



W.P.No.36669 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.36669 of 2016

E.Arun

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.The Managing Director,
M/s.Abirami Soap Works,
R.S.No.93/1A, 1 B2,
Sembiapalayam Village,
Konkadu Post,
Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent, quash the award of the 1st respondent Labour Court dated 31.03.2016 in I.D(L).No.15 of 2014 as illegal, arbitrary and contrary to law and consequently, direct the 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendants benefits.



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For Petitioner : Mr.Balan Haridas
For Respondents : Labour Court [R1]
Mr.John Zachariah
for M/s.Fox Mandal & Associates [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the concerned records from the first respondent, quash the award of the first respondent Labour Court dated 31.03.2016 in I.D.(L).No.15 of 2014 as illegal, arbitrary and contrary to law and consequently, direct the second respondent to reinstate the petitioner with full back wages, continuity of service and all other attendants benefits.

2. The case of the petitioner is that, he was working in the second respondent Management from the year 2007. In the second respondent Management, there was a Union, namely Abirami Soap Workers Thozhilalar Viduthalai Munnani. The office bearers of the said Union were misused by the second respondent Management. When the same was questioned by the petitioner, on the instigation of the second



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respondent Management, the puppet office bearers were threatening and abusing the petitioner and made a false complaint before the second respondent Management, thereby, the second respondent Management issued a charge memo and conducted an enquiry and drawn proven minute as against the petitioner. Thereafter, passed an order of dismissal on 22.10.2012, against which, the petitioner raised an Industrial Dispute before the first respondent/Labour Court in I.D(L).No.15 of 2014, however, the same was dismissed by the Labour Court on 31.03.2016. Challenging the same, the petitioner has filed the above writ petition before this Court.

3. The learned counsel for the petitioner submitted that, the alleged main allegation made against the petitioner is that, the petitioner unruly behaved with the co-worker one V.Shanthamurthy and he disobeyed the orders of his superiors. On the two grounds, the second respondent Management issued a charge memo and the same ended in order of dismissal. However, in order to prove the above said charges, no document was marked before the Labour Court. On behalf of the second



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respondent Management, only one witness, namely O.P.Sanjay Madan was examined, who is the Manager of the second respondent Management. However, the superiors, with whom the petitioner allegedly misbehaved were not examined. Without examining those witnesses, the Labour Court mechanically by arriving at a conclusion that the petitioner misbehaved with the superiors and threatened the co-worker, dismissed the dispute raised by the petitioner, which is not sustainable. Accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the second respondent submitted that, for the proven misconduct, the petitioner was dismissed from service. He also submits that, the petitioner misbehaved with the co-worker and went to the house of the co-worker, namely V.Shanthamurthy and threatened his wife, for which, though no police complaint was lodged, however, the said V.Shanthamurthy and his wife lodged a complaint before the second respondent Management. Thereby, the second respondent Management issued a charge memo after receiving report of the superiors. Further, the petitioner also disobeyed the orders of the superiors, thereby, as against the act of insubordination, another



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charge memo was issued and Enquiry Officer drawn a proven minute.

After providing fullest opportunity to the petitioner, the order of dismissal was passed. By considering the above facts, the Labour Court had rightly arrived at a conclusion that the enquiry conducted by the second respondent Management is fair and proper and dismissed the dispute raised by the petitioner, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent Management and perused the materials available on record.

6. Admittedly, the petitioner worked in the second respondent Management from the year 2007. For misbehaving with the co-workers and the act of insubordination, he was issued with a charge memo and after conducting enquiry, he was removed from service on 22.10.2012. The issue which has to be decided in this writ petition is whether the charges levelled against the petitioner was properly established before the Labour Court by examining the witnesses or not.



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7. Normally, this Court would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and further the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali Vs. High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.

8. In the present case, except the Manager of the second respondent Management, no other witness was examined before the Labour Court, even though the second respondent Management had examined five witnesses before the Enquiry Officer and Enquiry Officer drawn a proven minute. Even assuming that the allegations made against the petitioner is a proved misconduct, dismissing the petitioner from service is highly disproportionate, which is liable to be interfered with.



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9. It has been the consistent view of the Courts that, it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the



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gravity of the proved charges thereby shocking the conscious of the Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

(Empasis Supplied)

10. Though this Court would not normally interfere with the punishment imposed on the delinquent, unless it shocks the conscience of this Court, but this Court, already having held that the punishment is disproportionate and also the fact that the petitioner is not a chronic defaulter, is inclined to modify the punishment by ordering a lumpsum compensation to the petitioner, which would meet the ends of justice, as at this point of time, it would not be in the interest of either party to continue the services of the petitioner with the second respondent management.

11. Accordingly, this Court, modifies the punishment of dismissal from service and in lieu thereof, invoking its inherent powers under Article 226 of the Constitution, in the interest of justice, directs the



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second respondent management to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as lumpsum compensation to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.

12. The Writ Petition is allowed in part with the aforesaid observations and directions. There shall be no order as to costs.

20.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Presiding Officer,
Labour Court,
Pondicherry.



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M.DHANDAPANI, J.

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