



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.12627 & 15100 of 2012

and

M.P(MD)No.1 of 2012

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W.P(MD)No.12627 of 2012:-

A.Ranjan

... Petitioner

Vs.

1.Management,
Hi-Tech Aray Limited,
2, V.P.Rathinasamy Nadar Road,
North Chokkikulam,
Madurai - 14.

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pursuant to the award by the second respondent in I.D.No.23 of 1998, dated 29.12.2011, quash the same insofar as it relates to denial of reinstatement of the petitioner into service with backwages are concerned and consequently directing the first respondent herein to reinstate the petitioner into service with continuity of service, backwages and all other attendant benefits.

For Petitioner : Mr.D.Srinivasa Raghavan

For Respondents : Mr.K.Saravanan
for R - 1

W.P(MD)No.15100 of 2012:-

The Management,
Hi-Tech Aray Limited,
No.2, V.P.Rathinasamy Nadar Road,
North Chokkikulam,
Madurai - 14. (Now at No.33, Sarojini
Street, Chinna Chokkikulam,
Madurai - 625 002.

... Petitioner

Vs.



1.The Presiding Officer,
Labour Court,
Madurai.

2.A.Ranjan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records relating to the award of the first respondent in I.D.No.23 of 1998, dated 29.12.2011, quash the same.

For Petitioner : Mr.K.Saravanan

For Respondents : Mr.D.Srinivasa Raghavan
for R - 2

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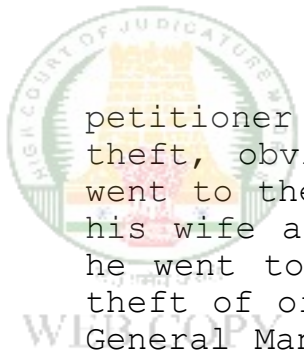
COMMON ORDER

W.P.(MD)No.12627 of 2012 is filed by the workman and W.P.(MD)No.15100 of 2012 is filed by the Management of the Hi-Tech Arai Limited, Madurai and both writ petitioners were filed as against the award passed by the Labour Court, Madurai, in I.D.No.23 of 1998, dated 29.12.2011.

2. Since the issues involved in both the writ petitions are one and the same, both the writ petitions are disposed of by this common order. For the sake of convenience, both the parties were hereinafter referred as the petitioner Management and the second respondent Workman.

3. The case of the petitioner Management is that the second respondent workman was working as Assistant Supervisor and drawing a salary of Rs.2,735/-per month. As Assistant Supervisor, he was appraising the work of others working under him and was allotting duty to others and he was also empowered to recommend leave and grant permission to workers and he worked as Supervisor and as such he will not be a workman as contemplated under Section 2(s) of the Industrial Disputes Act. Since the second respondent was not defined as Workman and he was employed as Supervisor which is under managerial capacity and for his proved misconduct supported by the satisfactory evidence, he was dismissed from service by an order dated 30.08.1997.

4. The facts and circumstances which led to the dismissal of the second respondent were that one Arivalagan was caught red handed at the gate on 06.02.1997 while he was stealthily removing 192 numbers of HTA 1062 oil seals belonging to the Management. The petitioner Management was making further enquiry and was contemplating to initiate criminal proceedings also. The second respondent having come to know about the serious actions, which the



petitioner Management was intending to proceed in respect of the theft, obviously out of fear, on 13.02.1997 around 09.30 p.m., he went to the house of the Deputy Manager (Administration) along with his wife and children and informed the Deputy General Manager that he went to the house of the Managing Director to inform about the theft of oil seals, who in turn directed him to approach the Deputy General Manager and informed about all the incidents and therefore, he has come and met the Deputy General Manager.

5. Before the Deputy General Manager, the second respondent admitted having removed stealthily the products manufactured by the petitioner Management from the factory and sold to third parties. For his admitted guilt, a charge memo was issued on 09.03.1997, along with a letter dated 31.03.1997 - a basic report was served on him. The second respondent submitted his explanations on 12.03.1997 and 04.04.1997 and since the same were found to be not satisfactory, the petitioner Management decided to conduct an enquiry. Accordingly, one S.Alagar Raja, Advocate was appointed as an Enquiry Officer and after conducting enquiry and after providing an opportunity of hearing to the second respondent, the Enquiry Officer has drawn a proven minute on 25.06.1997. A copy of the findings of the Enquiry Officer was sent to the second respondent by directing him to submit his explanation as to why the findings of the Enquiry Officer shall not be accepted.

6. On receipt of the said enquiry report the second respondent submitted his explanation on 07.07.1997 and the explanation offered by the second respondent was found to be not satisfactory. Thereafter a second show cause notice dated 05.08.1997 was served on the second respondent by directing him to submit his explanation. After receipt of the further explanation submitted by the second respondent, being found to be unsatisfactory, the petitioner Management dismissed the second respondent from service on 30.08.1997. Challenging the said order of dismissal, the second respondent raised an industrial dispute by invoking the provisions under Section 2-A of the Industrial Disputes Act before the Assistant Commissioner of Labour, Madurai and the same was taken cognizance by the Labour Court, Madurai as I.D.No.23 of 1998.

7. The Labour Court, having heard the preliminary issues viz., whether the second respondent could be construed as a workman and whether the enquiry was fair and proper, decided the other issues also which was not heard viz., whether the punishment imposed on the second respondent is justified and to what other relief he would be entitled to.

8. The Labour Court, after taking into consideration the oral and documentary evidences placed on record, modified the punishment and fixed a compensation of Rs.1,75,000/- payable to the second respondent. The petitioner Management, however denied the



reinstatement of the second respondent with back wages.

9. Challenging the fixation of compensation amount of Rs.1,75,000/-, the petitioner Management filed the writ petition in W.P.(MD)No.15100 of 2012. Challenging the denial of reinstatement with back wages, the second respondent filed the writ petition in W.P.(MD)No.12627 of 2012.

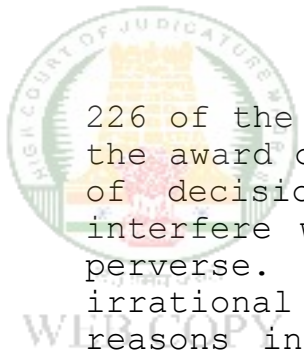
10. Learned Counsel appearing for the petitioner Management would submit that second respondent is not a workman defined under Section 2(s) of the Industrial Disputes Act and his nature of job was supervisor category and he was under the managerial capacity and when the second respondent worked under the managerial capacity, the industrial dispute raised by the second respondent in the capacity of workman is not sustainable in law and that issue was not properly considered by the Labour Court and the Labour Court erroneously fixed the compensation, which is non-est in law.

11. Learned Counsel for the petitioner Management would further submit that on the side of the petitioner Management, one Srivathsa Baskaran was examined as Management witness and 47 documents viz., Exs.M.1 to M.47 were marked. However, the Labour Court arrived at a conclusion that the charges against the second respondent were not proved and further the Labour Court came to the conclusion that there was an employer and employee relationship between the petitioner Management and the second respondent and it was also found that the petitioner Management lost the confidence with the second respondent and thereby modified the punishment to the extent of fixing compensation of Rs.1,75,000/-, which is unsustainable one. Accordingly, the learned Counsel would pray for appropriate orders.

12. Per contra, learned Counsel appearing for the second respondent would submit that though the Labour Court arrived at a conclusion that the charges levelled against the second respondent were not established and also arrived at a conclusion that there was an employer and employee relationship between the petitioner and the second respondent, it has to consider as to whether the punishment order of dismissal imposed against the second respondent is disproportionate or not. Though the Labour Court found that the charges against the second respondent were not proved, the denial of reinstatement of the second respondent with back wages is unsustainable one and hence, he would pray for appropriate orders.

13. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent and perused the materials placed on record.

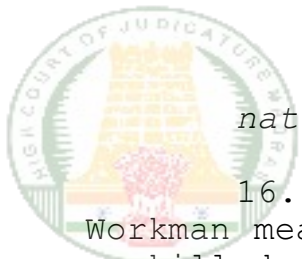
14. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to



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 Employer Management was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is solely responsible for the guilt and the same is affected the reputation of the Employer Management.

15. The facts in the present case are not in dispute. The petitioner Management claimed that the second respondent worked as supervisor in the petitioner Management and his nature of job was supervising and supporting the officials and his duty was in managerial capacity and he has not come under the purview of workman as contemplated under Section 2(s) of the Industrial Disputes Act. For better appreciation, Section 2(s) of the Industrial Disputes Act is extracted hereunder:

" 2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-
(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
(ii) who is employed in the police service or as an officer or other employee of a prison, or
(iii) who is employed mainly in a managerial or administrative capacity, or
(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial



nature.] "

16. A perusal of the above provision, it would reveal that Workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory, who is employed mainly in a managerial or administrative capacity and who being employed in a supervisory capacity, draws wages exceeding Rs.10,000/-. The crucial issue arises for consideration before this Court is that as to whether the second respondent was employed in the managerial capacity and has drawn the wages exceeding a sum of Rs.10,000/- per month. In the present case, the petitioner Management has failed to produce adequate evidence to prove that the second respondent received the salary more than Rs.10,000/- per month and that issue was not established before the Labour Court. Therefore, the conclusion arrived at by the Labour Court that the second respondent was not a Supervisor and was a workman cannot be interfered with.

17. Further, the Labour Court arrived at a conclusion that the charges levelled against the second respondent were not proved. The management witness claimed that the second respondent admitted his guilt before the Deputy General Manager. However, the said admission was not marked by way of documentary evidence or by way of oral evidence and the said Deputy General Manager was also not examined as Management witness. Further he has not recorded any statement or obtained any written statement from the second respondent. The Management witness is an interested witness and the said interested witness's statement cannot be accepted in the eye of law, unless that statement is proved in the manner known to law, by way of marking evidence.

18. Further in respect of the second respondent's claim for denial of reinstatement with back wages is concerned, admittedly, the Labour Court arrived at a fair conclusion by considering the relationship between the petitioner Management and the second respondent that ordering for reinstatement will create unnecessary dispute in between the petitioner Management and the second respondent. Therefore, the Labour Court arrived at a fair compensation to be paid by the petitioner Management to the second respondent to the tune of Rs.1,75,000/-, which is reasonable and justifiable one.

19. In respect of denial of back wages, the second respondent did not adduce any evidence to show that he was not gainfully employed elsewhere during his non-employment period. Therefore, the denial of reinstatement with back wages by the Labour Court is sustainable one and it does not warrant any interference.

20. For the reasons aforesaid, both the writ petitions are dismissed and, accordingly, the same are dismissed.



Consequently, connected Miscellaneous Petition is also dismissed.
There shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

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// True Copy //

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Sub Assistant Registrar(CS)

SSL

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

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+2 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-8722,8723[F])

+1 CC to M/s.K.JAYARAMAN, Advocate (SR-8910[F] dated 04/03/2021)

W.P(MD)Nos.12627 & 15100 of 2012
03.03.2021

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AC(CO)

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