



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.30171 OF 2017

M/s.Roca Bath Room Products Pvt Ltd.
Plot No.R11
Sipcot Industrial Growth Centre
Perundurai Erode-638 052
Rep. by Senior Vice President-HR.

... Petitioner

Vs

1. The Presiding Officer
Labour Court, Salem.
2. P.Kalaiselvan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 1st Respondent in I.D. No.23 of 2010 and quash the award dated 28.03.2016.

For Petitioner ... Mr.G.Anand,
for M/s.T.S.Gopalan and Co.

For Respondents ... Mr.K.V.Shanmuganathan,
for the second respondent

O R D E R

The petitioner company is in the business of manufacturing of ceramic products. According to the petitioner company, there are few institutions in the country which impart training in ceramic manufacture. One such institution is the petitioner company. According to the petitioner, most of the permanent workmen had undergone two year training scheme devised by the company before they came to be employed. They were provided



training in ceramic manufacturing and on successful completion of the training, orders of appointment were given to them. One such trainee was the second respondent, who was taken as a trainee after the completion of his 12th standard school education in the year 2006.

2. The second respondent was appointed as an operator and was placed on probation for a period of one year. He commenced his probation from 02.08.2008. The second respondent even during his probationary period exhibited callous attitude towards his work and he was counselled by the section supervisor at least on three occasions. Further, the second respondent willfully disregarded the instructions of the company and carelessly demoulded the casting pieces before assigned time, resulting in loss of 43 green pieces.

3. The second respondent was constantly being careless and casual in his approach towards his job, the petitioner company was constrained to issue a charge sheet on 21.11.2008, alleging lapses on his part. The second respondent workman vide his reply dated 02.12.2008, admitted the charges and pleaded for leniency. Accordingly, on 10.12.2008, a warning letter was issued to him, cautioning him that any repetition of such misconduct in future will be seriously dealt with. Subsequently, on 10.03.2009, when he was engaged in second shift in casting department, he was once again negligent in maintaining the tank slip level for filling, which resulted in loss of 52 casting pieces. The value of the castings were estimated to be around Rs.7,000/-. When the supervisor advised him to rectify his casual conduct, the second respondent refused to obey his orders.

4. In the above circumstances, another charge sheet was issued on 01.04.2009, listing the acts of misconduct committed by the second respondent. The previous misconduct committed by him was also referred to, in the charge sheet. In respect of the second charge sheet, the second respondent gave a reply on 04.04.2009, coming up with some lame excuses. But however, the second respondent requested the petitioner management to condone his conduct. As the reply of the second respondent was not satisfactory, a domestic enquiry was conducted and two witnesses were examined and 10 documents were marked on the side of the petitioner management. The second respondent also examined himself and marked two documents on his side. On conclusion of the enquiry, an enquiry report was submitted on 15.07.2009, holding the charges proved.

5. After consideration of the entire report of the domestic enquiry, wherein full opportunity was afforded to the second respondent, a second show-cause notice was issued on 30.01.2009,



proposing the punishment of termination of service. At this, the second respondent had given his reply on 06.02.2009. However, taking into account the repetitive nature of the acts of misconduct of the second respondent, despite indulgence shown to him by the petitioner company earlier, by order dated 20.08.2009, his probationary engagement came to be discontinued and terminated. As against his termination, the second respondent raised a dispute in I.D. No.23 of 2010.

6. In the proceedings before the Labour Court, a preliminary issue was framed as to the validity of the domestic enquiry conducted against the petitioner. By order dated 15.05.2014, the first respondent Labour Court held that the enquiry was conducted in accordance with the principles of natural justice. Before the Labour Court, several exhibits were marked both on behalf of the management as well as on behalf of the second respondent workman. However, no oral evidence was let in by both the parties.

7. The Labour Court after consideration of materials placed on record, passed an award on 28.03.2016, holding that the charges against the second respondent stood proved. But by concluding as such, it invoked Section 11A of the I.D. Act, and set aside the termination order dated 20.08.2009 and directed reinstatement of the second respondent workman without backwages but with continuity of service. Challenging the award in respect of the direction of reinstatement of the second respondent, the management is before this Court.

8. Mr. Anand Gopalan, learned counsel for the petitioner management would submit that the first respondent Labour Court has held that the charges against the petitioner were established in the domestic enquiry and also held proved. However, on a very strange reasoning, viz., that the second respondent workman would have become more matured by passage of time, the first respondent Labour Court interfered with the punishment by invoking Section 11A of the I.D. Act and set aside the termination of the petitioner and directed his reinstatement without back wages. The Labour Court also reasoned that the second respondent at his age may not probably get any other employment.

9. According to the learned counsel, once the Labour Court found that the workman was guilty of serious and repetitive charges and he had lost confidence of the management, unless there are compelling and extraordinary reasons, it cannot order reinstatement by invoking Section 11A of the I.D. Act. In this case, the charges were very serious in nature which relate to the efficiency of the workman concerned particularly when the



petitioner company was involved in the manufacture of ceramic products which needed to be handled delicately. When repeated counselling by the management had no effect on the petitioner, the Labour Court cannot force the workman on the management to be employed merely on the presumption that the workman would have become more matured after passage of considerable length of time and he may not be able to get any other job elsewhere. The basis of ordering reinstatement cannot therefore be countenanced in law or on facts.

10. The learned counsel would therefore contend that the award of the Labour Court suffers from grave legal infirmity and the same is liable to be interfered with.

11. On behalf of the second respondent, learned counsel Mr.K.V.Shanmuganathan appeared, and he would submit that the second respondent workman was rightly directed to be reinstated. The Labour Court has reasoned that after losing the job and by efflux of time, the workman, who was 33 years old then, did not have any employment and that the workman and his family would have been put to extreme hardship and suffering. According to the learned counsel, as a matter of fact, the Labour Court rightly reasoned that by passage of time, there was a possibility of the workman becoming more responsible and effective in discharge of his duties. Based on such reasoning, the award was passed directing reinstatement of the second respondent without back wages. According to the learned counsel, for being negligent in his duty, the Labour Court, as a measure of punishment, refused to grant back wages during the period of his non-employment. He would therefore submit that the award may be confirmed as the same cannot be stated to suffer from any infirmity.

12. This Court considered the submissions of Mr.Anand Gopalan, for the petitioner management and Mr.K.V.Shanmuganathan for the second respondent, perused the pleadings and the materials placed on record.

13. As rightly contended by the learned counsel, the Labour Court found that the charges framed against the petitioner were held to be proved. The Labour Court, as a matter of fact, on the preliminary issue, held that domestic enquiry conducted against the petitioner was fair and proper. The Labour Court further, after adverting to the materials placed on record, found that the second respondent workman was guilty of negligence, which was the basis of his termination from service.

14. In the above facts and circumstances, whether it is right for the Labour Court to pass an award of reinstatement by



exercising the extraordinary power vested in it vide Section 11A of the I.D. Act or not? is the only and core consideration of this Court.

15. In this case, the workman concerned was proceeded against twice for negligence, which resulted in pecuniary loss to the management. It is not in dispute that the workman was subjected to counselling but it appears that it had no positive effect on his suitability. It was also a fact that his negligent act was during the period of his probation. When a specialized training was imparted, and thereafter the second respondent workman was inducted into employment, it was quite fair, reasonable and natural that the management expected that the workman would make use of the training effectively and discharge his duties responsibly and diligently. On the other hand, the second respondent workman appeared to have not taken up his job seriously, as demonstrated by the materials placed on record.

16. In the above circumstances, the second respondent workman appeared to have lost the confidence of the management which eventually led to his termination during the period of his probation. In the said circumstances, the reasoning of the Labour Court while ordering reinstatement of the second respondent that by passage of time, there was a possibility of the workman becoming more matured and responsible was misplaced and such presumption was plainly conjectural that cannot be countenanced in law at all.

17. The presumption of the Labour Court is without any basis and it cannot be supported by any legal consideration at all. Once the charges against the petitioner were held to be proved and the basis of termination became justified on that account, unless there were very compelling reasons for invoking Section 11A of the I.D. Act, the Labour Court cannot, as a matter of course, invoke Section 11A of the I.D. Act, and order reinstatement of the workman on a fragile reasoning, ostensibly influenced by sympathetic consideration. A workman who had lost confidence of the management cannot be forced on the management by reason of sympathy alone, as reasoned by the Labour Court.

18. In the light of the above narrative, the award of the Labour Court is to be held as unsustainable in law. At the same time, the second respondent workman having succeeded before the Labour Court, the award as such may not be set aside in toto, leaving him in the lurch in the end. This Court, therefore, taking into consideration the said aspect would conclude that reasonable compensation to the second respondent workman could be awarded, instead of reinstatement. This Court on the over all consideration, fixes Rs.5,25,000/- (Rupees Five Lakhs and Twenty



Five Thousand only) as reasonable and equitable compensation to be paid to the second respondent in lieu of reinstatement awarded by the Labour Court.

19. This Court therefore directs the management to pay a lump sum amount of Rs.5,25,000/- (Rupees Five Lakhs and Twenty Five Thousand only) as full and final settlement to the second respondent workman. The compensation amount is arrived at on the basis of calculation of likely wages payable under Section 17B of the I.D. Act, during the period of his non-employment, from the date of the award and till date.

20. The petitioner management is directed to settle the compensation as indicated above, within a period of four weeks from the date of receipt of a copy of this order and on such payment being received by the second respondent workman, the entire dispute as between the workman and the management is to be given a quietus. There shall be no further claim by the second respondent in future against the petitioner management.

21. The impugned award dated 28.03.2016 passed in I.D. No.23 of 2010 shall stand modified in terms of the above ruling of this Court.

22. In the result, the writ petition is allowed by modifying the award as above. There will be no order as to costs. Consequently, W.M.P.No.32788 of 2017 is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Labour Court, Salem.

+1cc to M/s.T.S.Gopalan and Co., Advocate, S.R.No.23572

+1cc to M/s.K.V.Shanmuganathan, Advocate, S.R.No.23162

W.P.No.30171 OF 2017

SR-II(CO)

RLP(19/04/2022)