



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)Nos.1550 and 1555 of 2011

and

M.P. (MD)Nos.1 and 1 of 2011

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W.P. (MD)No.1550 of 2011:

G.Subburaj ... Petitioner
Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management,
Vellaisamy Nadar Polytechnic,
Virudhunagar.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the first respondent made in the award in I.D.No.8 of 1999, dated 10.11.2010 and quash the same and direct the second respondent to reinstate the petitioner as Watchman with continuity of service and backwages.

W.P. (MD)No.1555 of 2011:

M.Ayyanar ... Petitioner
Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management,
Vellaisamy Nadar Polytechnic,
Virudhunagar.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the first respondent made in the award in I.D.No.7 of 1999, dated 10.11.2010 and quash the same and direct the second respondent to reinstate the petitioner as Watchman with continuity of service and backwages.

For Petitioner
in both petitions : Mr.S.Karthik
for M/s Profexes Associates



For Respondents
in both petitions

: Mr.P.Chandrabose
for R.2
: R.1 Court

* * * * *

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COMMON ORDER

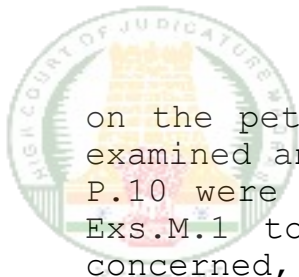
Since the facts relating to both petitions are interconnected, both the Writ Petitions are disposed of by this common order.

2. W.P.(MD)No.1550 of 2011 is filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent made in the award in I.D.No.8 of 1999, dated 10.11.2010 and quash the same and direct the second respondent to reinstate the petitioner as Watchman with continuity of service and back wages.

3. W.P.(MD)No.1555 of 2011 is filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent made in the award in I.D.No.7 of 1999, dated 10.11.2010 and quash the same and direct the second respondent to reinstate the petitioner as Watchman with continuity of service and back wages.

4. The case of the petitioners is that the petitioners were appointed as Watchman in the second respondent Management on 05.06.1989 and they were performing their duties to the satisfaction of their superiors and their last drawn salary was Rs.2,694/- per month. The petitioners were permanent employees and along with three other persons, they were working as Watchman with the second respondent. While so, the second respondent placed the petitioners under suspension on 27.02.1998 on the ground that one Subburaj (petitioner in W.P.(MD)1550 of 2011), was disobedient with the Principal(in-charge)viz., Thiru.K.Neethiraj and for his disobedience, the Principal(in-charge) instructed Ayyanar (petitioner in W.P.(MD)No.1555 of 2011) not to allow Subburaj to do duty, however the said Ayyanar had not followed the instructions given by the Principal(in-charge) and allowed the said Subburaj to do duty and when the same was questioned by the Principal(in-charge), he replied in an evasive manner. Hence, the said Principal (in-charge) complained to the second respondent and based on the complaint, the petitioners were placed under suspension. Thereafter, an Enquiry Officer was appointed and after conducting enquiry, the Enquiry Officer has drawn a proven minute and based on the proven minute, after following the due process of law, the petitioners were dismissed from service. Challenging the said order of dismissal, the petitioners raised industrial dispute before the Labour Court and the same was taken on file as I.D.Nos.8 and 7 of 1999 respectively.

<https://hcservices.ecourts.gov.in/hcservices/> In order to prove their case, in I.D.No.8 of 1999, either



on the petitioner or on the side of the Management, no witness was examined and on the side of the petitioner, the documents Exs.P.1 to P.10 were marked and on the side of the Management, the documents Exs.M.1 to M.24 were marked and insofar as I.D.No.7 of 1999 is concerned, either on the petitioner or on the side of the Management, no witness was examined and on the side of the petitioner, the documents Exs.P.1 to P.9 were marked and on the side of the Management, the documents Exs.M.1 to M.24 were marked.

6. After taking into considering the documents placed before the Labour Court, the Labour Court modified the punishment by holding that the Management should pay three years back wages as compensation to the petitioners.

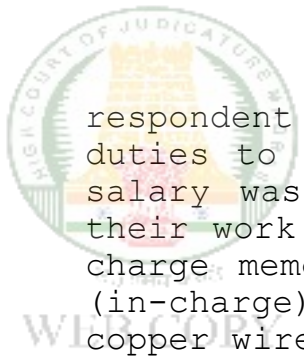
7. As against the said award, the petitioners filed the present writ petitions.

8. Learned Counsel appearing for the petitioners would submit that even a bare perusal of the complaint of the Principal, dated 27.02.1998 itself shows that there is no serious allegation against the petitioners and the only allegation against the petitioners is that the petitioners had not followed the instructions issued by the Principal, for which, major punishment was imposed. The Labour Court also without considering the charges levelled against the petitioners, modified the punishment, which is unsustainable one. The petitioners rendered ten years of service and the petitioners are aged about 59 and 57 years respectively, with any back wages and hence, this Court may order for reinstatement and accordingly, learned Counsel for the petitioners would pray for appropriate orders.

9. Per contra, the learned Counsel appearing for the second respondent would submit that the petitioners disobeyed the Principal and they abused him in a filthy language and while they were in service, 10K copper wires and one jet pump were also stolen and the petitioners were not perfect in their duty and thereby, charge memos were issued against the petitioners. Subsequently, enquiry was conducted and based on the proven minute, the order of dismissal was passed against the petitioners. Though the said order was modified by the Labour Court, the same cannot interfered under Article 226 of the Constitution of India by this Court. Hence, the learned Counsel appearing for the second respondent would pray for dismissal of the writ petitions.

10. Heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for the second respondent and perused the materials placed on record.

11. The facts in the present cases are not in dispute. The petitioners were appointed as Watchman in the second



respondent Management on 05.06.1989 and they were performing their duties to the satisfaction of their superiors and their last drawn salary was Rs.2,694/- per month. For their careless attitude in their work during the relevant point of time, they were issued with charge memos by stating that the petitioners abused the Principal (in-charge) and also they were responsible for the theft of 10K copper wires and one jet pump. However, on a perusal of the Exhibit M.1 - the complaint made by the the Principal Neethiraj, there is not even a single word mentioned in the complaint, as if the petitioners abused the Principal as stated in the counter filed in the petition filed under Section 2(A)(2) of the Industrial Disputes Act. Hence, all the averments made in the affidavit filed in the said petition were not in terms of the complaint issued by the Principal, which was marked as Ex.M.1 and hence, there is serious allegations as against the petitioners and the only allegation is that the petitioners were not in vigilant in duty, for which major punishment of dismissal is unwarranted.

12. 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 delinquent. 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)

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

14. Considering the facts and circumstances of the present case, for minor and filmy reasons, the petitioners were dismissed from service by the second respondent and the said order of dismissal was modified by the Labour Court, without properly weighed the evidences and without appreciation of materials placed before the Labour Court, which is unsustainable. The punishment imposed on the petitioners is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges. Therefore, the second respondent is directed to reinstate the petitioners and settle the benefits, as if the petitioners reached the age of superannuation. However, the petitioners are not entitled for any backwages from the date of termination till the date of reinstatement and further, the petitioners are entitled for continuity of services and other benefits.

15. With the above modifications, both the Writ Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

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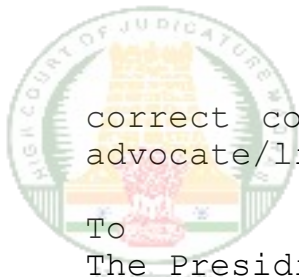
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Sub Assistant Registrar (CS)

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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

<https://hcservices.ecourts.gov.in/hcservices/>



correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Presiding Officer,
Labour Court,
Madurai.

+1 CC to M/s.P.CHANDRABOSE, Advocate (SR-3895[F] dated 09/02/2021)

W.P(MD)Nos.1550 and 1555 of 2011

05.02.2021

SSS (CO)

KK(23.02.2021) 6P 3C