



W.P.No.3534 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3534 of 2019
and W.M.P.Nos.3844 & 3845 of 2019

The Manager
Tata Coffee Limited
Pachaimalai Estate, Valpaarai Post
Coimbatore District.

.... Petitioner

-Vs-

S.Muthu

.... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the Presiding Officer, Additional Labour Court, Coimbatore and quash the impugned Award dated 24.11.2017 made in I.D.No.54 of 2010 to the extent it directs payment of 25% back wages.

For Petitioner : Mr.M.Vijayan
for M/s.King and Patridge

For Respondents : Mr.S.Muthu – Party-in-Person

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the records on the file of the Presiding Officer, Additional Labour Court, Coimbatore



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and quash the impugned Award dated 24.11.2017 made in I.D.No.54 of 2010 to the extent it directs payment of 25% back wages.

2. The respondent was working as a worker at the petitioner's Coffee Estate. While so, there was a departmental proceedings initiated against him followed by domestic enquiry, pursuant to which on the alleged definite charge against the respondent, he was removed from service by order of the Management dated 04.07.2009.

3. As against the said order of removal, the petitioner raised an industrial dispute in ID No.54 of 2010 before the Labour Court, Coimbatore. The Labour Court found that the domestic enquiry was not properly conducted. Therefore, the parties were permitted to let in evidence and on behalf of the management three persons were examined and documentary evidences were produced. Likewise, on the side of the workman also, evidences were placed. Considering the said evidences, the labour Court passed an award on 24.11.2017 under which the Labour Court set aside the order of dismissal dated 04.07.2009 and the Management was directed to reinstate the worker in service with continuity of service within one month period and also the worker was entitled to 25% back wages for the non working period ie., from 2009 to 2013, however he was not entitled to other benefits.



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4. Challenging the said award only in respect of the 25% back wages for the non-working period from 2009 to 2013, the present writ petition has been filed by the Management.

5. Heard Mr.M.Vijayan, learned counsel for the petitioner Management who would submit that the award of the labour court, in all other respects has been accepted by the petitioner Management, pursuant to which in fact the respondent worker was reinstated on 11.04.2018, which is an admitted fact. However, subsequently from 15.09.2018 he was not reporting to duty, to that extent further disciplinary action has to be initiated against him.

6. Learned counsel for the Management would submit that, insofar as the awarding of 25% back wages for the total non working period from 2009-2017 is concerned, the petitioner Management is aggrieved and the charges framed against the worker based on the evidence, though had been proved, the Labour Court ought to have accepted such evidence. But, on the reason that pursuant to the said complaint received from the management against the worker since there was no police complaint given, the evidence adduced on behalf of the management was not properly appreciated and that is why such award was passed. Therefore, in fact the entire award passed by the Labour Court is infirm



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and in order to purchase the peace, the petitioner Management wanted to accept the award with regard to reinstatement with continuity of service except the back wages. Therefore, to that extent the award of the Labour Court which is impugned herein can be modified, he contended.

7. Per contra, the respondent worker who appeared party-in-person would submit that, the charge framed against him was in fact not proved during the domestic enquiry and though the worker denied the charge, the domestic enquiry was conducted by the management and it stated that the charges were proved and that is the reason why when an industrial dispute was raised against the order of dismissal made against the worker dated 04.07.2009 as a preliminary issue, the domestic enquiry conducted by the Management was found to be not fair and that is the reason why the Management as well as the worker were permitted to let in evidence.

8. Even though some evidences said to have been let in by the Management was not accepted by the Labour Court, where a discussion had been made stating that, if at all such a serious allegation that the worker was selling liquor unauthorisedly or illegally was raised, such serious issue could have been brought to the notice of the police by giving a complaint by the management. Since no such complaint was given by the Management, the



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labour Court allowed the industrial dispute filed by the worker. However though the worker was entitled to get full back wages, only 25% was allowed and even that was not given because of the pendency of the writ petition. Hence, the party-in-person submits that, the award passed by the Labour Court is to be sustained and this writ petition has to be dismissed, and since the respondent worker was not permitted to work even though he reported to duty, a suitable direction can be given to the petitioner Management to permit the respondent worker till his superannuation as he is now running only 54 years of age, he contended.

9. I have heard the submissions made by the learned counsel for both sides and have perused the materials placed on record.

10. The labour Court found that the domestic enquiry was not conducted properly. Therefore the parties were permitted to let in evidence. In this regard, on behalf of the management M.Ws. 1 to 3 were examined and M.W.2 is a watcher one Balasubramaniam who was the complainant before the Management about the alleged action on the part of the worker, who sold liquor unauthorisedly. Insofar his evidence is concerned, the discussion made by the labour Court reads thus,



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“ 10. The burden of proving of charge is on the respondent. Respondent has examined three witnesses M.W.2 to M.W.3. M.W.2 Watcher Mr.Balasubramaniam is the complainant. His complaint is Ex.M.15 in which he has stated that he found the petitioner selling liquor in the F.No.8 of the estate on 27.09.2006 from 05.00 p.m. To 08.00 p.m. According to the respondent the petitioner has been selling liquor repeatedly, despite several oral warnings. But admittedly no complaint has been sent to the concerned police station either by the respondent or by others. M.W.1 is the Senior Manager of the respondent. He has stated that on 29.09.2006 while he was passing through the estate creche, Bazaar area about 06.00 p.m., he found a bag inside the Tea Field No.8 with 4 full bottles of brandy, 2 empty brandy bottles and some tumblers and the petitioner who was standing nearby claimed ownership of the bag. It is to be noted that even M.W.1 has not sent any complaint to the police. M.W.3 is the Field Officer and he has stated that many worker complained to him about the selling of liquor by the petitioner in the estate and so he instructed M.W.2 to attend the complaint directly. But M.W.2 has not stated so and hence the evidene of M.W.2 and M.W.3 are contradictory. No co-worker or woman worker was examined to prove the charge. M.W.1 during cross examination clearly admitted that, physically he did not see the petitioner selling brandy to any person and that the name of the persons purchasing the liquor has not been mentioned in the complaint given by the Watcher.”



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11. Mainly on this basis, the labour Court proceeded to pass the award saying that, even though evidences were adduced by the Management side about the alleged charge against the worker that he was selling liquor unauthorisedly or illegally, no such police complaint since has been given on the management side against the worker and hence the evidence let in by the management was not accepted. Therefore, the labour Court has passed the award as stated supra.

12. In this context, the learned counsel appearing for the petitioner Management has brought to the notice of this Court about the statement given by M.W.2 Balasubramanian, which reads thus,

“நான் 27.09.2006 அன்று மனுதாரர் முத்து பி..எப்.எண்.2407 பச்சமலை எஸ்டேட் பேருந்து நிலையம் அருகில் காடு எண்.8-ன் அருகில் மதுபானம் விற்பனை செய்து வந்ததை கண்டுபிடிக்கப்பட்டது. சுமார் 5.00 மணியிலிருந்து இரவு 8.00 மணிவரை தெற்கு பிரிவிலுள்ள குழந்தைகள் காப்பகம் மற்றும் பஜார் பகுதியில் விற்பனை செய்து வந்தார். நான் (பாலசுப்பரமணியம்) நிறுவனத்தின் வளாகத்திற்கு உட்பட்ட பகுதிகளில் மதுபானம் விற்பனை செய்யக்கூடாது என்று சொன்னேன். ஆனால் அவர் வழிமுறைகளை கடைபிடிக்காமல் மறுத்துவிட்டார். நான் அவரிடம் சென்று பரிசோதனை செய்தபோது மதுபானம், காலி மதுபான பட்டில்கள் மற்றும்



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குடிநீர் ஒரு கைபையில் வைத்துள்ளார். அதை நான்
கேட்டதற்கு சில நபர்கள் மற்றும் பெண் நிர்வாகத்திடம்
தெரிவிக்கவேண்டாம் என்று கேட்டுக்கொண்டார்கள்.”

13. By relying upon this deposition, the learned counsel for the petitioner Management would submit that, even though it was stated by M.W.2 that it was found that the respondent worker selling liquor unauthorisedly on 27.09.2006, it was claimed by M.W.2 that the respondent worker had stated that this action need not be revealed to the management and in this regard, it was also claimed by M.W.2 that when he checked with the respondent worker, he found certain liquor bottles, empty bottles and water packets in the custody of the respondent worker.

14. If this is the definite case on the part of the management as per the evidence let in by the management, wherein Balasubramaniam viz., M.W.2 who claimed that he found directly the respondent worker with some liquor bottles and the reason for even brushing that aside by the labour Court based on non giving of the complaint to the police, is not known.

15. Be that as it may. Now the writ petition has been filed against the award only in respect of the back wages portion and not against the reinstatement ordered by the Labour Court. On the basis of the evidences which



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have been recorded before the Labour Court, even the Labour Court could have come to the conclusion that the charge framed against the respondent worker had been proved and the punishment awarded against him either could have been accepted or some modified punishment could have been ordered against the respondent worker. Instead, the punishment has been set aside and he was ordered to be reinstated with 25% of back wages. The non-working period from 2009 to 2017 now has been taken into consideration by the Labour Court, for which no specific reason has been stated by the Labour Court as to how such a conclusion has been arrived at, except to state that awarding 25% of back wages to the worker would meet the ends of justice.

16. No doubt, when the order of punishment is set aside and the worker is reinstated, normally the back wages would also be awarded. However, in the case in hand, this Court after considering the evidences is of the view that, the evidence let in on behalf of the Management could have been accepted by the Labour Court and brushing aside the said evidence on the only ground that there was no police complaint given on the side of the management, may not be justifiable. Therefore, on that ground the impugned award passed by the Labour Court is erroneous.



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17. Despite this factor, since the writ petition has been filed challenging only the back wages and not the reinstatement awarded by the Labour Court, this Court is traversing on what has been prayed in this writ petition.

18. In that view of the matter, this Court feels that the back wages awarded by the Labour Court may not be justifiable and therefore to that extent the prayer sought for by the management is to be accepted.

19. It has been brought to the notice of this Court by the petitioner management that the respondent worker has not been attending duty from 15.09.2018.

20. However the respondent worker, who appeared as party-in-person submits that, even though he appeared before the Management, they only denied the job and they were not permitting the worker to continue the job.

21. Instead of going into such controversy, for the rest of the period at least, the respondent worker can continue in the job, for which the petitioner management also would cooperate and without any plausible reason the respondent worker cannot be prevented from continuing his job. Hence, this Court feels that this writ petition can be disposed of with the following order.



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- That the impugned award passed by the Labour Court, to the extent of awarding 25% back wages for the non-working period is hereby set aside. In all other aspects, the award is to be sustained.
- Insofar as the complaint made by the respondent worker against the management that, he was not permitted to work, though it was denied by the petitioner management, this Court, considering the aforesaid facts and circumstances, is inclined to direct the petitioner management to permit the respondent worker to immediately join in his job and till his entitlement / superannuation, he may be permitted to continue in the said job if there is no other impediment like any disciplinary action in future.
- It is made clear that, in respect of the period from 15.09.2018 till he re-joins now pursuant to this order, the respondent would not claim any back wages and



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likewise, the petitioner shall not initiate any disciplinary proceedings against the respondent worker.

22. With the above directions, this writ petition is disposed of. No costs.
Consequently, connected miscellaneous petitions are closed.

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