



W.A.Nos.730 and 731 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal Nos.730 and 731 of 2014
and
M.P.No.1 of 2014 (2 petitions)

--

V.IIambharathi

.. Appellant in both the Writ Appeals

Vs.

1. Management of M/s.Addison & Co. Ltd.,
Rep. by its Director & Chief Executive,
having office at
803, Anna Salai, Chennai-600 002.

2. Presiding Officer,
III Additional Labour Court,
Chennai-600 002.

.. Respondents in both the Writ Appeals

Writ Appeal No.730 of 2014 filed under Clause 15 of the Letters Patent against the order dated 06.08.2013 passed by the learned Single Judge, in Writ Petition No.18712 of 2009 on the file of this Court.

Writ Appeal No.731 of 2014 filed under Clause 15 of the Letters Patent against the order dated 06.08.2013 passed by the learned Single

Page No.1/11



W.A.Nos.730 and 731 of 2014

Judge, in Writ Petition No.985 of 2010 on the file of this Court.

WEB COPY

For appellant : Mr.V.Prakash, Senior Counsel for M/s.K.Sudalai kannu

For respondent: Mr.M.Vijayan for M/s.King and Patridge for R-1

R-2 - Court

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by S.Vaidyanathan, J)

These appeals have been preferred against the common order passed by the learned Single Judge, dated 06.08.2013 in W.P.Nos.18712 of 2009 and 985 of 2010, setting aside the Award of the Labour Court, dated 16.04.2009 passed in I.D.No.673 of 2003 and reinstating the appellant/employee in service without back-wages.

2. For assaulting a higher official for the second time at Tambaram, due to which severe injury was caused to the officer by the appellant-employee and pursuant to a disciplinary action initiated against the appellant, apart from being charged on various counts, which were proved in the domestic enquiry, the appellant was dismissed from service on



W.A.Nos.730 and 731 of 2014

19.06.2003. In the industrial dispute raised by the appellant, the Labour Court, vide Award dated 16.04.2009 in I.D.No.673 of 2003, granted reinstatement of the appellant without back-wages, after holding that the charges were proved. Challenging the Award of reinstatement, the first respondent-employer filed W.P.No.18712 of 2009 and challenging the denial of back-wages, the employee filed W.P.No.985 of 2010.

3. The learned Single Judge, by the impugned common order dated 06.08.2013, allowed the Writ Petition filed by the Management and dismissed the Writ Petition filed by the employee. Challenging the same, the present Writ Appeals are filed by the employee.

4. The learned Single Judge held that the charges are serious in nature and hence, interference with the punishment is not warranted. The learned Single Judge also held that the Labour Court has erroneously exercised its discretion conferred under Section 11-A of the Industrial Disputes Act, 1947.



W.A.Nos.730 and 731 of 2014

5. The contention of the appellant that the Labour Court has not taken into consideration the past record of the employee, cannot be justified, more particularly, when charges against the employee stood proved.

6. It is further contended by the learned Senior Counsel appearing for the appellant that the Labour Court has got wide powers to interfere with the punishment even if the charges are proved and that depending upon the gravity of the misconduct, the Labour Court is empowered to interfere with the punishment.

7. Though we agree with the above contentions, in the case on hand, the appellant was involved in the very same incident against the very same person, not once, but twice. That apart, some of the employees who are said to have been involved along with the appellant in the first instance, tendered apology, whereas the appellant has not chosen to do so, but contested the matter. One of the employees has also accepted the settlement and given a quietus to the issue.



W.A.Nos.730 and 731 of 2014

8. It is the contention of the first respondent-Management that with regard to the incident at Tambaram, the appellant was convicted by a Criminal Court. Apart from preponderance of probability with regard to the inquiry that was conducted against the charge memo, there was also a criminal case, which ended in conviction and the charge was proved beyond reasonable doubt. In this regard, the learned Senior Counsel appearing for the appellant submitted that as against the order of conviction, a Criminal Appeal is filed and is pending before this Court.

9. Though we agree that the principle that is applicable to a domestic enquiry is completely different from the one applicable to a criminal case, as the former is based on preponderance of probability, and the latter has got to be proved beyond reasonable doubt, in the instant case, the Labour Court rendered a finding of fact that charges have been established. In addition, the appellant/employee was involved in assaulting his superior officer.

10. We find that there is no reason to interfere with the order of the learned Single Judge, reversing the finding of the Labour Court and

Page No.5/11



W.A.Nos.730 and 731 of 2014

upholding the act of the employer, dismissing the employee from service.

WEB COPY

11. At this stage, Mr.V.Prakash, learned Senior Counsel appearing for the appellant/employee submitted that the employee has already attained the age of superannuation and that since the order of dismissal has been confirmed by this Court, the employer has not settled the terminal benefits to the employee.

12. Mr.M.Vijayan, learned counsel appearing for the first respondent/Management submitted that the Management is willing to pay the Gratuity to the appellant/employee with interest @ 10% per annum from the date it became due, however, the ceiling limit payable towards Gratuity together with interest shall not cross the maximum amount prescribed under Section 8 of the Payment of Gratuity Act, 1972 and also that the employer is willing to extend a further sum of Rs.1 lakh to the employee.

13. The learned Senior Counsel appearing for the appellant/employee submitted that the learned Single Judge erred in observing that there is an



W.A.Nos.730 and 731 of 2014

admission of the incident and that the matter ought to have been remanded to the Labour Court for fresh disposal.

14. The learned Senior Counsel further submitted that there was no appreciation of evidence by the Labour Court. Though the word used by the learned Single Judge is "admittedly", the factum that the charges have been established, had been discussed by the Labour Court in detail.

15. We have also tried to persuade the parties to arrive at an amicable settlement, as the employee has already attained the age of superannuation to shorten the life of the litigation.

16. The appellant/employee is present before this Court and he is not agreeable to the suggestion made by the Management and he submitted that he is entitled to better benefits, as there was a settlement on 28.03.2000.

17. The learned counsel appearing for the first respondent/Management, apart from filing a Memo dated 15.02.2023,

Page No.7/11



W.A.Nos.730 and 731 of 2014

submitted that the charges have been proved and that they are willing to pay a sum of Rs.1 lakh as compensation, apart from twice the Gratuity amount, as the employee would be entitled to Gratuity plus interest @ 10% per annum on the same and in any event, the interest shall not cross the maximum amount prescribed under the Payment of Gratuity Act, 1972,

18. This Court has already dictated the order earlier, but not signed, hoping that the matter would be settled between the parties. Today, the learned Senior Counsel appearing for the appellant-employee wanted to re-argue the matter pointing out the alleged error in the impugned order of the learned Single Judge

19. According to the learned counsel appearing for the first respondent-Management, the amount payable including Rs.1 lakh, works out to Rs.2,28,308/-, which was offered by the employer.

20. This Court asked the learned counsel for the first respondent/Management to pay a sum of Rs.3 lakhs to give a quietus to the



W.A.Nos.730 and 731 of 2014

matter, which he readily agreed. This was also turned down by the employee who is present before this Court.

21. Hence, in view of the aforesaid discussion, we are not inclined to interfere with the impugned order passed by the learned Single Judge. The admitted amount of Gratuity of Rs.48,750/- plus interest @ 10% per annum and also any other benefits based on the settlement, dated 28.03.2000 or any other settlement, are willing to be paid by the Management to the employee within 15 days from the date of receipt of a copy of this judgment and if there is any difference in Gratuity, it is open for the employee to take recourse to the remedy available under the Industrial Disputes Act, 1947 and the Payment of Gratuity Act, 1972.

22. Further, while making a claim under Section 33-C(2) of the Industrial Disputes Act, 1947, the employee must establish that he has got a pre-existing right to claim the benefit under the said provision.

23. This judgment will not preclude the employee from receiving



W.A.Nos.730 and 731 of 2014

Rs.3 lakhs from the employer in its entirety as full and final settlement, and if any request is made by him within a period of two weeks from the date of receipt of a copy of this judgment, the same shall be considered by the Management.

24. The order of the learned Single Judge is modified to the extent indicated above. The Writ Appeals are disposed of accordingly. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

(S.V.N., J) (R.K.M., J)
21.02.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

cs

To

The Presiding Officer,
III Additional Labour Court,
Chennai-600 002.

Page No.10/11



WEB COPY



W.A.Nos.730 and 731 of 2014

S. VAIDYANATHAN, J

and

R. KALAIMATHI, J

CS

W.A.Nos.730 and 731 of 2014

21.02.2023

Page No.11/11