



WEB COPY

W.P.No.28868



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2022

DELIVERED ON : 30.09.2022

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.28868 of 2011

V.Robin

...Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
High Court Compound,
Chennai – 600 104.

2.The Management of Mercury Fittings Pvt. Ltd.,
SS-1, SP-141C, 1st Main Road,
Ambattur Industrial Estate,
Chennai – 600 058.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of

Writ of Certiorari, to call for the records from the files of the 1st respondent in I.D.No.29/2008 and quash the award made therein dated 25.03.2011 insofar as the 1st respondent has denied and negatived the claim of the petitioner for reinstatement in service, with continuity of service, with back wages and other consequential benefits.

For Petitioner	:	Mr.S.Kumarasamy
For Respondents	:	R1 – Labour Court
		Mr.Jayaraman for R2
		For M/s.Jayaraman & Associates



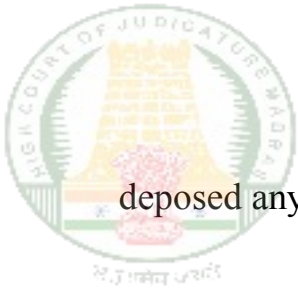
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ORDER

The above Writ Petition has been filed seeking to quash the order of the Industrial Tribunal made in I.D.No.29 of 2003 dated 25.03.2011 insofar as the negated the claim for reinstatement in service with continuity of service and back wages and other consequential benefits.

2.Heard Mr.S.Kumarasamy, learned counsel for the petitioner and Mr.Jayaraman learned counsel for the second respondent.

3.Mr.S.Kumarasamy, learned counsel appearing for the petitioner would submit that he had joined the services of the second respondent on 22.07.1997. On 12.12.2005, he was placed under suspension and on 31.12.2005, a charge memo was issued to him relating to incident which had taken place on 02.12.2005, 06.12.2005, 07.12.2005 and 12.12.2005. According to him, the entire disciplinary proceedings was victimization as the petitioner was elected as an Office Bearer on the formation of an Union to espouse the cause of the workman in the second respondent Union. The said Union, according to him, came into being on 11.12.2005 and the order of suspension was issued on 12.12.2005. He would submit that the entire charge memo has been only targeted against him even though the President of the Union had also allegedly taken part in the imputations which were made against the petitioner. He would further submit that the witnesses in the disciplinary proceedings had not



deposed anything against the petitioner.

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4.He would vehemently contend that the Industrial Tribunal having found that the petitioner was entitled reinstatement ought to have reinstated him but on the contrary has directed the payment of compensation which is uncalled for. He would further plead that the Industrial Tribunal had also erred in holding that the disciplinary proceedings has been held in proper and fair manner and has misdirected it to hold that the charges have been proved. He further contended that the Model Standing Orders is applicable to the second respondent and Clause 17(4)(a) mandates that, a statement setting out in detail the reasons for suspension shall be supplied to the workman within a week from the date of suspension. Therefore, he submitted that in the present case, even though the orders of suspension was dated 12.12.2005, the same was served upon him on 14.12.2005 and charge memo was issued only on 31.12.2005. In that context, he contended that the entire disciplinary proceedings stands has been vitiated.

5.That apart, he also while going through the charges, claimed the charges levelled against him were not serious and therefore, when the Industrial Tribunal had found that the punishment imposed upon the petitioner was disproportionate ought to have reinstated him. The reasons assigned by the Industrial Tribunal in awarding the



compensation is contrary to the well established principle of invoking Section 11(A) of the Industrial Tribunal Act, 1947. The reason assigned by the Industrial Tribunal is that if the petitioner is reinstated, it would cause unrest in the respondent company is wholly unfounded when no such evidence was let in before it to arrive at such a conclusion. Hence, he sought interference with the orders of the Industrial Tribunal by setting aside the portion insofar it relates to negating the claim for reinstatement and awarding compensation and consequentially direct the second respondent to reinstate the petitioner.

6.Countering his arguments, Mr.Jayaraman learned counsel appearing for second respondent would submit that even though they have not challenged the Award, as the charges are held to be proved. The Industrial Tribunal had not assigned any reason whatsoever to arrive at a conclusion that the punishment imposed was disproportionate and that they had accepted the Award of the Industrial Tribunal and had paid the compensation which has been returned by the petitioner. He would further contend that the Industrial Tribunal after analysing the various fact on the misconduct against which the petitioner was charged, thought it fit that it would be improper to direct reinstatement of the petitioner and therefore, awarded a just and fair compensation. He would further plead that reinstatement is not a matter of right and when it is found that the reinstatement is not desirable then the workman



will be compensated accordingly. The Industrial Tribunal had rightly concluded that the reinstatement of the petitioner would not be desirable in the interest of workman in the second respondent and therefore had directed compensation to the petitioner. Hence, he submitted that no interference is called for and prayed this Court to uphold the Award and dismiss the Writ Petition.

7.I have considered the arguments of the learned counsel appearing on both sides and perused the materials available on record before this Court.

8.Learned counsel for the petitioner would try to prevail upon the Court to reappreciate the evidence on record before the Disciplinary Authority. It is pertinent to note, the same has also been analysed by the Industrial Tribunal which is the fact finding authority and it had arrived at a conclusion that the charges against the petitioner were held to be proved. No arguments were advanced that such a finding of the Industrial Tribunal on the established facts are perverse. Therefore, I am not inclined to reappreciate the evidence which is beyond the scope of judicial review under Article 226 of the Constitution of India. Further, the issue is whether the punishment awarded by the second respondent was disproportionate also need not been gone into, since the second respondent had not challenged the said findings arrived at by the Industrial Tribunal. What is left to be analysed is whether the



Industrial Tribunal after holding that the punishment is disproportionate was right in denying the reinstatement of the petitioner into service with continuity of service and back wages and other attendant benefits. The Industrial Tribunal while considering the arguments of the second respondent that the petitioner was charged on the allegation that he was indulging in activities by trying to bring in communal divide between the employees which would be detrimental to the Management as the said charge also stood proved and affirmed by the Industrial Tribunal and came to the conclusion that it would not be proper for it to direct reinstatement.

9.I have also considered the said finding and in light of the proven charges against the petitioner, I am of the view that there is no irregularity or perversity in the conclusion arrived at by the Industrial Tribunal. What is now left is whether the compensation that has been awarded by the Tribunal is fair and proper in the circumstances of the case?

10.Having found that the dismissal was disproportionate the option is only to reinstate the petitioner. When the petitioner is reinstated, then the other consequential benefits would also accrued to the petitioner. The Management had not challenged the findings arrived at by the Industrial Tribunal holding that the punishment is disproportionate which entitles the petitioner for reinstatement since it



was satisfied that there was no positive direction to reinstate and only they were liable to pay compensation. In the circumstances, considering the nature of charges, I would deny back wages to the petitioner. However, the petitioner would have been entitled to other attendant benefits. Admittedly, the petitioner had joined the services of the second respondent in the year 1997 and he has been continuously working till 2005 when the incident took place. The Award holding that the punishment was disproportionate was passed in the year 2011. It is well established principle that when compensation is being award in lieu of reinstatement, back wages, gratuity and in full quit of any other amount payable to the workman should be considered.

11. In this case, the petitioner had worked for 8 years, if he had been reinstated, he would have been entitled to various other benefits. In considering the same, I am of the view that the compensation awarded by the Industrial Tribunal is less and therefore, I am of the view that awarding a compensation of Rs.2 lakhs in lieu of reinstatement, back wages, gratuity and in full quit of any other amount payable to the petitioner would be just and reasonable.

12. In the result, the impugned Award passed by the Industrial Tribunal dated 25.03.2011 is confirmed. However, the compensation amount fixed by the Industrial Tribunal is set aside and a sum of Rs.2 lakhs is fixed as the compensation payable by



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the second respondent to the petitioner.

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13.In view of the above directions, the Writ Petition is partly allowed.

However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed, if any.

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Index: Yes/No

Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
Principal Labour Court,
High Court Compound,
Chennai – 600 104.



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K.KUMARESH BABU, J.

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A pre-delivery order in
W.P.No.28868 of 2011

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