



WEB COPY



W.A. Nos.1100 & 1104 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos.1100 and 1104 of 2013

B. Ameer Ahamed

Appellant in WA No.1100/2013

N. Santhanam

Secretary

Thanjai Mavatta Podu Thozhilalar Sangam

No.6, Kish Raja Veethi

Thanjavur - 1

Appellant in WA No.1104/2013

v

1 The Management
Arignar Anna Sugar Mills
Kurungulam
Thanjavur District

2 The Presiding Officer
Labour Court
Cuddalore

Respondents in both WAs

Writ Appeals filed under Clause 15 of the Letters Patent challenging the common order dated 08.10.2012 passed in W.P. Nos.27164 of 2003 and 28327 of 2005.

For appellants in both appeals Mr. T. Ramkumar
for Mr. R. Subramanian

For R1 in both appeals No appearance

R2 in both appeals Court



COMMON JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

Inasmuch as the instant writ appeals emanate from a common order passed by a Single Bench in two writ petitions, they are considered and decided by this common judgment.

2 For the sake of convenience and clarity, the appellants will be adverted to by their name and the second and third respondents will be adverted to as the Management and the Labour Court, respectively.

3 The facts in brief read thus:

3.1 Ameer Ahamed, the appellant in W.A. No.1100 of 2013, joined as Pump Attender in the services of the Management in May 1977. In view of his frequent absenteeism, charges were framed against him and owing to the said charges being proved against him in the domestic enquiry, he was demoted from the post of Pump Attender to the post of Seasonal Mazdoor *vide* order dated 09.11.1994.

3.2 Thereagainst, Ameer Ahamed raised an industrial dispute being I.D.No.38 of 2000, through the Union, *viz.*, Thanjai Mavatta Podu Thozhilalar



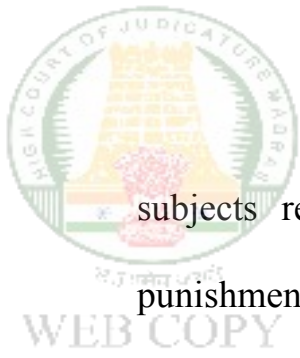
Sangam, represented by Santhanam, Secretary, which was referred for adjudication *vide* G.O. Ms.No.1157, Labour & Employment Department dated 23.12.1999 and the reference proceeds thus:

“Whether the demotion of Thiru. B. Ameer Ahamed by Management from Pump Attender to the post of Masthur on 09.11.1994 is correct and to what relief is the petitioner entitled?”

3.3 The Labour Court, *vide* award dated 13.03.2002, accepting the contention of the Management that Ameer Ahamed has not proved that the Union is not competent to raise the dispute and that there was no evidence to show that the dispute has the support of substantial section of the workmen, held that the dispute referred by the Government is not an industrial dispute.

3.4 Further, taking note of the explanation to the second show cause notice which was marked as Ex.M.15, wherein, the workman has admitted the charges as well as the past records, more so, Exs.M.6 to M.8, the Labour Court held that the the Management's order demoting Ameer Ahamed from the post of Pump Attender to the post of Mazdoor is justified.

3.5 As regards applicability of Section 11-A of the Industrial Disputes Act, 1947, the Labour Court held that the said provision is not applicable to the facts of the case, as it is a case of demotion which does not attract any of the



subjects referred to in the said provision for the purpose of reducing the punishment.

3.6 Thus, in short, the industrial dispute filed by the Union was dismissed by the Labour Court.

3.7 Prior to the raising of the aforesaid industrial dispute through the Union represented by the Secretary, Ameer Ahamed had raised an industrial dispute under Section 2-A(1) before the Labour Officer, Thanjavur, contending that he was orally terminated from service, and upon the said authority filing a failure report, the said industrial dispute was taken on file as I.D. No.24 of 1998 by the Labour Court.

3.8 Before the Labour Court, the Management contended that Ameer Ahamed was not at all terminated from service. Further, according to the Management, they never prevented Ameer Ahamed from attending duty, but, on the contrary, he absented himself from 04.12.1995 and in spite of their communication dated 10.03.1997 asking him to come and report for work, he never turned up for work.



WEB COPY

3.9 The Labour Court, after analysing the evidence on record, *vide* award dated 16.02.2004, finding that the Management never prevented the workman from doing his work and that it is only the workman who remained unauthorizedly absent and that he further failed to prove that he was on medical leave, held that he is not entitled to reinstatement, much less with backwages and continuity of service.

3.10 Thus, there are two awards in these cases. The first award is dated 13.03.2002 passed by the Labour Court dismissing I.D. No.38 of 2000 filed by the Secretary of the Sangam on behalf of Ameer Ahamed. The second award is dated 16.02.2004 passed by the Labour Court dismissing I.D. No.24 of 1998 preferred by Ameer Ahamed seeking reinstatement.

3.11 While the Secretary of the Sangam filed W.P. No.27164 of 2003 challenging the award dated 13.03.2002 passed in I.D. No.38 of 2000, Ameer Ahamed filed W.P.No.28327 of 2005 challenging the award dated 16.02.2004 passed in I.D.No.24 of 1998.

3.12 As stated in the opening paragraph, the Single Bench took up both the writ petitions together and by a common order dated 08.10.2012, dismissed



the writ petition filed by the Management by concurring with the reasoning of the Labour Court that only as against an order of termination or dismissal, can Section 11-A, *ibid.*, be invoked and not against an order of demotion and also dismissed the writ petition filed by the workman on the finding that the Management did not prevent him from attending duty and also by taking due notice of the slew of notices issued by the Management informing him to join duty without prejudice to the disciplinary action pending against him

3.13 Challenging the order passed in W.P. No.27164 of 2003, while the Secretary of the Sangam has preferred W.A. No.1104 of 2013, Ameer Ahamed has preferred W.A. No.1100 of 2013 challenging the order passed in W.P. No.28327 of 2005.

4 From a perusal of the records, it is evident that the workman absented himself very frequently in various spells, charge memos were issued to him and not satisfied with his explanation, a domestic enquiry was conducted, in which, due opportunity was afforded to him. To be noted, the Enquiry Officer has held the charges to be proved as the workman did not attend the enquiry at all. Albeit the fact that all the proceedings pertaining to enquiry were completed, the Management did not pass any order terminating / dismissing the workman. *Ergo*, it can safely be held that the workman's contention that he was verbally



W.A. Nos.1100 & 1104 of 2013

terminated by the Management is only a smokescreen created by him for the purpose of approaching the Labour Court.

5 In view of the foregoing discussion, we confirm the common order passed by the Single Bench.

As a sequitur, both the writ appeals fail and they are accordingly dismissed.
Costs made easy.

(S.V.N., J.) (K.R.S., J.)
04.08.2023

cad



WEB COPY



W.A. Nos.1100 & 1104 of 2013

S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

cad

To

The Presiding Officer
Labour Court
Cuddalore

W.A. Nos.1100 and 1104 of 2013

04.08.2023