



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.01.2021
CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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W.P.(MD)Nos.8854, 8855, 8856 and 8857 of 2011
and
M.P.(MD)Nos.1, 1, 1 and 1 of 2011

The Management,
Thangaraj Match Works,
Kilavipatti Village,
Pandavarmangalam Post,
Kovilpatti Taluk,
Tuticorin District.

: Petitioner in all petitions

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli District.

: 1st Respondent in all petitions

2.E.Shanmugavel

: 2nd Respondent in W.P.(MD)No.8854 of 2011

3.M.Deivendran

: 2nd Respondent in W.P.(MD)No.8855 of 2011

4.M.Nagaraj

: 2nd Respondent in W.P.(MD)No.8856 of 2011

5.M.Ponraj

: 2nd Respondent in W.P.(MD)No.8857 of 2011

COMMON PRAYER:- Petitions filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records on the file of the Labour Court/1st respondent herein in the proceedings of I.D.No.4, 5, 6 and 7 of 2006 and quash the common award, dated 09.03.2011.

For Petitioner

(in all petitions)

: Mr.B.Rajesh Saravanan

For R2

(in all petitions)

: Mr.D.Srinivasa Raghavan

COMMON ORDER

Challenging the award passed by the first respondent in I.D.Nos.4, 5, 6 and 7 of 2006, dated 09.03.2011, respectively, these writ petitions have been filed.

2.Since the issues involved in these writ petitions are similar, all the writ petitions are disposed of by way of this common order.

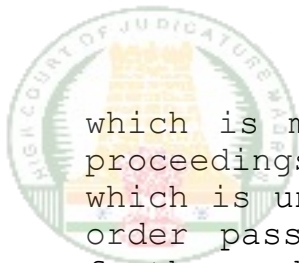
<https://hcservices.ecourts.gov.in/hcservices/>



3. These writ petitions are filed by the petitioner Management as against the award passed in favour of the workmen, who are arrived as the second respondent in the respective writ petitions, hereinafter called the petitioner as Management and the second respondent in all the writ petitions are referred to as workmen.

4. It is the case of the petitioner that the petitioner Management is running the Match work in the name and style of Thangaraj Match Works and the workmen worked under the petitioner Management and they misbehaved with all work norms and they were not attending their work regularly and without permission of the petitioner Management, they absented from duty frequently. The petitioner is a manufacturing factory, where smoking is strictly prohibited. However, some of the workmen used to smoke within the factory premises and further, some of the workmen misbehaved with the women employees, for which, a criminal case was registered against some of the workmen and further, the workmen prevented the Labour Officer from entering the office premise, for which, the police had registered a criminal case against the workmen and further, one of the workmen misbehaved with one Lakshmi, daughter of Mariammal of Kovilpatti and when she was working in the petitioner's Match Factory, the said Lakshmi was not able to bear the torture for the workmen and had committed suicide, for which, the petitioner Management issued a show cause notice to the workmen. After receipt of the said show cause notice, the workmen issued a Lawyer's notice on 19.07.2005 with false averments, in which, he specifically stated that he was working under the petitioner Management till 19.07.2005, wherein, he raised a Industrial Dispute as if the petitioner Management issued an oral termination order on 18.07.2005 and that itself shows the contrary stand taken by the workmen before the Labour Court. Thereafter, the workmen with his false averments, filed a petition before the Labour Court, Thoothukudi for fresh consideration and that the Labour Officer filed a failure report. Thereafter, the second respondent workmen filed a case under Section 2 (A) (2) of the Industrial Disputes Act before the first respondent/Labour Court and the same was taken on file as I.D.Nos.4, 5, 6 and 7 of 2006 and in order to prove their case, the petitioner Management examined one witness and marked six documents. In order to dispute the petitioner Management's version, the workmen, marked Ex.W.1 to W.6 and examined one Shanmugavel as a witness and after elaborate discussion, the Labour Court rejecting the evidence of the Management and accepting the evidence of workmen, passed an award in favour of the workmen for reinstatement with continuity of service, however, denied the backwages. Challenging the same, the present writ petitions have been filed by the petitioner before this Court.

5. The learned counsel for the petitioner would submit that though no oral termination order was passed as alleged in the Industrial Dispute, the show cause notice was issued on 15.07.2005,



which is marked as Ex.M.2 and before the decision in the enquiry proceedings, hurriedly the workmen raised the Industrial Dispute, which is unsustainable one and in fact, there is no oral termination order passed on 18.07.2005 as alleged by the workmen. He would further submit that when there is no oral termination passed and the enquiry is pending, since the order of the Labour Court for passing the award for reinstatement with continuity of service, is unsustainable one. Accordingly, he prayed for allowing these petitions.

6.The learned counsel for the second respondent in the respective writ petitions would submit that the petitioners' Management accepted the second respondent as workmen and the relationship is not disputed. Further, the Labour Court arrived at a conclusion as if he issued a show cause notice on 15.07.2005. Thereafter, no enquiry was conducted. After a lapse of one year, the workmen filed a case before the Labour Officer arising a dispute before the Labour Officer and filed a failure report even before the Labour Officer and they have not stated anything with regard to the disciplinary proceedings, which was initiated in the year 2005. Hence, the Labour Officer filed a failure report and thereafter, the workmen raised the Industrial Dispute as against the oral termination. The oral termination was established before the Labour Court, based on the evidence and the Labour Court passed award, which cannot be interfered with under Article 226 of the Constitution of India. Hence, he prayed for the dismissal of these writ petitions.

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

8.Before this Court venture 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 decision 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.

9.Considering the facts and circumstances of the case and on perusal of the award of the Labour Court, it would clearly show that on 15.07.2005, a show cause notice was issued by the petitioner Management to the second respondent workmen, in which, they made an allegation that they were irregular in duty and prevented the officials from entering the office premises and misbehaved with the women employees. However, the show cause notice was issued on 15.07.2005. Thereafter, no Enquiry Officer was appointed and enquiry was not conducted in the manner known to law and there are some evidence produced before the Labour Court, which are all lawyer's notice and no show cause notice was not issued in the manner known to law. Further, the Labour Court arrived at a conclusion that the oral termination was established before the Labour Court and the petitioner himself thought that there is no oral termination. However, without conducting any enquiry, based on the show cause notice and failure to engage the second respondent workmen in the petitioner Management itself shows that there was an oral termination without following the procedures. Hence, there is no reason to interfere with the award passed by the Labour Court.

10.Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court,
Tirunelveli District.

+1 CC to Mr.D.SRINIVASARAGHAVAN, Advocate (SR-1338[F] dated
20/01/2021)

W.P. (MD)Nos.8854, 8855, 8856 and 8857 of 2011
18.01.2021

VB (03.03.2021) 4P 3C