



WEB COPY



W.P.No.6462 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.6462 of 2019

A. Dhanalakshmi

... Petitioner

Vs.

The Management of
Lotus Foot Wear Enterprises Limited,
3 B, SIPCOT Industrial Park,
Mangal Village - Mathur Post
Cheyyar Taluk.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in connection with I.D. No.58 of 2015, passed by the Principal Labour Court, Vellore, on 18.03.2016 and quash the same and further direct the respondent Management to reinstate the petitioner in service with continuity of service, back wages and all other attendant benefits.

For Petitioner	:	Mr.V. Prakash Senior Counsel Assisted by Mr.K.Sudalai Kannu
For Respondent	:	Mr.Manohar Gupta for Mr. M. Kandasamy



W.P.No.6462 of 2019

ORDER

WEB COPY

The Petitioner Dhanalakshmi has challenged the order dated 18.03.2016 in I.D. No.58 of 2015 on the file of the Principal Labour Court, Vellore.

2. The petitioner Dhanalakshmi joined the respondent Company M/s. Lotus Foot Wear Enterprises Limited which is into manufacture of footwear with its factory in Mangal Village, Mathur Post, Cheyyar Taluk, Thiruvannamalai District, in 2008. After probation, she was confirmed in service on 19.05.2010 and appointed as Assistant. She joined the United Workers Union in 2014. On 28.11.2014, she was not allowed to report for duty and was informed by the HR Department of the Company that she was placed under suspension. It was because of an alleged incident on 27.11.2014 in which the petitioner reportedly abused her superiors and other employees in filthy language and did not obey the lawful orders of her superiors. When she was issued two warning letters she refused to receive them.

2.1. On 10.12.2014 she received a charge memo dated 06.12.2014.

The charge memo was based on a complaint dated 27.11.2014 from some



W.P.No.6462 of 2019

of the co-employees and contained certain incidents of misconduct which involved use of abusive language, insubordination and non-adherence of work hours. She had replied to the charge memo. However, the petitioner Management went ahead with the domestic enquiry which commenced on 27.12.2014 and went on till 19.01.2015. On 19.01.2015 the Enquiry Officer decided to pass an ex parte order citing the rude and arrogant behaviour of the employee (petitioner) who tore the proceedings copy into pieces and threw on the face of the Enquiry Officer. The petitioner alleged that the Enquiry Officer and another Officer present in the enquiry had misbehaved with her and lodged a complaint with the All Women Police Station, Cheyyar. The complaint was reportedly closed as 'mistake of fact'. The aggrieved petitioner filed a private complaint under Section 200 Cr.P.C in the Judicial Magistrate Court of Cheyyar.

2.2. After the enquiry concluded *ex parte*, a second show cause notice dated 23.01.2015 was issued to the petitioner. She was terminated from service on 03.02.2015 which led to the petitioner approaching the Labour Officer for conciliation. The conciliation failed and resulted in the petitioner filing I.D.No.58 of 2015 in the Principal Labour Court



W.P.No.6462 of 2019

Vellore. The Principal Labour Court, Vellore, vide its order 18.03.2016, dismissed the petition in ID No.58 of 2015 by observing thus:

"I could not find out any error, irregularity, illegality, perversity, non-observance of natural justice in the enquiry report. I also did not find any fault of dis proportionality in so far as terminating the petitioner after due enquiry upon the enquiry report".

3. This order is challenged in this petition.

4. Mr.V. Prakash, learned Senior Counsel assisted by Mr.K.Sudalai Kannu, learned counsel for the writ petitioner would contend that the Labour Court failed in its adjudication by not deciding whether the domestic enquiry in the first place was fair and whether adequate opportunity was afforded to the petitioner. According to him, without going into this aspect, as a preliminary issue, the Labour Court decided the dispute, which is in contravention to the ruling in ***The Cooper Engineering Limited vs. Shri P.P. Mundhe*** reported in ***(1975)2 Supreme Court Cases 661*** by the Apex Court. It was his further contention that the punitive action was an act of victimisation as she was



W.P.No.6462 of 2019

indulging in Union activities. It was also argued that the punishment rested on an ex parte order of the Enquiry Officer which is invalid *ab initio*.

5. Per contra, Mr.Manohar Gupta,learned counsel for the respondent contended that the Enquiry Officer was an outsider and no bias or violation of principles of natural justice can be alleged. Secondly, his contention was that the delinquent petitioner had a past record of misconduct in 2013 for which a penalty of "cancellation of evaluation for a period of six months from 15.04.2014" was inflicted upon her vide order dated 15.04.2014. His further contention was that her acts on 27.11.2014 resulting in her suspension with effect from 28.11.2014 were absenteesim, insubordination, using filthy language against superiors and not performing the allotted work. He also contended that a lady who was the chairperson of the Sexual Harassment Committee was also present during the enquiry and was a witness to the tearing of the enquiry proceedings into pieces by the petitioner and throwing them on the Enquiry Officer's face. According to him that act was the last nail in the coffin bringing an end to all the tantrums of the delinquent petitioner



W.P.No.6462 of 2019

who went ahead with a police complaint against the Enquiry Officer and the HR Official present in the enquiry alleging that they pulled her dupatta and misbehaved with her. He added that the police complaint was closed as a 'mistake of fact' which further infuriated her and made her file a private complaint against them. He further contended that both the Enquiry Officer Mr.Venkatesan and Sankar, IR Official were confronted by her prompting Sankar to file a police complaint against her on 20.01.2015 based on which an FIR was registered. He also pointed out that the 2nd show cause notice proposing the punishment of termination was issued to her but evoked no response from her. He also argued that the delinquent employee had no remorse for her rude and arrogant behaviour and was instigated by outsiders who gave her wrong advice and misled her.

6. The impugned order has elaborately dealt with the three allegations and the manner in which the domestic enquiry was conducted. The petitioner examined herself and had adduced as many as 23 exhibits while the respondent examined 4 witnesses and marked 8 exhibits before the Labour Court. The Enquiry Officer was a rank



W.P.No.6462 of 2019

outsider in the sense that he was not an employee of the respondent Company. The Enquiry Officer, it appears, has been fair in his approach affording the petitioner adequate opportunity to defend herself. But the flash point was only on 19.01.2015 when the incident of the petitioner tearing the enquiry proceedings to pieces occurred. The petitioner has averred that the papers were snatched from her by the Enquiry Officer and she never indulged in tearing the papers. The Labour Court opined that it was shredded into small pieces which is possible only if it is torn by hand. The Enquiry Officer had witnesses around him when the incident happened. It was not only the tearing of the proceedings papers but also throwing the pieces on the face of the Enquiry Officer which aggravated it. The petitioner further complicated the issue by going to the All Women Police Station, Cheyyar, on 19.01.2015 to give a complaint of harassment against the Enquiry Officer and the HR Official Sankar. However, the police after enquiring into her complaint found no truth in it and closed it as 'mistake of fact'. She had also alleged that she was being videographed by one Silambarasan, employee of the respondent Company on 03.01.2015 when the enquiry process started. She termed it as harassment.



W.P.No.6462 of 2019

6.1. The Labour Court had found the depositions of all the four Management witnesses to be cogent and convincing. Therefore, the contention of the petitioner that the domestic enquiry was not taken as a preliminary issue fails. The petitioner, it appears, has been an 'undesirable' element causing trouble and behaving erratically making only enemies and not friends. In an office or a factory atmosphere discipline is vital. The hierarchy has to be respected. The petitioner is young in age but with a corrupt mind. Corrupted with prejudices and wrong notions. It appears that she feels supremacy can be gained by threats and intimidation. The Labour Court in its observation wrote as follows:

"The disobedience to the command of the superior officials, unleashing of barbaric and uncivilized verbal disposition against the mediate and immediate superior, challenging the authority of the superior, making false allegations against the superior calculated protest and protracting the domestic enquiry and tearing of the enquiry proceedings into several pieces and throwing them against the face of the Enquiry Officer is definitely a grave in nature and no sensible employer would keep this kind of woman employee that too a second offender".

These observations tell the entire story. I am not inclined to show any



W.P.No.6462 of 2019

lenience to her. The contention by her that she was forced to join a particular Union by the respondent Management is not convincing. Her choice of one Allahbaksah, who was already dismissed from service to defend her as a co-worker shows her bad company. The respondent Company, in my opinion, would have been lenient had she not overreacted on 19.01.2015. Humility is one virtue to be learnt and imbibed by youngsters like the petitioner.

7. In my opinion, there is no infirmity in the impugned order. In the result, the Writ Petition is dismissed. No costs.

01.12.2023

bga
Index : yes/no
Speaking /Non speaking Order

To
The Management of
Lotus Foot Wear Enterprises Limited
3 B, SIPCOT Industrial Park,
Mangal Village - Mathur Post, Cheyyar Taluk.



WEB COPY



W.P.No.6462 of 2019

R.HEMALATHA, J.

bga

W.P.No.6462 of 2019

01.12.2023