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W.P.Nos.22033 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.22033, 22037, 22039, 22041,
22044 and 22050 of 2019

in

W.M.P.Nos.21291, 21296 of 2019, 21299, 21304,
21308 and 21314 of 2019 and 407/2020

W.P.No.22033 of 2019:

The Management of C.P.C. (P) Limited.,
No.207, Mettupalayam Road,
Coimbatore,
Rep. By its Director Petchiraj.

... Petitioner

Vs.

1. A.Santha Kumar
2. N.P.Subramanian
3. M.Sivaraj
4. M.Velusamy
5. S.AnnDurai
6. M.Srinivasan
7. A.Mohamad Jaffarulla

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the Principal Labour Court Coimbatore dated 29.08.2018 made in ID Nos. 89/ 2014, 95/ 2014, 96/ 2014, 98/ 2014 101/ 2014, 108/ 2014 and 110/ 2014 On the file of Principal Labour Court, Coimbatore quash the same.

For Petitioners : Mr.Sivashanmugam.S. For all the writ petitions

COMMON ORDER

Since the issue involved in the present writ petitions are one and the same are disposed of by way of this common order.

2. These writ petitions have been filed seeking to quash the of the Principal Labour Court, Coimbatore, dated 29.08.2018 made in ID Nos. 89/ 2014, 95/ 2014, 96/ 2014, 98/ 2014 101/ 2014, 108/ 2014 and 110/ 2014 on the file of Principal Labour Court, Coimbatore.

3. It is the case of the petitioners that the petitioner company was running from the year 1946 and was involved in the production and manufacturing of auto components for both national and international customers. The petitioner has two divisions viz., foundry division and



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machine shop. Till 2013, the petitioner company was doing well and there was not a single instance of labour unrest or strike. Due to the imposition of restriction of HT electric power load by TANGEDCO and restrictions imposed by TNPCB on the foundry operations in the Coimbatore unit has resulted under utilisation of the foundry and machine shop facilities and which resulted in not losses and accumulated debts to the lenders and banks. The petitioner wanted to migrate the permanent employees from foundry division to machine shop division. The petitioner conducted training program for the employees. Though the respondents gave their consent for such migration, but did not attend the training program. The employees were paid full salary during April 2013 despite their refusal to work. Since the respondents refused to work, despite the lawful instructions given to the respondents. Hence, that period was treated as refused work and the same was informed to the respondents by the petitioner's letter dated 27.05.2013 and their salaries would be withheld. On 07.06.2013, the respondents along with other 46 workmen, without any prior notice either under the ID Act or under provision of the petitioners standing order, resorted to illegal strike and prevented the ingress and egress of the men and materials into the petitioner's premises. However, the negotiations between the petitioner and the workmen ended in failure.



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Hence, the petitioner issued show cause notice cum suspension order to the respondents and other erring workmen and calling them to attend enquiry notice and charges were framed against them. The EO was appointed and the respondents have also participated in the enquiry proceedings. The EO found the respondents guilty of the charges levelled against them. Based on which, the petitioner terminated the respondents from the service vide order dated 29.10.2013. The Conciliation proceedings before the Assistant Commissioner of Labour-II, Coimbatore had failed and referred the dispute to the Labour Court. The Labour Court, vide its order dated 29.08.2018, passed an award directed the petitioner to pay compensation to the respondents. Aggrieved over the same, these writ petitions have been filed.

4. The learned counsel for the petitioner submitted that the Labour Court, without any materials on record, passed the present impuned award, which is unsustainable one. Before the Labour Court, the learned counsel for the respondents had already given up his plea for reinstatement and he pleaded only for the compensation. However, such compensation could not be granted on for mere asking without there being any evidence to substantiate the case of the respondents/workmen. Hence, the order passed by the Labour Court is



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liable to be set aside and allow this petition.

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5. Heard the learned counsel for the petitioner and perused the materials available on record. There is no appearance on behalf of the respondents.

6. As stated supra, the private respondents were employed in the petitioner's company and there were employed for more than ten years. Some of the respondents have attained for more than thirty years of service. It is the grievance of the petitioner that the private respondents had prevented the other employees from discharging their work and went on strike, which led the petitioner to initiate the disciplinary proceedings as against the respondents. Based on enquiry report, the petitioner company terminated the service of the respondents.

7. However, the Tribunal, in modification of the punishment, in lieu of reinstatement, had ordered for payment of compensation to the workmen, which is put in issue by the petitioner before this Court that the order of the Tribunal is perverse.



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8. The order of the Tribunal reveals that the domestic enquiry was conducted in a fair and proper manner and that there is no violation of principles of natural justice. The charges levelled against the petitioners were held to be proved, but the Tribunal felt that the proportionality of the punishment to the charges is disproportionate, which necessitated the Tribunal to modify the punishment to one of payment of a lumpsum compensation in lieu of reinstatement.

9. The petitioner attacks the impugned award on the question of modification from dismissal to one of payment of lumpsum compensation by exercising its powers under Section 11-A of the ID Act.

10. To appreciate the contention and also to find out whether the interference with the punishment by the Tribunal is justified or not, it is but necessary to advert to Section 11-A of the ID Act to find out whether the power has been properly exercised by the Tribunal.

Section 11-A of the ID Act, for better appreciation is quoted hereunder:-



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"11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

Even a bare reading of Section 11-A, supra, reveals that where in the course of adjudication the Tribunal feels that the punishment of dismissal



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or discharge imposed was not justified, it may direct reinstatement of the workman or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal.

11. The Tribunal considering the fact that dismissal casts a stigma, but equally the act of the workmen in preventing the other workmen from discharging their work and their conduct coupled with their going just and reasonable to award lumpsum compensation in lieu of any other on strike, thought it fit that it would be punishment. Therefore, Tribunal, by exercising its power u/s 11-A had thought it fit to modify the punishment, by considering the length of service of the workman and also the charges, which cannot be said to be erroneous or beyond the jurisdiction of the Tribunal. Therefore, on a holistic consideration of the entire materials, this Court is of the considered view that no interference is warranted with the modification of punishment into one of payment of lumpsum compensation.

12. Accordingly, all the writ petitions are liable to be dismissed and the same are dismissed. However, this Court directs the petitioner Company to deposit the entire compensation amount along with 6% interest, as awarded by the Labour Court, before the Labour Court, from the date of award to till date,



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within a period of four weeks from the date of receipt of a copy of this order.

No costs. Consequently, the connected miscellaneous petitions are closed.

19.06.2023

Index : Yes / No

Speaking order / Non speaking order

Netrual Citation Case : Yes / No

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M.DHANDAPANI, J.

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