



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2021

CORAM

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD)No.3756 of 2011

and

MP (MD)No.1 of 2011

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A.R.M.Seshu

... Petitioner

Vs

The Management,
Sri Kannattal Mills Limited,
Okkur, Sivagangai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of I.D.No.40 of 1999, order dated 16.12.2010 on the file of the Presiding Officer, Labour Court at Madurai and quash the same and consequently direct the respondent to permit the petitioner to continue his service with all back wages with continuity of service.

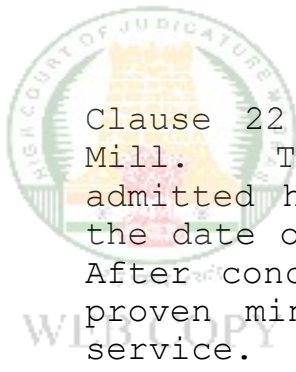
For Petitioner : Mr.P.Muthuvijayapandian

For Respondent : Mr.Jerin Mathew
for Mr.M.E.Ilango

O R D E R

Challenging the Award passed by the Labour Court, Madurai, in I.D.No.40 of 1999, order dated 16.12.2010 and direct the respondent to permit the petitioner to continue his service with all back wages with continuity of service, the Writ Petition has been filed.

2.The learned counsel for the petitioner would submit that the petitioner has joined as a Watchman in the respondent Management in the year 1986 and his salary was fixed as Rs.200/- from the date of his initial appointment. At the time of dispute, the petitioner draw Rs.2900/- as monthly salary. While so, on 14.05.1998, the petitioner went to the company for the duty, but to the shock and surprise, he was orally terminated from service. Immediately, thereafter, the petitioner approached the officials in the company. However, no one given proper reply to the petitioner. Thereafter, on 01.06.1998 a show cause notice was issued stating that as if he was slept, when he was in duty at 01.06.1998 and the same is grave misconduct as per



Clause 22(1) and 22(m) of the Standing Order of the respondent Mill. Thereafter, enquiry was conducted and the petitioner admitted his guilt and gave apology letter to the respondent, on the date of dispute, which was adjudicated by the Enquiry Officer. After conclusion of the enquiry and the Enquiry Officer drawn a proven minute, based on which, the petitioner was removed from service. Challenging the said dismissal order, the petitioner filed an application in I.D.No.40 of 1999 before the Labour Court, Madurai and after taking into consideration, the service rendered by the petitioner in the respondent Management, the Labour Court, Madurai passed award for reinstatement and denied the back wages. As against the denial of back wages, the petitioner filed a present writ petition before this Court.

3.The learned counsel for the petitioner would submit that the respondent communicated, they are going to settle the statutory benefits within a reasonable period of time as fixed by this Court. He would further submit that though the Labour Court passed award for reinstatement as a fresh entrance, however, denied the back wages is unsustainable one. He would further submit that the petitioner not gainfully employed anywhere and the same was established. Hence, denying the back wages is unsustainable one and accordingly, he prayed for allowing this petition.

4.The learned counsel for the respondent would submit that the respondent is ready to comply the order passed by the Labour Court in respect of reinstatement. The learned counsel would further submit that the order of denial of back wages passed by the Labour Court cannot be interfered with, for the simple reason that the petitioner/workman did not establish his case before the Labour Court that during the period of termination, he was not a gainful employee. Unless the petitioner/workman established before the Labour Court for his gainful employment and without any documents, the denial of back wages by the Labour Court cannot be interfered with and accordingly, he would pray for dismissal of the writ petition.

5.In support of his contentions, the learned counsel for the respondent 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, the learned single Judge 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.

6. The learned counsel for the respondent 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



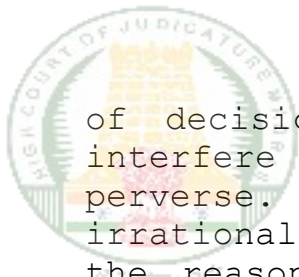
"18. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management 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."

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent Management and perused the materials available on record.

8. 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.

9.Considering the facts and circumstances of the case, the case against the petitioner is that he slept, while he was in duty and the same was admitted by the petitioner himself before the Enquiry Officer. Since the petitioner himself admitted his guilt and his apology was accepted, he was allowed to join duty. Thereafter, oral termination order was passed, which was challenged before the Labour Court. The Labour Court after considering the entire facts including the apology letter given by the petitioner, the order for reinstatement was passed as fresh entrance, however, denied the back wages. The Hon'ble Apex Court clearly held that unless the petitioner did not gainfully employed anywhere, further there must be an adjudication with regard to the gainful employment before the Labour Court, denial of back wages by the Labour Court cannot be interfered with under Article 226 of the Constitution of India. In the present case, there is no issue with regard to the gainful employment of the petitioner before the Labour Court and the award passed in the year 1989 and almost 21 years are lapsed and hence, the order of reinstatement is no freshable one. 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.

10. Further, the Labour Court passed the award in the year 1999. Almost 21 years was lapsed. At this point of time, ordering reinstatement as fresh may not be proper. Hence, instead of reinstatement and back wages, it would be appropriate to award some compensation in favour of the petitioner.

11.In view of the above discussions, the respondent Management is directed to pay a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty thousand only) without any interest to the petitioner as full and final settlement, within a period of four weeks from the date of receipt of a copy of this order.



12. With the above modification, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS-I)

// True Copy //

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

To

The Presiding Officer, Labour Court at Madurai.

+1 CC to MR.P.MUTHU VIJAYAPANDIAN, Advocate (SR-1254[F] dated 19/01/2021)

+1 CC to MR.M.E.ILANGO, Advocate (SR-1235[F] dated 19/01/2021)

W.P. (MD) No. 3756 of 2011
18.01.2021

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