



W.A.Nos.1902 of 2010 and 272 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.1902 of 2010 and 272 of 2013
and M.P. Nos.1 and 2 of 2015

The Management,
TI Cycles of India,
Ambattur,
Chennai 600 053.

... Appellant in W.A. No.1902 of 2010 and
2nd respondent in W.A. No.272 of 2013

VS

1.The Presiding Officer,
I Additional Labour Court,
Madras.

... 1st respondent in both appeals

2.T.Gurumoorthi

... 2nd respondent in W.A. No.1902 of 2010
and appellant in W.A. No.272 of 2013

Prayer in both appeals: Writ Appeals filed under clause 15 of the Letters Patent Act against the order dated 08.06.2010 passed in W.P. Nos.15101 of 2001 and 620 of 2002.

For Appellant in W.A. No.1902 of 2010 & :Mr.R.Anand Gopalan
2nd respondent in W.A. No.272 of 2013 for M/s.T.S.Gopalan and Co.

R1

:Court

R2 in W.A. No.1902 of 2010 and
appellant in W.A. No.272 of 2013

:Mr.R.Ponnusamy



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COMMON JUDGMENT

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[Judgment of this Court was delivered by T.RAJA, J.]

For the sake of convenience, parties are referred to as the appellant/Management and the second respondent/workman as arrayed in W.P. No.1902 of 2010.

These writ appeals have been filed by the appellant/Management and the second respondent/workman respectively, challenging the order dated 08.06.2010 passed in W.P. Nos.15101 of 2001 and 620 of 2002, wherein the learned Single Judge, while dismissing both the writ petitions, confirming the Award dated 21.03.2001 passed in I.D. No.1122 of 1992, wherein the Labour Court has ordered re-instatement with continuity of service and benefits and 50% of back wages, has held that the Labour Court had made a well reasoned Award and found that the second respondent/workman was not guilty of the misconduct on a re-appreciation of evidence placed before it. Aggrieved by the same, the appellant/Management and the second respondent/workman have come to this Court with W.A.Nos.1902 of 2010 and 272 of 2013 respectively.

2.Learned counsel for the appellant/Management submitted that TI Cycles of India, Ambattur has been carrying on manufacture of



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bicycles and bicycle components originally with 1460 workmen and the said Factory was working for 5 days a week i.e. from Monday to Friday with Saturday as 'closed day' and Sunday 'weekly holiday'. While so, on 23.12.1974, a long term settlement was concluded, which provided for introduction of staggered closed days by which the factory will work for 6 days a week and the workmen will be given the off day in lieu of closed day on any of the 6 days in the week. When they started implementing the staggered off day in December 1977, the same was resisted by a group of workmen instigated by the leaders of Tube Investments Employees Union. Since the leadership of the Union precipitated a confrontation, the same led to gross violence in January 1978 and thereby, the factory remained closed for a period of 10 months.

3.Learned counsel for the appellant/Management further submitted that in view of the continued agitation and prolonged stoppage of work in 1978, a majority of the workmen got disillusioned with the Tube Investments Union and decided to have direct negotiations with the appellant and arrive at a settlement. Accordingly, the majority of workmen convened a meeting, in which, they elected 5 authorised representatives with whom the appellant conducted negotiations and arrived at a Settlement on 14.10.1978 under Section



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18(1) of the Industrial Disputes Act and the said Settlement was accepted by all the workmen and therefore, the work was resumed from 18.10.1978.

4.Learned counsel for the appellant/Management further submitted that in the year 1982, the appellant/Management and the Tamil Nadu National Engineering Employees Union concluded another long term settlement, which gave the workmen a substantial increase in wages and the said settlement was also accepted by all the workmen except 126 workmen, who claimed to be the members of Tube Investments Employees Union. After the expiry of the said Settlement, in the year 1987, yet another long term settlement was concluded between the the appellant/Management and the Tamil Nadu National Engineering Employees Union. When the Settlement came to an end on 26.04.1990, the Tamil Nadu National Engineering Employees Union submitted a charter of demands, which were negotiated by the appellant/Management. In this regard, on 16.08.1990, an understanding was reached between the appellant/Management and the Tamil Nadu National Engineering Employees Union on the increase in wages and the said Union announced the terms of the proposed agreement. When the proposals of the new settlement were made known to the workmen on 16.08.1990, some of



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the workmen belonging to Tube Investments Employees Union and TI Cycles Thozhilalar Munnetra Sangam wanted to create confusion among the workmen and thwart the conclusion of the proposed settlement. On 17.08.1990, some of the workmen including the second respondent instigated the workmen to join the strike. This was brought to the notice of the police and the Revenue Divisional Officer, who arrived at the factory and on their persuasion, the workmen, who had squatted in front of the Personnel Office, vacated the place and gathered near the gangway. Due to the same, the officers had been forcibly confined to the Personnel Office by some of the workmen including the second respondent and the officers were able to move out of the Personnel Office only on 17.08.1990. Although the other workmen carried on their work, on 18.08.1990, the members of the Tube Investments Employees Union and TI Cycles Thozhilalar Munnetra Sangam were enraged. Due to the same, the disbursement of arrears was advanced to 1.30 p.m. and the other workmen left the factory, after collecting their wages on the said day. But strangely at about 06.30 p.m., the workmen, who were members of Tube Investments Employees Union and TI Cycles Thozhilalar Munnetra Sangam crashed into the factory, disrupted the work in the second shift, pelted stones, threw brickbats at the administrative office and smashed glass panes. Therefore, on 17.08.1990, a complaint was



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given to the Inspector of Police, Industrial Estate Police Station, Ambattur stating that 60 to 70 workmen were staying inside the factory premises beyond the shift timings and requesting the police to take action against those employees because of the problem created by the workers. On 20.08.1990, suspension orders were issued to 21 workmen in respect of their participation in the incident took place on 17.08.1990. Thereafter, 21 workmen were restored to duty and departmental action was initiated against nine workmen including the second respondent. When the charge memo was issued against 9 workmen, the Enquiry Officer found guilty of charges against 7 workmen and finally, on the basis of the finding given by the Enquiry Officer, who held the enquiry, after complying with the principles of natural justice, the appellant/Management dismissed 7 workmen from service and in respect of 5 out of 7, settlement was reached by paying a sum of Rs.60,000/- each to the workmen and one person did not come back and yet another person, who is the second respondent, had only raised the Industrial Dispute before the Labour Court.

5.Learned counsel for the appellant/Management further submitted that when the appellant/Management placed the findings of the Enquiry Officer, who had held that the second respondent was one of the persons, who led the innocent workers to protest inside the



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premises and also caused damages to the property belonging to the Management, the Labour Court, without reading the oral and documentary evidence recorded by the Enquiry Officer, who conducted the domestic enquiry, reversing the order of dismissal issued against the second respondent, passed an order directing the Management to re-instate the workmen in service with 50% of back wages and held that there was a violation of principles of natural justice though the reasons given by the Enquiry Officer in the domestic enquiry were fair and reasonable. Aggrieved thereby, when the above writ petition was filed before this Court questioning the wrong approach adopted by the Labour Court, the learned Single Judge, although took note of the fact that the enquiry held was fair and reasonable, wrongly went to re-appreciate the evidence and finally came to the wrong conclusion that the name of the second respondent was not mentioned in the police complaint and held that the finding given by the Labour Court that the appellant/Management alone gave evidence and that there is no independent witness from the workers/Union side and dismissed the writ petition. Such approach is wholly untenable.

6.Taking support from a judgment of the Hon'ble Apex Court in the case of Divisional Controller, KSRTC vs. A.T.Mane reported in 2005 (3) SCC 254, learned counsel for the appellant submitted that once a



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domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. Again taking support from yet another judgment of the Apex Court in the case of West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh reported in 2008 (3) SCC 729, learned counsel for the appellant submitted that once the Labour Court or the Tribunal comes to a conclusion that the the enquiry conducted by the enquiry officer was fair and proper, it is not open to the Appellate Court to take a contra view. But in the present case, when the Enquiry Officer, after analysing all the evidence produced by both the parties, has come to the conclusion that the enquiry held by the Management in the domestic enquiry was fair and reasonable, the Labour Court has no power or authority under Section 11-A of the Industrial Disputes Act to set aside the conclusion reached by the Enquiry Officer. These legal aspects have been completely ignored by the Labour Court as well as the learned Single Judge. Therefore, the impugned order dated 08.06.2010 passed by the learned Single Judge, confirming the Award dated 21.03.2001 passed in I.D. No.1122 of 1992, is liable to be set aside by allowing the appeal.



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7.Per contra, learned counsel appearing for the second respondent/workmen submitted that when the domestic enquiry held against 9 persons, admittedly, charges levelled against 2 workmen were not established. However, with regard to 7 workmen, the Enquiry Officer gave a finding that all the charges were proved and based on the same, the order of dismissal was issued against them and for the reasons best known to the appellant/Management, 5 of the workmen have come forward to settle the claims by receiving their compensation. Out of 2 other persons, the second respondent/workman alone raised an Industrial Dispute before the Labour Court, which finding the erroneous approach adopted by the Enquiry Officer, holding that the name of the second respondent was not even shown in the police complaint as alleged by the Management, rightly asked a question had there been an involvement of the second respondent in the incident as alleged by the appellant/Management, like name of the second respondent/workman in the charge memo, his name ought to have been mentioned in the police complaint. Since in the police complaint the name of the second respondent has not been mentioned, the same shows that there was an after thought by the appellant/Management. Therefore, the Labour Court, has rightly exercising the inherent power under Section 11-A of the Industrial Disputes Act, set aside the order of dismissal passed against the



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second respondent/workman. Learned counsel for the second respondent/workman further submitted that the Labour Court has also held that firstly when the incident took place on 21.08.1990, the charge memo came to be issued only on 05.09.1990 with the delay of 13 days, which was not properly explained by the appellant/Management that indicates the after thought of the appellant/Management. Secondly, when the domestic enquiry was held, not even a single independent witness was produced on the side of the workers, but there were only the interested witnesses from the Management side. Thirdly, the police complaint given on 23.08.1990 fails to mention the name of the workman/second respondent. Therefore, the contention made the learned counsel for the appellant that the second respondent/workman is responsible for the incident took place on 21.08.1990 and he led the other workmen to go inside the premises and caused damages to the glasses and windows and property belonging to the Factory are all unacceptable. Therefore, when the Labour Court has interfered with the findings of the Enquiry Officer and the learned Single Judge has rightly confirmed the same, this Court, sitting under Article 226 of the Constitution of India, need not interfere with the same.



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8.We do not find any merit on the said arguments made by the learned counsel for the second respondent/workman. Firstly, when 21 workmen resorted to strike, the appellant/Management came forward to re-instate 12 workmen. Though strong allegations were made against 9 workmen and the charge memo dated 05.09.1990 was issued against all of them, the Enquiry Officer, after holding fair and proper enquiry, found that 7 workmen were guilty of the charges and therefore, the appellant/Management reinstated 2 workmen in service. When 7 workmen were dismissed from service, 5 workmen came forward to settle their claims by getting compensation and out of 2 workmen, only the second respondent has raised the above Industrial Dispute.

9.When it is an admitted case that the enquiry officer has found the second respondent guilty of the proven charges along with 6 other persons and admittedly, one workman did not turn up, the second respondent/workman alone approached the Labour Court and got the order of dismissal set aside. After the incident took place on 21.08.1990, the charge memo has been admittedly issued on 05.09.1990. Therefore, we do not find any delay or unreasonable approach on the part of the appellant/Management, since for preparing the charge memo reasonable time should be consumed and



13 days taken by the appellant/Management for issuing the charge memo cannot be found delay on the part of them. When the charge memo was definite and not vague and based on the charges issued against the second respondent/workman, the enquiry officer also found him guilty. Therefore, it is not open to the Labour Court to say that the name of the second respondent/workman has not been mentioned in the police complaint, which is far from acceptance.

10.We could see that the Labour Court in paragraphs 5, 12 and 16 has given a finding that the domestic enquiry held by the Enquiry Officer against the second respondent was fair and reasonable. When the legal position shows that once a domestic tribunal based on the evidence comes to a particular conclusion, normally, it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In this context, it is relevant to extract paragraph 9 of the judgment dated 27.09.2004 passed by the Hon'ble Apex Court in the case of Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane reported in 2005 (3) SCC 254 as under:

'9.From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of



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the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh in not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh has since been followed by this Court in Devendra Swamy v. Karnataka SRTC.'

11.A perusal of the above observation shows that the domestic tribunal accepted the evidence and found the respondent guilty, but the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding.

12.Again the same proposition has been reiterated in paragraphs 14, 16 and 17 of the judgment dated 01.02.2008 passed by the Hon'ble Apex Court in the case of West Bokaro Colliery vs Ram Pravesh Singh reported in 2008 (3) SCC 729, which reads as under:

'14.The Tribunal in its order on re-appreciation of evidence came to the conclusion that in the absence of any independent evidence other than of fellow workmen, the charge of indecent, riotous and disorderly behaviour with



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superior and co-worker was not proved. Insofar as the absence from the duty is concerned, the Tribunal came to the conclusion that according to the workman, he had left the place of work at 12.25 p.m. and as the incident allegedly had taken place at 12.30 p.m. the respondent could not have reached the place of incident at 12.30 p.m. After collecting his other associates. In para 14 of its order, the Tribunal concluded that Management had failed to substantiate the charges brought against the workman beyond reasonable doubt.

16.In U.P. SRTC v. Vinod Kumar this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the enquiry officer or the punishment awarded by the punishing authority.

17.After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the respondent towards his superiors. Their evidence has been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. The Industrial Tribunal fell in error in discarding the evidence produced



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by the Management only because the independent witnesses were not produced.'

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13.A perusal of the above observation also clearly shows that their evidences have been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed.

14.In the present case, when the Enquiry Officer has correctly found in domestic enquiry that the second respondent/workman was one of the persons, who led the innocent workers to protest inside the premises and also caused damages to the property belonging to the appellant/Management, the Labour Court, without reading the oral and documentary evidence recorded by the Enquiry Officer, who conducted the domestic enquiry, reversing the order of dismissal issued against the second respondent/workman, passed an order directing the appellant/Management to re-instate the second respondent/workman in service with 50% of back wages. Since the above observation is applicable to the present case, the approach adopted by the Labour Court is liable to be interfered with as the Labour Court fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced.



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**T.RAJA,J.
AND
K.KUMARESH BABU,J.**

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15. Therefore, finding material irregularity in the impugned order passed by the learned Single Judge, we are inclined to interfere with the same. Accordingly, the impugned order passed by the learned Single Judge confirming the Award passed by the Labour Court is set aside and the appeal filed by the Management stands allowed and the appeal filed by the second respondent seeking full back wages stands dismissed. Consequently, connected M.Ps stand closed. No costs.

[T.R.,J.] [K.B.,J.]
10.08.2022

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To

The Presiding Officer,
I Additional Labour Court,
Madras.

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