



W.P.No.4308 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4308 of 2016

and W.M.P.No.3647 of 2016

The Management
M/s.Lotus Footwear Enterprises Limited,
B3, SIPCOT Industrial Park,
Mangal Village, Mathur Post,
Cheyyur-631 701.

.. Petitioner

Vs.

1.The Presiding Officer,
Additional Labour Court,
Vellore.

2.V.Magendiran

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ or order or direction in the nature of writ, particularly a Writ of Certiorari to call for the records connected with I.D.No.169 of 2014 on the file of 1st Respondent, Additional Labour Court, Vellore and to quash the award dated 31.08.2015 made therein.



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For petitioner : Mr.M.Kandasamy
For Respondents : Mr.P.T.Ram Kumar for R2

ORDER

Aggrieved by the impugned award of the Labour Court in I.D.No.169 of 2014, the petitioner is before this Court.

2. It is the case of the petitioner that the 2nd respondent/workman was working in the petitioner management as an assistant. He was issued with a charge memo dated 02.08.2013 alleging that some article was missing in the warehouse. Since, the explanation given by the workman was not satisfactory, a detailed enquiry was conducted and the enquiry officer submitted his report holding the charges proved against the workman. Subsequently, a second show cause notice was issued him, since there was no response from the workman, he was dismissed from service on 28.05.2014. As against the dismissal, the workman raised a dispute before the conciliation officer and as the conciliation proceedings ended in failure,



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the workman raised an industrial dispute before the Labour Court under Section 2A of the Industrial Disputes Act, 1947 wherein the Labour Court has ordered reinstatement with continuity of service by modifying the punishment to one of stoppage of promotion to a higher post for a period of two years. Challenging the same, the petitioner management has filed the Writ Petition.

3. Learned counsel for the petitioner management submitted that it is the duty of the store assistant to maintain the Stock Issue Register, however, workman has not maintained the same properly which was the only reason for material missing thereby incurring huge loss to the management and therefore, the workman is solely responsible for the same. In view of the said misconduct, the enquiry was conducted, wherein, the charges have been proved by the enquiry officer. However, the Labour Court having failed to appreciate that in domestic enquiry, the charges need not be proved beyond reasonable doubt unlike a criminal case, has erroneously come to a conclusion that the charges framed against the workman with regard to theft of material has not been proved by the



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management and accordingly, passed the impugned award in favour of the workman which is not sustainable.

4. Per Contra, learned counsel appearing for the 2nd respondent workman submitted that the punishment imposed by the management for the said misconduct is highly disproportionate and in this regard, the Labour Court having elaborately discussed the factual aspects and also the documents submitted by either parties as a proof of evidence, has rightly arrived at the conclusion that a lesser punishment could be imposed for the alleged misconduct against the workman and had ordered reinstatement with continuity of service. Hence, there is no perversity in the order passed by the Labour Court. Accordingly, he prays for dismissal of the Writ Petition filed by the management.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.



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6. Admittedly, the workman who was working in the petitioner management as a store assistant was dismissed from service alleging that some material was missing in the warehouse while he was in duty and was placed under suspension prior to the dismissal. Though it is the case of the management that the workman has not maintained the Stock Issue Register properly which was the reason for material missing from the warehouse, however, the management has not placed any satisfactory evidence to prove that the petitioner has stolen the missing material. In the absence of any such material, the workman could be fastened only with a charge of dereliction of duty and not theft. In view of the above, considering the lapse on the part of the workman, this Court does not find any perversity in the findings rendered by the Labour Court with regard to imposition of lesser punishment for the said misconduct.

7. However, in view of the loss incurred by the management and the damages caused to the functioning of the management due to the said misconduct of the workman and the charges being proved with regard to discrepancy in the stock, the Award passed by the Labour Court stands



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modified from stoppage of promotion to a higher post for a period of two years to that of the stoppage of increment for a period of one year without cumulative effect. However, the workman is not entitled for the relief of backwages except the wages, if any, received u/s 17B.

8. In view of the above modification, this Writ Petition is disposed of with a direction to the respondent to consider the petitioner for promotion after the petitioner completes the currency of punishment. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

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Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
Additional Labour Court,
Vellore.



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M.DHANDAPANI, J.

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