

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2023

PRONOUNCED ON : 04.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. Nos.6135 of 2014 & 29917 of 2022

W.P.No.6135 of 2014

The Management,
Bimetal Bearings Limited,
Hosur-Krishnagiri Road,
Parandapalli, Hosur – 635 125.
rep. by its Whole Time Director

....

Petitioner

Vs

1. The Presiding Officer,
Labour Court, Salem.

2. B. Manikannan

....

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in I.D.No.135 of 1999 and quash its award dated 11.09.2013.

For Petitioner	:	Mr.Anand Gopalan For M/s.T.S.Gopalan and Co.,
For R1	:	Court
For R2	:	Mr.R.Subramani for Mr.L.Rajendran

W.P.No.29917 of 2022

B.Manikannan

....

Petitioner

Vs

The Management,
Bimetal Bearings Limited,
rep. by its Whole Time Director
Hosur-Krishnagiri Road,
Pandandapalli, Hosur – 635 125.

....

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the learned Presiding Officer, Labour Court, Salem passed in I.D.No.135 of 1999 dated 11.09.2013 in so far as denying 75% of back wages quash the same and direct the respondent herein to reinstate the petitioner with continuity of service, full back wages with all consequential benefits in accordance with law.

For Petitioner : Mr.R.Subramani
for Mr.L.Rajendran
For Respondent : Mr.Anand Gopalan
For M/s.T.S.Gopalan and Co.,

COMMON ORDER

These Writ Petitions have been filed challenging the Award dated 11.09.2013 in I.D.No.135 of 1999 passed by the Labour Court, Salem, thereby directed the Management in so far its entirety by the workmen in so far as denial of 75% back wages.

2. In W.P.No.6135 of 2014, the petitioner herein after called as “Management” and the second respondent herein after called as “Workman”. In W.P.No.29917 of 2022, the petitioner here in after called as “Workman” and the respondent herein after called as “Management”.

3. The workman was appointed as Industrial Trainee on consolidated wages with effect from 01.12.1989 in the Management factory for a period of two years. The Management was engaged in the manufacture and supply of various types of bearings to all the automobile industries in India. About 200 workmen were deployed in the Management in various categories, in which 120 workmen were permanent and others were on contract basis, to reach optimum production to meet its demand in the automobile industry. The service of the workman was confirmed by the Management with effect from 17.11.1991 as Operator Grade-III. There was quality check inspection of each end product and the same were immersed in oil and stored in intermediary stores and packed.

4. There was a recognized Trade Union functioning for several years in the Management, in which the workman was one of the Office Bearer, which acted as a bargaining agent with the Management and wage settlements were entered into under Section 12(3) of Industrial Disputes Act periodically. The earlier wage settlement came to an end on 31.12.1994 and the new settlement was entered into on 21.03.1996. However, the Management acted in contravention of the new settlement and refused to pay the incentive for reaching the required target of production.

5. Therefore, the Union raised the issue and as such, the Management issued suspension orders against 42 workmen on the allegation that they were involved in the act of wilfully slowing down the performance of work, idling or wasting time during working hours and wilful insubordination. Based on those charges, the workman was served with charge memo dated 18.05.1996. After submitting their explanations, 32 workmen were taken back by the Management and 10 workmen were left in lurch. Though they also accepted the terms imposed on the other workmen, the left out workmen were involved

directly in the Trade Union activities. Therefore, an enquiry was conducted and the Enquiry Officer held that all the charges leveled against the workman were proved. After issuance of second show cause notice, the workman submitted his explanation. Without being satisfied with the explanation submitted by the workman, the Management dismissed the workman from his service from the date of suspension i.e., on 18.05.1996. Thereafter, seven workmen were settled and three of the workmen were not settled and raised Industrial Dispute.

6. The Labour Court, after careful consideration of evidence and records, held that the charges leveled as against the workman were not proved and ordered to reinstate the workman with continuity of service with 25% of back wages, by an order dated 11.09.2013. The Enquiry Officer held that the workmen including the second respondent/petitioner guilty of misconduct of go-slow. Since after issuance of memos for slowing down the production contemporaneously on the next day of the commission of misconduct and there was no reply for the said charges. The workmen as a whole did not achieve the minimum target of production of 11 lakhs bearings, they did not earn any

incentive for the months of March to June 1996. Therefore, they were slowing down the production. The undertaking letters were given by the 32 workmen who agreed to maintain production as per the settlement dated 21.03.1996. However, the other workmen including the second respondent/petitioner had been giving the output as demanded by them by the said settlement lower than the normal output as per the said settlement.

7. The workmen slowed down the production as a protest against the non-payment of wages in the settlement. Without the time cards, it cannot be said that the Engineers and Supervisors had not rejected the declaration made by the workmen and the Management has not placed any material to show that the entries made in the time cards were false. The first respondent also erred in holding that the two workmen in I.D.Nos.137 & 140 of 1999 were reinstated in employment, while it was not so. Those workmen arrived at a settlement to receive financial compensation to give up their claim for employment. There was no discrimination between the workmen, since the workman in this writ petition and others were not considered. The two workmen had

expressed their regret for the acts of misconduct committed by them and settled their cases. Whereas, the other workmen are concerned, the settlement has not accepted by them.

8. In support of his contention, he relied upon the Judgment reported in **(2005) 8 SCC 46** in the case of ***Obettee (P) Ltd., Vs. Mohd.Shafiq Khan***, in which the Hon'ble Supreme Court of India held that the employer accepted to choose the unqualified apology given and regrets expressed by the workman. It cannot be said that the employer had discriminated so far as the respondent workman is concerned because as noted above he had tried to justify his action for which departmental proceedings were initiated.

9. He also relied upon the Judgment reported in **(2013) 12 SCC 372** in the case of ***Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh***, in which the Hon'ble Supreme Court of India held that if there is a complete parity in the two sets of cases, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine

of equality enshrined in Article 14 of the Constitution of India. Even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employees accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted to the mode of denial with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It is further held that if the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

10. He also submitted that the Labour Court, instead of awarding reinstatement into service, ought to have awarded compensation. In support of the said contention, he relied upon the Judgment in *W.A.No.2311 of 1987*, in the case of *Engine Valves Ltd., Madras Vs. Labour Court, Madras and another*, in which the Hon'ble Division Bench of this Court held that a specific finding must be recorded, whether it was expedient and proper to reinstate the employee or whether award of compensation in lieu of reinstatement will meet the

requirements and ends of justice of the case concerned. Absence of reasons to invoke the power and interfere under the provisions of Section 11A in a particular case would render the very exercise of powers arbitrary and perverse and consequently the order would stand vitiated.

11. After a period of eight years, the workman filed writ petition in W.P.No.29917 of 2002, challenging the very same Award in so far as its denial of 75% back wages.

12. On perusal of the records revealed that the first respondent passed preliminary order holding that the enquiry conducted by the Management was contrary to the principles of natural justice and gave an opportunity to them to establish the charges leveled against the workmen. It was also confirmed by this Court by an order dated 27.03.2008. Thereafter, the Management let in evidence on its behalf to prove the charge of go-slow. However, the Management failed to produce the time cards maintained by the workmen to prove the charge of go-slow. In the time cards, the Engineers and Supervisors had not rejected the declaration made by the workmen and the Management

failed to place any material to show that the entries made in the time cards were false.

13. In fact, even according to the Management, the workmen achieved an output of 12.32 Lakhs of bearings in the month of April 1996. Further, no production records were produced to show that there was any break down of machinery during the relevant period. Therefore, the Management failed to prove the charge of go-slow. Out of 10 workmen except 3 workmen, the Management reinstated them and settled them. Therefore, the Management had shown discrimination in treating the workmen differently. Hence, the Judgments cited by the learned counsel appearing for the Management are not helpful to the case on hand, since there was no justification in not taking back these three workmen. Further, the Management had not placed any material to show the yardstick adopted by the Management in the matter of choosing the workmen for disciplinary action. In such circumstances, it can only lead to an inference that disciplinary action was initiated only against the workmen who participated in Union activities. Further, the Management had also failed to place any material to show that the workman was

gainfully employed during the pending litigation. Therefore, the first respondent rightly directed to reinstate the workman with 25% back wages. However, in the arguments of the learned counsel for the workman, this Court finds no force of claim of 75% back wages.

14. In view of the above, this Court finds no infirmity or illegality in the Award dated 11.09.2013 in I.D.No.135 of 1999 passed by the Labour Court, Salem. Accordingly, these Writ Petitions stand dismissed. There shall be no order as to costs.

04.09.2023

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Index:Yes/No
Internet:Yes/No

To

The Presiding Officer,
Labour Court, Salem.

WP.Nos.6135 of 2014 & 29917 of 2022

G.K.ILANTHIRAIYAN,J.

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Pre-delivery order in
W.P. Nos.6135 of 2014 &
29917 of 2022

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