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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2021

PRONOUNCED ON : 24.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.11094 of 2017

B.Palaniswamy ...Petitioner

Vs.

1. The Presiding Officer,
   I Additional Labour Court,
   City Civil Court Campus,
   High Court Buildings,
   Chennai-600 104.

2. Tempel Precision Metal Product (I) Pvt. Ltd.,
   No.7, Gudapakkam Village,
   Puducharam Post,
   Poonamallee Taluk,
   Thiruvallur-600 124.
   R2-cause title amended vide Court order dated
   16.11.2018, made in WMP.34605/18 in
   W.P.11094/17 by KRCBJ. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the award of the first respondent dated 04.07.2016 in I.D.No.189 of 2013 and to quash the same insofar as it has not granted the normal relief of reinstatement with back wages and continuity of service with other benefits and to substitute the above relief in the award.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row & Reddy
For Respondent-2 : Mr.M.Vijayan
for M/s.King & Partridge

O R D E R

Heard the learned counsel for the parties.

2. The brief facts of the case are as follows:-
The petitioner, who joined the second respondent Company as a Driver, was promoted to the post of Supervisor on 25.11.2009.

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It is the case of the Management that on 19.08.2010, some scrap materials, along with garbages, were transported out of the Company, for which the petitioner had received Rs.1500/- per load towards removal of such scrap materials. Charges were framed against the petitioner on 28.01.2011 for the delinquency and by an order dated 12.02.2011, he was discharged from services, on the ground that the Management had lost confidence on him for his act of colluding in stealing the Company's properties. In the dispute raised by the petitioner in I.D.No.189 of 2013 before the I Additional Labour Court, Chennai under Section 2A of the Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"], the Labour Court had held in its impugned award dated 04.07.2016, that the Management had failed to prove the alleged misconduct of the petitioner. However, since the petitioner also failed to establish victimization for his union activities as alleged by him, a sum of Rs.1 lakh was awarded as compensation in lieu of reinstatement and other benefits. The workman has challenged this award.

3. While the learned counsel for the petitioner submitted that when the Labour Court had held that the alleged misconduct of the petitioner has not been proved, the Court ought to have ordered for reinstatement with full back wages and other benefits, the learned counsel appearing for the second respondent would submit that when the Management loses its confidence and trust in the workman, the termination of the petitioner is to be regarded as immune from challenge. In support of their contentions, both the learned counsels relied on certain decisions of the Hon'ble Supreme Court, which I shall deal with later.

4. The Labour Court in its impugned award had held that, the termination of the petitioner as a measure of punishment for the alleged misconduct, without holding any enquiry or giving an opportunity to him to defend himself, is per se invalid. This apart, the Labour Court had taken into consideration the police complaint given by the Management, which was later withdrawn and held that merely because a complaint is given, it cannot be concluded that the petitioner had permitted outsiders to remove the scrap from the Company by receiving money, particularly, when the Management had withdrawn the complaint. The oral evidence let in by the Management M.W.1 and M.W.2 were held to be insignificant since they were not eye-witnesses and two other eye-witnesses of the alleged incident, since not examined, the Court drew an adverse inference against the Management. It is in this background, the Labour Court had come to the conclusion that the Management had failed to prove the alleged misconduct of the petitioner.

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5. Having held so, the Labour Court took into consideration of the plea of the petitioner of having been victimized for his union activities and held that the petitioner had failed to establish victimization. It had also observed that since the Management had lost faith in the petitioner for having charged him with theft, it would not be proper to direct reinstatement and consequently, awarded a sum of Rs.1 lakh as compensation, in lieu of reinstatement.

6. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

> "38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> 38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

7. Likewise, in Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar reported in 2015 (9) SCC 345, the Hon'ble Supreme Court had held that, once the termination is held to be bad in law, compensation in lieu of reinstatement is impermissible and that such a workman will be entitled for all the benefits. The relevant portion of the order reads as follows:-

> 19. Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding

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> Officer, Labour Court,[1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non- compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for all benefits for which he is legally entitled to in law.
>
> 20. The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the appellant- workman in his post along with 50% back wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication on the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the respondent- firm at the time of passing an order of termination against the appellant-workman, therefore, the same has been held to be bad in law and as such it should have awarded full back wages to the workman from the date of termination till the date of passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court.

8.If and when the aforesaid principles laid down by the Hon'ble Supreme Court is applied to the facts in the present case, the reasoning adopted by the Labour Court in denying reinstatement and ordering for compensation, particularly, when it had categorically established and found that the Management had not proved the misconduct of the petitioner, cannot be sustained. Rather, the appropriate award ought to have been for reinstatement with all service and monetary benefits.

9. The Management had terminated the services of the petitioner predominantly on the ground that it had lost confidence in him for the alleged acts of collusion for stealing the Company's properties while employed as a Supervisor. The Labour Court had taken into account of this aspect and was of the view that since the Management had charged the petitioner of having aided in theft and thereby lost confidence in him, it would not be proper to reinstate him into services. Further, it was held that since there was no plausible explanation as to why

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the petitioner was victimized, the Labour Court was not in a position to reinstate him and opted for ordering compensation. The learned counsel for the Management placed strong reliance on the decision of the Hon'ble Supreme Court in the case of The workmen of Sudder Office, Cinnamara V. Management of Sudder Office and another reported in 1972 (4) SCC 746, as well as the decision in the case of Air India Corporation, Bombay V. V.A. Rebellow and another reported in 1972 (1) SCC 814 and submitted that when there is a bona-fide loss of confidence in the workman, the termination of services is justifiable.

10. Before addressing the decisions cited by the learned counsel for the Management, it would be appropriate to analyze as to how the Management had come to the conclusion that it had lost confidence in the petitioner and whether such a conclusion is bona-fide or not?

11. On the allegation that the petitioner had transported scrap out of the premises for monetary gain, the Management had preferred a complaint to the police which was admittedly withdrawn on the ground that the Management had taken the petitioner's “past good records” into account. Thereafter, charges were framed against him on 28.01.2011, calling for an explanation to be submitted within 48 hours. The petitioner had produced the copies of two explanations alleged to have been given by him on 02.02.2011 & 08.02.2011 and the receipt of these explanations sent by registered post with acknowledgment due, are also produced before this Court. However, there is no reference to these explanations in the order of discharge dated 12.02.2011. Rather, the Management had remarked that there was no reply from the petitioner. It is in this background, the Management had stated that they had lost confidence on the petitioner.

12. Admittedly, no enquiry was conducted by the Management. Apart from the mere statement in the order of termination dated 12.02.2011, that the Management had lost confidence on the petitioner, there is no other material to prima-facie substantiate the allegations of the Management, connecting him to the charges and the withdrawal of the police complaint by the Management by taking into account his “past good records”, further strengthens the doubts as to whether there could be any bona-fides on the plea of “loss of confidence”. The Labour Court had held that in the absence of any enquiry or opportunity to the petitioner to defend his case, the termination order itself, is illegal.

13. In Sudder's case (supra), cited by the learned counsel for the Management, the facts were that, the employee had indulged in pilferage for which charges were framed and reply

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was also given by the employee. Not being satisfied with the reply, an enquiry was conducted on the levelled charges, which came to be held as proved. It is in this background, the Management felt that it had lost confidence in the employee and accordingly, terminated his services. On these set of facts, the Hon'ble Supreme Court had held that the order of termination on the ground that the Management had lost confidence and trust in the workman, is justifiable. The background on which the Hon'ble Supreme Court had come to such a conclusion is clearly distinguishable from the facts in the present case, where there was absolutely no satisfactory evidence for the Management to come to the conclusion that it had lost confidence in the petitioner. The further action adopted by the Management in withdrawing the police complaint, would also indicate that the Management had reposed confidence in the petitioner, rather than losing it.

14. Likewise, in Air India Corporation's case (supra), the ratio laid down was when lost of confidence is bona-fide, the consequential termination, is justifiable. But such "bona-fide" loss of confidence is conspicuously absent on the facts of the present case in hand. In this background, the decision cited by the learned counsel for the Management, may not come to his assistance.

15. Thus, when the Labour Court had dealt with the evidences before it elaborately and also taken into account of the fact that the petitioner was not subjected to any domestic enquiry or given an opportunity to defend the charges against him and thereby held that the termination be 'bad', the corollary ought to have been for an order for reinstatement of the petitioner, together with all monetary and service benefits.

16. In the case of Deepali Gundu Surwase (supra), the Hon'ble Supreme Court had held that in cases of wrongful termination of service, the employee would be entitled to be reinstated back into services with full back wages. So also was the view in Rajkumar Dixit's case (supra). In the present case also, the Labour Court had held that the termination to be wrongful and by applying the principles laid down by the Hon'ble Supreme Court in the aforesaid two decisions, the proper re-course would be for reinstatement of the petitioner back into service, together with full back wages and other benefits.

17. For all the foregoing reasons stated above, the impugned award of the I Additional Labour Court, Chennai passed in I.D.No.189 of 2013, dated 04.07.2016, is modified and consequently, there shall be a direction to the second respondent herein to forthwith reinstate the petitioner into service together with continuity of services, full back wages

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and all other attendant benefits. The second respondent is called upon to disburse the entire monetary benefits to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

18. The Writ Petition stands allowed accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

DP

To

The Presiding Officer,
I Additional Labour Court,
City Civil Court Campus,
High Court Buildings,
Chennai-600 104.

+1cc to M/s.King and Partridge, Advocate, S.R.No.4128
+1cc to M/s.Row and Reddy, Advocate, S.R.No.4113

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SS(CO)
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