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W.P.No.13894 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.13894 of 2010

The Management
Hatson Agro Products (P) Ltd.,
Attur Main Road,
Karumapuram,
Salem rep by its Asst. Manager – Legal,
And Authorized Signatory

...Petitioner

-Vs-

1.The Presiding Officer,
Labour Court,
Salem.

2.R.Sakthivel

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent in I.D.No.611/04 and quash its award dated 17.11.09.

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

For R1 : Court

For R2 : Mr.K.V.Shanmuganathan



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ORDER

This writ petition is filed by the petitioner/Management as against the Award of the 1st respondent / Labour Court in I.D.No.611/04 dated 17.11.2009 directing the petitioner to reinstate the 2nd respondent in service with back wages.

2.Brief facts that are necessary for the disposal of this writ petition are as follows:

3.The petitioner/Management engaged in the procurement and sale of milk and milk products, including a popular brand of ice cream known as Arun Ice Cream. The petitioner/Management has milk processing units in various places in the State of Tamil Nadu, including one at Karumapuram in Salem District. The petitioner/Management used to procure polythene film which will be used to pack milk in sachets. The petitioner/Management used to get printed polythene films from Madurai Depot. The petitioner/Management used to sell wasted printed polythene films at a reduced rate to some of the traders in Salem District.



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4.It is the specific case of the petitioner that the 2nd respondent worked as a Junior Assistant in the stores of the petitioner/Management unit at Karumapuram, Salem. A specific allegation is made against the 2nd respondent that the petitioner/Management received 27 boxes of 1000ml Arokyia printed polythene films by way of stock transfer from Madurai, and the 2nd respondent failed to bring the receipt of the Arokyia printed polythene films to the notice of his superior.

5.It is the case of petitioner that the 2nd respondent connived with another person by name, Mr.P.Sasikumar, who unauthorizedly dispatched 27 boxes of 1000ml Arokyia printed polythene films to M/s.Mahalaksmi Poly Pack, Salem, with the intention of selling the above products as wasted printed polythene films and receive money from the traders. Thereafter, the petitioner/Management came to know about the fraudulent conduct of the 2nd respondent only from the Proprietor of M/s.Mahalakshmi Poly Pack, who confirmed the involvement of the 2nd respondent in dispatching 27 boxes of 1000ml Arokyia films. When the 2nd respondent went on leave, he asked one Mr.P.Sasikumar, who worked in the stores with him, to contact M/s.Mahalakshmi Poly Pack to enquire about the scrap film dealer.



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6.A charge Memo was issued to the 2nd respondent on 18.02.2004. Since the explanation offered by the 2nd respondent dated 19.02.2004 was not satisfactory, a domestic enquiry was conducted against him. The enquiry was conducted by an Enquiry Officer, and the 2nd respondent fully participated. It is to be noted that Deputy Manager, Commercial, by name, Mr.Nageswaran and the Proprietor of M/s.Mahalakshmi Poly Pack, Salem, by name, Mr.Chandra Prakash were examined by the petitioner/Management to prove the charges.

7.It is stated that the 2nd respondent did not even cross-examined the two witnesses. A complaint was made against the 2nd respondent for his involvement in the fraudulent dispatch of 27 boxes of 1000ml Arokyia printed polythene films with a clear intention to make some profit by selling a valuable commodity of the petitioner/Management as scrap. In view of the gravity of the proved charges against the 2nd respondent, who was in the position of Junior Assistant and was responsible for the unauthorised dispatch with the intent to make an illegal profit, it is stated that the petitioner/Management was forced to dismiss the 2nd respondent from service.



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8.The 2nd respondent challenged the dismissal order dated 24.02.2004 before the 1st respondent / Labour Court in I.D.No.611/2004. However, the Labour Court passed an Award directing the petitioner to reinstate the 2nd respondent with continuity of service, back wages, and other attendant benefits. Aggrieved by the same, the above writ petition is filed.

9.The learned counsel appearing for the petitioner submitted that domestic enquiry was conducted in a fair manner and that the 2nd respondent himself admitted before the Labour Court that he was not disputing the fairness of the enquiry proceedings, but only the correctness of the enquiry report and proportionality of the punishment. The learned counsel submitted that the Award of the Labour Court is perverse in nature and the Labour Court has not appreciated the admitted position that the 2nd respondent did not even cross-examine two witnesses on behalf of the petitioner/Management to prove the charges. The learned counsel further submitted that the Labour Court ought to have held that the charges against the 2nd respondent were proved, that he was guilty of serious misconduct, and that he could not be employed by the petitioner/Management.



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10. Per contra, the learned counsel appearing for the 2nd respondent contended that the Labour Court considered all evidence and held that the petitioner/Management failed to prove that the 2nd respondent contacted M/s.Mahalakshmi Poly Pack, Salem, about the dealings. However, the Labour Court has failed to consider the crucial aspect of the case. When the petitioner/Management presented two witnesses to the Enquiry Officer to prove the charges, the 2nd respondent has not chosen to cross-examine the material witnesses who have spoken to the fact that the 2nd respondent had unlawfully and unauthorisedly dispatched valuable goods with the intention of making a small profit thereby causing loss to the petitioner/Management.

11.Heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

12.In the present case, the Labour Court has failed to appreciate the material evidence adduced by two witnesses who have been examined by the petitioner/Management to prove the charges against the 2nd respondent. It is admitted before this Court that the 2nd respondent did not cross-examine two witnesses, and the Enquiry Officer relied on their statements made against the



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2nd respondent to find the 2nd respondent guilty of the charges.

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13.The crux of the issue in the present case is whether the 2nd respondent has committed a serious misconduct for which he can be terminated from the service. It is admitted that the petitioner/Management acted only on the basis of information furnished by one of their regular dealers about the misconduct of the 2nd respondent. Therefore, at the time of the domestic enquiry, two witnesses were examined to prove the charges against the 2nd respondent. Despite the 2nd respondent had the opportunity to cross-examine the witnesses in order to establish his innocence, he has failed to cross-examine the witnesses and therefore, this Court has no hesitation in holding that the 2nd respondent is guilty of misconduct and that the charges are proved against him. This Court is of the view that the petitioner/Management is justified in dismissing the 2nd respondent from service. In such circumstances, this Court is unable to sustain the order of the Labour Court ignoring the material facts and the evidence.

14.The learned counsel appearing for the petitioner/Management has relied upon a judgment of the Hon'ble Supreme Court in the case of ***Mazdoor Sangh Vs. Usha Breco Ltd.***, reported in (2008) 5 SCC 554, wherein it has been



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held as follows:-

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“31. It is one thing to say that the finding of an enquiry officer is perverse or betrays the well-known doctrine of proportionality but it is another thing to say that only because two views are possible, the Labour Court shall interfere therewith. In other words, it is one thing to say that on the basis of the materials on record, the Labour Court comes to a conclusion that a verdict of guilt has been arrived at by the enquiry officer where the materials suggested otherwise but it is another thing to say that such a verdict was also a possible view.

39. The upshot of our discussion is that the decision of the Labour Court should not be based on mere hypothesis. It cannot overturn a decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the Act although is a wide one, must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinise and analyse the evidence but what is important is how it does so.”

15.The learned counsel appearing for the petitioner/Management has relied upon a judgment of the Hon'ble Supreme Court in the case of ***West Bokaro Colliery (TISCO Ltd.) Vs. Ram Pravesh Singh*** reported in (2008) 3



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SCC 729, wherein it has been held as follows:-

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“16. In U.P. SRTC v. Vinod Kumar [(2008) 1 SCC 115 : (2008) 1 SCC (L&S) 1 : (2007) 13 Scale 690] this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the enquiry officer or the punishment awarded by the punishing authority.

17. After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the respondent towards his superiors. Their evidence has been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. The Industrial Tribunal fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced.”

In the light of the judgment of the Hon'ble Supreme Court, this Court is unable



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to sustain the order of the Labour Court, ignoring the vital evidence adduced before the Enquiry Officer and reversing the findings of the Enquiry Officer without considering the material evidence against the 2nd respondent.

16.Considering the facts and circumstances of this case, and the judgments above referred to this Court finds that the reasonings of the Labour Court are perverse and unsustainable.

17.In the result, this writ petition stands allowed and the Award dated 17.11.2009 passed by the 1st respondent / Labour Court in I.D.No.611 of 2004 is hereby set aside. No costs.

12.01.2023

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To

1.The Assistant Manager – Legal
and Authorized Signatory,
The Management,
Hatson Agro Products (P) Ltd.,
Attur Main Road,
Karumapuram.
Salem.

2.The Presiding Officer,
Labour Court,
Salem.

S.S.SUNDAR. J.,



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