointment, the second respondent/workman along with some other employees have objected the appointment, started an illegal strike on 02.05.1996 and abused the co-employee and threatened them with dire consequences. The second respondent/workman has also abused the customers, proprietor's family and obstructed the delivery of gas cylinders. For the above said illegal activities, the Management has issued the charge memo against the second respondent/workman on 19.06.2006 and on 04.07.1996. After receipt of the same, the second respondent/workman has submitted his explanation admitting the illegal strike. Since the reply was not satisfactory, an enquiry officer was appointed to conduct a domestic enquiry. The second respondent did not co-operate for enquiry. Hence, the enquiry officer has submitted a report on the basis of the oral and documentary evidence adduced by the



Management. The petitioner Management accepted the enquiry report and sought for explanation from the second respondent and the second respondent has also offered his explanation on 15.12.1996. Thereafter, the petitioner Management dismissed the second respondent from service on 23.12.1996. Aggrieved by the said dismissal order, the second respondent/workman has raised an industrial dispute in I.D.No.58 of 1997 before the first respondent/Labour Court, Trichy, stating that the enquiry was not conducted in a fair manner. Hence, the Labour Court has treated the same as a preliminary issue and passed an award on 09.06.1998, holding that the enquiry was not conducted in a free and fair manner. Thereafter, the petitioner Management has challenged the said order in W.P.No.5866 of 2000 and the same was allowed on 26.06.2009, holding that the enquiry was conducted in a proper manner and remitted the matter back to the Labour Court for passing final order, in accordance with law. Therefore, the Labour Court has conducted an enquiry, after affording opportunity to the petitioner Management and the second respondent/workman, and held that out of six charges, four charges were proved and two charges were not proved and for proving charges, the Labour Court has denied the back wages and for not proving charges, ordered for reinstatement. Challenging the same, the present writ petitions have been filed.

5. The learned counsel appearing for the petitioner Management would submit that the petitioner Management has challenged the preliminary award passed by the Labour Court in W.P.No.5866 of 2000, in which the second respondent / workman has also filed W.P.M.P.No.35368 of 2001, claiming 17(B) wages and this Court has issued a direction to the Labour Court to conduct enquiry whether the workman gainfully employed elsewhere, by order dated 06.08.2002. In compliance of the said order, the Labour Court has conducted an enquiry and filed a report in the above said W.P.M.P.No.35368 of 2001, stating that the second respondent/workman is gainfully employed in Thilak Gas Agency on monthly salary of Rs.1030/-. Thereafter, this Court has denied the back wages to the workman and remanded the matter back to the Labour Court for conducting trial in respect of the charges levelled against him. He would further submit that the order of reinstatement is legally not sustainable and when the workman was involved in a misconduct, in order to maintain the smooth functioning of the Management, the order of dismissal is perfectly valid.

6. In support of his contentions, the learned counsel for the petitioner Management has relied on a decision of the Division Bench of this Court reported in **(2010) 0 Supreme (Mad) 1136 (MAK India Private Limited represented by its Managing Director,**



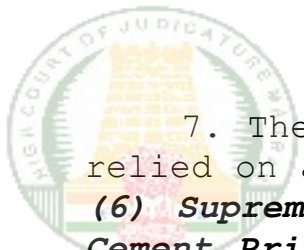
Coimbatore vs. A.Palaniswamy & Others). It is relevant to extract paragraphs Nos.12 to 15.

"12. We are of the considered view that as the High Court is not an Appellate Authority under **Article 226** of the Constitution of India and the learned single Judge was right in not interfering with the findings of the Labour Court but exercised his judicial discretion in judicial review by denying the backwages for a period of seven years from August 1984 to July 1991 and further directed reinstatement of the respondents 1 to 3/claimants in their respective posts with continuity of service and payment of backwages from August 1991, thereby modifying the Award passed by the Labour Court.

13. Coming to the aspect of the present case, the learned counsel for the Appellant/Management informs this Court that the Appellant/Management is not functioning and as a matter of fact, the respondents 1 to 3/claimants had settled their accounts after the dismissal order dated 14.08.1984, issued to them.

14. The respondents have filed counter affidavit stating that they have approached the Management and they were denied employment. According to the Management, the accounts were settled and hence there was no question of employment.

15. It cannot be forgotten that the date of dismissal of the respondents 1 to 3/claimants dates back to 14.08.1984, 14.06.1984 and 14.09.1984 respectively and nearly 15 years have gone by. In the affidavit filed by respondents 1 to 3, there are no averments that the respondents 1 to 3 were not gainfully employed elsewhere. Therefore taking note of the development that the Appellant/Management is not functioning (as informed by the learned counsel for the appellant), such orders of reinstatement of the respondents 1 to 3/claimants in their respective posts with continuity of service and payment of backwages from 1991 as ordered by the learned single Judge passed in the writ petition in W.P.No.6556 of 1990 dated 23.09.1998 will not serve the desired purpose to the respondents/claimants and in order to do equitable justice and to promote the substantial cause of justice, we are inclined to interfere with the said order of the learned single judge and instead we direct the Appellant/Management to pay a sum of Rs.50,000/- (Rupees fifty thousand only) each to the respondents/claimants in full quit as compensation within a period of eight weeks from the date of receipt of a copy of this order and accordingly, dispose of the writ appeal in the above terms without costs. The connected miscellaneous petition is closed.



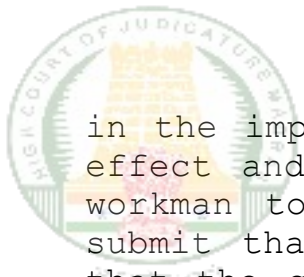
7. The learned counsel for the petitioner Management has also relied on a decision of the Hon'ble Supreme Court reported in **2007 (6) Supreme 609 (U.B.Gadhe & others etc., vs. G.M.Gujarat Ambuja Cement Private Limited)** . It is relevant to extract the following paragraphs.

18. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

22. Power and discretion conferred under the Section needless to say have to be exercised judicially and judiciously. The Court exercising such power and finding the misconduct to have been proved has to first advert to the question of necessity or desirability to interfere with the punishment imposed and if the employer does not justify the same on the circumstances, thereafter to consider the relief that can be granted. There must be compelling reason to vary the punishment and it should not be done in a casual manner.

23. We would have asked the High Court to consider that aspect. But considering the long passage of time, it would not be proper to do so since the employer seems to be a public utility service and the workmens' continued utility to the employer is gravely doubtful in view of their conduct. After such a long period, it would not be in the interest of parties to direct the High Court to consider parameters of Section 11-A of the Act. Therefore, we have considered the matter, taking into account the background facts. The proved misconduct is definitely serious. The respondent has, as a matter of good gesture, offered to pay each of the appellant rupees one lakh, in view of the fact that they have received payment upto December, 2004."

8. The learned counsel appearing for the second respondent/workman would submit that though the petitioner Management claimed that the workman gainfully employed in Tilak Gas Agency, that issue was not established before the Labour Court

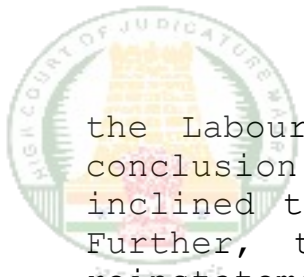


in the impugned I.D.No.58 of 199, there is no discussion to that effect and the said enquiry report is also not furnished to the workman to enable him to argue on that point. He would further submit that though the Labour Court has arrived at a conclusion that the charge Nos.1, 2, 3 and 6 are proved, the Management has not established the charge Nos.4 and 5 and for proving charges, the Labour Court has denied the back wages and for not proving charges, ordered for reinstatement. He would further submit that without any discussion and without framing any issues in respect of the back wages, denying the back wages is unsustainable one and the second respondent/workman is entitled to get back wages from the date of dismissal from service till the date of reinstatement.

9. Heard the learned counsel for the petitioner, learned counsel for the second respondent 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 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.

11. The facts in the present case are not in dispute and admittedly, this Court, while sitting under Article 226 of the Constitution of India, cannot re-appreciate the evidence, which was already discussed by the Labour Court and the only issue before this Court is whether the denial of back wages as well as the reinstatement are correct or not. Admittedly, the charge against the workman is that he went on strike on 02.05.1996 along with some other employees and abused the co-employees and threatened them with dire consequences and also obstructed the delivery of gas cylinders. Further, with regard to the charge Nos.4 and 5, they were not established before the Labour Court. The explanation given by the workman itself shows that the workman objected the appointment of one Murugian, who was working in Renga Gas Agency and the workman did not like the appointment made by the Management, for which he went on strike. However, for any appointment, it is the Management discretion to appoint their own employees, which the workmen have no right to say. Further,



the Labour Court, after elaborate discussion, had arrived at a conclusion that the charges are proved. Hence, this Court is not inclined to interfere with the award passed by the Labour Court. Further, the workman has crossed the age of 62 and ordering reinstatement after lapse of several years, order of reinstatement will not serve the desired purpose to the workman and the Hon'ble Apex Court, in the case of **U.B.Gadhe etc. etc. vs. G.M.Gujarat Ambuja Cement Private Limited** reported in **2007(6) Supreme 609**, arrived at a conclusion, considering the long passage of time, it would not be proper to do so since the employer seems to be a public utility service and the workmens' continued utility to the employer is gravely doubtful in view of their conduct. After such a long period, it would not be in the interest of parties to direct the High Court to consider parameters of Section 11-A of the Act

12. Applying the said ratio laid down by the Hon'ble Apex Court, instead of reinstating the workman to the petitioner Management, this Court is inclined to fix a fair compensation to the workman for the proved misconduct and as a matter of good gesture, the petitioner Management is directed to pay a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) to the workman within a period of four weeks from the date of receipt of a copy of this order.

13. With the above modifications, both the Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Presiding Officer,
Labour Court,
Tiruchirapalli.

+1 CC to M/s.K,HEMA KARTHIKEYAN, Advocate (SR-1070[F] dated
19/01/2021)

Writ Petition (MD)Nos.8504 and 10533 of 2010
18.01.2021

VR (CO)

TR (09.02.2021) 8P 3C