



WEB COPY

W.P (MD) Nos.10428 to 10430 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD) Nos.10428 to 10430 of 2012

R.Murugan ... Petitioner in W.P(MD)No.10428/2012
S.Thirumalai Nambi ... Petitioner in W.P(MD)No.10429/2012
K.Sappani ... Petitioner in W.P(MD)No.10430/2012

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Management,
Ragavendra Spinners,
24/3, Anna Nagar,
Suthamalli Pettai,
Tirunelveli District.

3.Sri Abirami Spin Tex,
24/3, Anna Nagar,
Suthamalli Pettai,
Tirunelveli District.

.. Respondents in all writ petitions

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus, to call for the records in I.D.Nos.275/1997, 61/1998 and 271/1997, dated 05.04.2011 on the file of the first respondent and quash the same as illegal and consequently directing the second respondent to reinstate the petitioners into service with all attendant benefits forthwith.

In all writ petitions:

For Petitioner : Mr.S.Kumar

For Respondent No.1 : Labour Court



For Respondent No.2 : Ms.S.Athirai
for Mr.M.E.Ilango

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, these writ petitions are taken up together and disposed of by a common order.

2. These writ petitions have been filed against the order of the Labour Court, dated 05.04.2011, passed in I.D.Nos.275/1997, 61/1998 and 271/1997, and for consequential direction to the second respondent to reinstate the petitioners into service with all attendant benefits forthwith.

3.The facts of the case are as follows:

The petitioners in these writ petitions were joined in the first respondent Mill as workers on 01.10.1991, 01.05.1991 and 01.01.1989 respectively, and they were paid Rs.832/-, Rs.1,450/- and 1,450/- respectively as monthly salary. As per agreement dated 06.11.1995, the first respondent failed to supply the material as fixed in the agreement due to which the workers could not achieve their target for which the second respondent reduced their monthly salary and the same was objected by the workers. As a result, the second respondent suspended four workers. In order to protest the illegal action of the second respondent, the remaining workers undertook the strike inside the work premises. Thereafter, the Labour Union called as Janata General Labour Sangam mislead the illiterate workers and forced to undertake general strike. Hence, on 19.12.1996, the second respondent issued charge memo to the petitioners alleging that the petitioners reduced the production and participated in the illegal strike. Immediately, the petitioners submitted their explanations to the charge memo. Thereafter, the Enquiry Officer drawn proven minutes against the petitioners and thereby, based on the proven minutes, the second respondent has terminated the petitioners with ulterior and oblique motive. Challenging the said order of dismissal, the petitioners raised industrial disputes in I.D.Nos.275/1997, 61/1998 and 271/1997.

3.1. Before the Labour Court, on the side of the Management Exs.M1 to M72 were marked and on the side of the workers, no documents were marked and no witnesses were examined on both side. Ex.C1 and Ex.C2 were marked as Court documents.

3.2. After analysing the documentary evidence, the Labour Court dismissed the industrial dispute raised by the petitioners. Challenging the said order of dismissal, the petitioners approached this Court with the above said prayer.



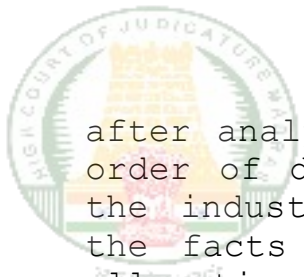
4. The learned counsel for the petitioner would submit that since the Labour Court dismissed the dispute raised by the petitioners for reinstatement and other backwages in the year 2011, after a lapse of so many years, it is not possible to reinstate the petitioners to the Mill. However, he would further submit that it would suffice if this Court modified the punishment by considering the past services of the petitioners, the petitioners may receive the contributions, namely, Gratuity and other benefits.

5. Per contra, the learned counsel for the second respondent would vehemently oppose that the petitioners had participated in the illegal strike and reduction in production, which was clearly established by the Enquiry Officer as well as the Labour Court, hence, the order of the Labour Court is perfect and there is no need to interfere with the award. Thus, he prays for dismissal of this writ petition.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the second respondent and perused the materials available on record.

7. 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.

8. The facts in the present cases are not disputed. Admittedly, the petitioners were entered into service in the year 1991 and 1995 respectively. While so, in the year 1996, the second respondent issued charge memo alleging that the petitioners participated in the illegal strike and reduced the production of the Mill, thereby, the Mill sustained huge loss. For the above said charges, Enquiry Officer was appointed and after full-fledged enquiry, he has drawn proven minutes and the same was established by the Enquiry Officer before the Labour Court. The Labour Court,



after analysing all the evidences in proper manner, justified the order of dismissal passed by the second respondent and dismissed the industrial dispute raised by the petitioners. However, from the facts and circumstances of the case, it is clear that the allegation against the petitioners is the participation of the illegal strike along with other co-workers and reduction of production. For the above said lapses, imposing maximum punishment of dismissal of service is not proportionate. Hence, I am inclined to modify the punishment. Further, mere order of dismissal does not restrict the petitioners for entitlement of Gratuity and other benefits. At the same time, the petitioners are not entitled for reinstatement and backwages. Accordingly, the punishment is modified to the effect that the petitioners are entitled for Gratuity and other contributions, if any, paid by the Management on behalf of the petitioners as well as paid by the petitioners during their service period.

9. Accordingly, the second respondent/Management is directed to settle all the eligible monetary benefits available to the petitioners, while they were in service, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. With the above direction, these writ petitions are disposed of. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PJL

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.



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To

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Tirunelveli.

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+1 CC to MR.M.E.ILANGO, Advocate (SR-8042[F] dated 02/03/2021)

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26.02.2021**

KM (24.03.2021) 5P 4C