



W.P.No.15654 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.15654 of 2015

and

M.P.No.1 of 2015

The General Manager,
Suja Rubber Industries Pvt. Ltd.,
No.19/3, Mailam Road,
Sedrapet, Thiruchitrambalam Post,
Puducherry - 605 111

.... Petitioner

VS

1. The Presiding Officer,
Labour Court,
Pudhucherry.
2. The President/ Secretary,
Pudhuvai Thozhilalar Sangam,
No.42, Cuddalore Road,
Bharathi Mill Thittu,
Mudaliarpeta,
Pudhucherry - 605 004.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari to call for the records relating to the award dated
01.04.2015 passed in I.D.(L)No.7 of 2006 on the file of the first respondent



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herein and to quash the same.

For Petitioner : Mr.S.Subbiah,Senior Counsel
for Mrs.Elizabeth Ravi

For Respondents : R1-Court
Mr.Muralidharan for R2

ORDER

This writ petition has been filed challenging the award passed by the 1st respondent/Labour Court dated 01.04.2015, in which, the petitioner Management was directed to reinstate the delinquent worker by setting aside the order of dismissal and holding that the said delinquent worker was entitled to all benefits except backwages.

2. The brief facts of the case of the petitioner Management are as follows:

i) The delinquent worker D.Rajendiran was alleged to have misbehaved with one female employee of the petitioner Management on 23.12.2003 and on 24.12.2003, complaint was received from the said female employee and other co-workers against the said D.Rajendiran. Therefore, on 25.12.2003, charge memo was issued and he was kept under suspension. The said Rajendiran submitted his explanation on 17.01.2003.



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Notice was issued to the delinquent employee on 23.02.2004 stating that enquiry to be conducted on 28.02.2004. On 28.02.2004, as D.Rajendiran did not appear for enquiry, notice of adjournment was issued by the Enquiry Officer stating that the enquiry to be conducted on 13.03.2004. Even on 13.03.2004, the delinquent employee did not appear for enquiry and the enquiry was adjourned to 20.03.2004. Finally, the enquiry was conducted in part on 18.06.2004 and it was adjourned to 26.06.2004. On 26.06.2004, the delinquent worker walked out of the enquiry in the middle of the enquiry thereby refusing to proceed with the enquiry. On 26.06.2004, the delinquent worker was set exparte and the enquiry was closed and the Enquiry Officer sent his report on 24.07.2004 holding the charges levelled against the delinquent worker as proved. On the basis of the enquiry report show cause notice was issued on 13.08.2004. The delinquent worker/Rajendiran submitted his reply on 17.08.2004 and on 29.09.2004, an order of dismissal from service was issued as against D.Rajendiran.

ii) The 2nd respondent Sangam raised Industrial Dispute before the 1st respondent in I.D.(L) No.7 of 2006 and the first respondent passed an award on 26.03.2010 directing the petitioner management to reinstate the



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delinquent worker with full backwages and other monetary benefits. The petitioner Management challenged the award by filing W.P.No.17270/2010 and this Court, by order dated 10.09.2014, remitted the matter back to the 1st respondent with a direction to decide the matter afresh on merits. Notice of hearing was received by the petitioner Management on 26.12.2014, their proof affidavit was filed on 21.01.2015 and cross examination of RW1 was done on 17.02.2015. Thereafter, the impugned award was passed by the 1st respondent on 01.04.2015, in which, the petitioner Management was directed to reinstate the delinquent worker, after setting aside the order of dismissal and holding that the delinquent worker was entitled to all benefits. Aggrieved over the same, this writ petition has been filed by the petitioner Management.

3. Heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the 2nd respondent.

4. i) Learned senior counsel appearing for the petitioner Management would submit that the findings of the Labour Court that the petitioner Management had not proved the charges as against the said delinquent worker is nothing but a perverse one. Two reasons were given by the labour



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Court for holding that the charges as not proved. The first one being that the victim Thenmozhi was not examined. It cannot be expected that a female worker who was subjected to such an indecent act by a co-worker would come and tender evidence in the open enquiry proceedings. The second reason is that the said worker was not given an opportunity of cross examining the witness more particularly that of the said Thenmozhi, as she had not been examined as a Management witness during the course of the domestic enquiry. Both these conclusions reached by the labour Court are totally against the dictum laid down by the Hon'ble Division Bench of this Court in the unreported judgment dated 27.01.2006 made in W.P.No.27283/2002 (S.Tamilselvan vs. The Registrar, Tamil Nadu Central Administrative Tribunal, Chennai & others) under identical circumstances.

ii) Learned senior counsel would further submit that when the charge memo was issued, the delinquent employee replied by admitting the factum of meeting the said victim Thenmozhi, but setting up a different story relating to taking delivery of polythene covers. However, after considering the entire evidence, the Enquiry Officer held that there was no enmity or misunderstanding or dispute in between the management and the said



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worker and that even the said worker did not attribute anything as against the victim. There was no reason for the said victim Themnozhi to make such a complaint involving herself and that no women would come forward to lay this kind of complaint, involving her name and that the said worker could have given a complaint as against Thenmozhi if there was such an incident, as narrated by him and that the said worker himself had admitted that he had gone to the store at 11.30 a.m. and that he did not examine any witness on his side. Therefore, the stand taken by the said worker could not be acceptable.

iii) Learned senior counsel would further submit that when the statement of the co-worker had established the misconduct on the part of the said worker, it is rather unfortunate that the Labour Court fell in error in granting the award in favour of the worker for his reinstatement. In the absence of a challenge to the legality or fairness of the domestic enquiry, the Labour Court should be reluctant to either interfere with the findings recorded by the Enquiry Officer or the punishment awarded by the punishing Authority.

5. Per contra, learned counsel for the 2nd respondent would state that



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the Tribunal had already decided the dismissal order passed against the workman Rajendiran was illegal and the said Rajendiran was entitled for the employment as per the order dated 26.03.2010. The respondent management had filed W.P.No.17270/2010, following which, the matter was remitted back to the Tribunal for fresh disposal. Even after the remittance of the case to the Tribunal, the petitioner management did not adduce any valid document to substantiate their case. The witnesses were not examined by any enquiry officer for the charges leveled against the said Rajendiran. The decision of the petitioner Management in dismissing the said Rajendiran is without any basis. The main witness, Thenmozhi was neither produced before the Enquiry officer nor produced before the Tribunal to prove the charges levelled against the said Rajendiran. Even no complaint was given to the concerned police for the alleged misbehaviour act of the said Rajendiran. Considering all the aspects, the Tribunal has rightly ordered for reinstatement of the said Rajendiran with all benefits. Therefore, the award passed by the 1st respondent need not be interfered with.

6. This Court considered the submissions made on either side and perused the materials available on record.



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7. The main allegation as against the worker Rajendiran is that he misbehaved with a woman co-worker by name Thenmozhi. The Tribunal vide order dated 26.03.2010 had decided that the dismissal order passed against the workman Rajendiran was illegal and that he is entitled for reinstatement. The petitioner Management filed a writ petition in W.P.No.17270/2010, in which, this Court remitted the matter back to the Tribunal for fresh disposal. Even after the remittance of the case to the Tribunal, the petitioner management did not adduce any valid document to substantiate their case. No police complaint was given as against the said Rajendiran. The decision of the petitioner management in dismissing the said Rajendiran was unilateral. The main witness Thenmozhi with whom the said Rajendiran alleged to have misbehaved was not produced before the Enquiry Officer or before the Tribunal to prove the charges levelled against the said Rajendran.

8. Further, at the time of cross examination of RW1, it is evident that it was not the statement of the so called witnesses, one Kulothungan, one Selvakumar and one Manjini that they had directly witnessed the alleged incident namely, the misbehaviour of the said Rajendiran with the said



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Thenmozhi. The above said persons were also not produced before the Labour Court to depose the incident which was alleged to have been happened as alleged by the petitioner Management. Further, the witness RW1 admitted that Thenmozhi was not enquired by the concerned enquiry officer. There is no concrete evidence to prove the charges levelled against the said Rajendiran. Therefore, this Court is of the view that the order of dismissal passed against the said Rajendiran is not in accordance with law and thus, there is no infirmity or illegality in the award passed by the Labour Court.

9. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2023
(1/2)

Index:Yes/No
Speaking/Non-speaking order
vsi

To

1. The Presiding Officer,
Labour Court,
Pudhucherry.



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J.NISHA BANU,J.

vsi

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