



W.P.No.5545 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 03.04.2023

PRONOUNCED ON : 12.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.5545 of 2013
and W.M.P.No.17398 of 2017

The Management
M/s.Tractors Farm and Equipments Ltd

Post Box No.3302

Chennai-600 034

Rep. by its Director and Secretary

..Petitioner

Vs

1.The Presiding Officer

Second Additional Labour Court

Chennai.

2.Mrs.Sherrel Peters

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records connected with I.D.No.80 of 2011 and quash the Award dated



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06.11.2012 passed by the 1st respondent i.e., The Presiding Officer,
Second Additional Labour Court, Chennai.

For Petitioner : Mr.Sanjay Mohan
for M/s.Ramasubramaniam Associates
For respondents : Mr.N.D.Sahety for R2.
R1-Court.

ORDER

This writ petition is filed praying to quash the Award passed in I.D.No.80 of 2011 dated 06.11.2012 by the Presiding Officer, Second Additional Labour Court, Chennai.

2. The Management has filed this writ petition challenging the award passed in I.D.No.80 of 2011 whereby, dismissal order passed by the Management was set aside and the 2nd respondent-worker was reinstated into service with continuity of service and with 50% of backwages and all other benefits.

3. The learned counsel for the writ petitioner/Management would



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argue that the charges levelled against the worker is that she had abused the customer in her capacity as Telephone Operator-cum-Receptionist. Further there was a serious charge and she was found guilty for the act of misconduct of shouting at the superiors and the charge sheet containing allegations were sought to be served upon her. The Labour court failed to carry out the jurisdiction vested and failed to refer to these vital submission in the case.

4. The learned counsel further argued that she was not a fit person who could work anymore in her capacity as telephone operator and that too under the very same person to whom she addressed the uncalled questions.

5. The learned counsel for the petitioner strenuously contended that 2nd respondent worker cannot be reinstated when it was the specific case of the employer that it could no longer repose any confidence in her not only on account of the nature of misconduct but on account of a subsequent behaviour in the enquiry.



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6. On the other hand, learned counsel appearing for the 2nd respondent/worker would submit that the second respondent has proved that the management victimized her and the evidence of M.W.1 and M.W.2 was not genuine which evidence was rightly rejected by the labour court. The labour court, on a detailed analysis found that the findings of the enquiry officer was perverse and accordingly set aside the punishment and ordered for reinstatement with 50% backwages, which order is based on appreciation of facts and the same need not disturbed.

7. Heard both sides and perused the materials on records carefully.

8. The facts of the case is that the 2nd respondent was employed as a Receptionist and telephone operator in the petitioner management from 01.04.1988. Based on the complaint received from one of the Senior Executive, charge memo dated 09.02.2010 and 23.02.2010 was



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issued to the 2nd respondent calling for explanation. Since the explanation offered by her was not justified, the petitioner management conducted domestic enquiry against the charge of misconduct. Second respondent/worker participated in the enquiry. After completion of enquiry, enquiry officer submitted the report dated 13.05.2010 to the management and the 2nd show cause notice was also issued to the 2nd respondent/worker and she had submitted her explanation. Thereafter, the Management terminated the service of the 2nd respondent/worker by its order dated 08.09.2010. The Enquiry Officer held that the charge of misconduct of the worker was proved.

9. Aggrieved by the order of dismissal passed against the 2nd respondent/worker, she filed a petition under Section 2A of I.D.Act before the Labour Officer, Chennai. After the conciliation proceedings, failure report was sent by the Labour Officer, Chennai. The 2nd respondent raised industrial dispute before the Labour court. seeking to set aside the order of dismissal dated 08.09.2010.



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10. Before the Labour court, on the side of Worker, she was examined as W.W.1 and 20 exhibits were marked on her side. On the side of Management, no one was examined but Exhibits M.1 to M.9 were marked.

11. The Labour court, while deciding the I.D., filed by the second respondent/worker/petitioner in I.D.No.80/2011, framed the following points for consideration :-

- a) Whether the findings of the Enquiry Officer dated 13.5.2010 is perverse or the same cannot be questioned by the petitioner workman?
- b) Whether the petitioner is entitled to claim reinstatement, continuity of service, backwages and other benefits ?
- c) Whether the petitioner is entitled to what relief ?

12. The Labour court, while deciding the Preliminary issue in respect of conduct of enquiry held that proper opportunity was given to the worker to put forth her case before the enquiry officer and opportunity was given to her to cross examine the witness.



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WEB COPY 13. The Labour court also pointed out that as far as contention of the worker that Model Standing Order prescribed under the Central Rules for representation of the delinquent workman by office bearers of the trade union was not furnished is concerned, no prejudice was caused to the worker and rejected the said contention.

14. In the Award, the Labour court discussed the charges levelled against the second respondent/worker which reads as under:-

- (i) Refusal to receive the lawful communications of the superiors
- (ii) shouting at and abusing superiors
- (iii) passing derogatory remarks about high officials
- (iv) Bringing disrepute to the organisation in the eyes of outsiders under Rule 16(a)(i)(1) and (y) of Schedule 1 of the Tamil Nadu Industrial Employment (Standing orders) Rules 1947.

15. The Labour court found that in the findings of the Enquiry Officer, worker was exonerated for 3 charges as not proved. In so far as the charge of misconduct, the learned Judge found that there was a personal animosity between the worker and M.W.1, management



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witness. As such the non examination of the witnesses before the enquiry officer will establish the fact that there is a doubt as far as the first charge is concerned.

16. In respect of the other charge in respect of an incident which is alleged to have taken place in the cabin of M.W.1 is concerned, the learned Judge held that evidence of M.W.1 and M.W.2 is not acceptable one and the 2nd charge and the findings of the enquiry is concerned, it was perverted and is contrary to equity and justice.

17. The learned Judge, Labour court, while reappreciating the evidence of parties adduced before the Enquiry Officer was of the considered view that the enquiry officer has not given sufficient reasons for his findings and the same was perverted and the punishment awarded to the worker is not sustainable in law.

18. It is held by the labour court that once termination of service is held to be illegal, relief of reinstatement is available to the employee.



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The worker was found to be not gainfully employed after the termination from service. On a finding that the charge of misconduct framed by the management against the petitioner was not established and the findings of the enquiry officer was perverse, the learned Judge, set aside the punishment awarded to the worker, and ordered reinstatement into service with continuity of service with 50% backwages and all other benefits.

19. This court while admitting the writ petition on 06.03.2013, granted interim stay of the award of the Labour court. Thereby, the award dated 06.11.2012 was stayed. While examining the factual matrix of this case, it is relevant to note that the 2nd respondent/worker was aged 54 years at the time of filing I.D.No.80 of 2011 challenging her dismissal dated 08.09.2010. The award was passed on 6th November 2012. Writ petition filed by Management got stayed the award by order dated 06.03.2013. Now the second respondent would be aged about 65 years. The second respondent was employed as Receptionist cum Telephone Operator in the writ petitioner



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Management.

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20. In my considered view, the learned Judge, Labour Court, has given cogent reasons to set aside the dismissal order passed by the Management. The learned Judge categorically found that the findings of the enquiry officer is perverse. This court do not find any ground raised by the Management would merit acceptance to take a different view to that of finding recorded by the labour court.

21. In the result, the award of the Labour court is confirmed. The Writ Petition is dismissed. The writ petitioner/Management shall disburse the entire settlement amount as per the Award of the Labour Court to the petitioner, within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, interim stay is vacated.

12.04.2023



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To
1.The Presiding Officer
Second Additional Labour Court
Chennai.



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J.NISHA BANU, J.

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