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W.P.Nos.18348, 18349 & 15172 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 15.12.2022

Orders delivered on 28.02.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.Nos.18348, 18349 & 15172 of 2014

and

M.P.No.1 & 1 of 2014

W.P.No.18348 of 2014

The Management of
SRF & SRF Polymers Limited
Manali Industrial Area,
Manali,
Chennai – 600 118

.. Petitioner

Vs

1. The Presiding Officer,
3rd Additional Labour Court,
Chennai.
2. R.Duraisami (deceased)
3. D.Hemamalini,
W/o Late R.Duraisamy
4. D.Meerapriya
D/o Late R.Duraisamy
rep. By her mother D.Hemamalai



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(R3 and R4 substituted as LR's of deceased
R2 vide order dt.30.06.2022 made in WMP.6833/2021
in W.P.No.18348/2014 by SMSJ)

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a
Writ of Certiorari to call for the records connected with I.D.No.267 of 2009
on the file of the 1st respondent and to quash the award dt. 26.03.2014
(Common Award passed along with I.D.No.557 of 2006) insofar as it relates
to grant of compensation.

For Petitioner	: Mr.Shivathanu Mohan for M/s.Ramasubramanian & Associates
Respondents	: R1-Court R2-died Mr.A.Suresh Sakthi Murugan for R3 & R4

W.P.No.18349 of 2014

The Management of
SRF & SRF Polymers Limited
Manali Industrial Area,
Manali,
Chennai – 600 118

.. Petitioner

Vs

1. The Presiding Officer,
3rd Additional Labour Court,
Chennai.



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2. SRF and SRF Polymers Employees Union (821/MDS)

rep. By General Secretary,
No.11, Vimalapuram,
Bharathiyar Street,
Manali,
Chennai – 600 068

3. The Government of Tamil Nadu,
rep. by its Secretary,
Labour & Employment Department,
Chennai – 600 009
(R3 - given up)

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records connected with I.D.No.557 of 2006 on the file of the 1st respondent and to quash the award dt. 26.03.2014 (Common Award passed along with I.D.No.267 of 2009) insofar as holding the dismissal by the Opposite Party/Management.

For Petitioner : Mr.Shivathanu Mohan
for M/s.Ramasubramanian &
Associates

Respondents : R1-Court
Mr.A.Suresh Sakthi Murugan
for R2
Mr.T.Arunkumar for R3

W.P.No.15172 of 2014



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1. R.Duraisami (deceased)

2. D.Hemamalini,
W/o Late R.Duraisamy

3. D.Meerapriya
D/o Late R.Duraisamy
rep. By her mother D.Hemamalai

(P2 & P3 substituted as LR's of deceased
sole petitioner vide order dt.30.06.2022 made in
WMP.6894/2021 in W.P.No.15172/2014 by SMSJ) Petitioners

Vs

1. The Presiding Officer,
III Additional Labour Court,
High Court Campus,
Chennai.

2. The Management of
SRF & SRF Polymers Limited
rep. by its General Manager,
Manali Industrial Area,
Manali,
Chennai – 600 068

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a

Writ of Certiorarified Mandamus to call for the concerned records from the

1st respondent and quash the award passed by the 1st respondent Labour



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Court in I.D.No.267 f 2009 dated 26.03.2014 insofar as declining to grant relief of reinstatement with full backwages, continuity of service and all other attendant benefits after holding that the dismissal of service of the petitioner is invalid in law and setting aside the same after holding that the punishment of dismissal is grossly disproportionate as illegal arbitrary and contrary to law and consequently direct the 2nd respondent to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

For Petitioners	: Mr.A.Suresh Sakthi Murugan
Respondents	: R1-Court Mr.Shivathanu Mohan for M/s.Ramasubramanian & Associates for R2

COMMON ORDER

W.P.No.18348 of 2014 has been filed by the Management challenging the common award made in I.D.No.267 of 2009 dated 26.3.2014 passed by the Labour Court granting compensation to the workman. W.P.No.18349 of 2014 has been filed by the Management challenging the common award made in I.D.No.557 of 2006 dated 26.03.2014 of the Labour Court, holding



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that R.Duraisamy dismissal by the Management amounts to unfair Labour practice. W.P.No.15172 of 2014 has been filed by the workman challenging the common award passed in I.D.No.267 of 2009 dated 26.3.2014 insofar as declining the relief of reinstatement with full backwages, continuity of service and all other attendant benefits after holding that dismissal of service of the workman as invalid in law

2. For the sake of convenience, workman is shown as petitioner/workman and the Management is shown as respondent Management in this common order.

3. The brief facts of the case of the petitioner/workman are as follows:

The petitioner was employed under the respondent Management from 14.3.1985 as a temporary employee and became Operator Grade II in the Twisting and Wining Department and confirmed in service on 01.11.1989. He was issued with a charge memo dated 5.3.2022 alleging that on 14.02.2002 when he was on duty in 'D' shift, he barged into the cabin of the shift in-charge and shouted at Assistant Manager – Textiles, without any reason. The petitioner denied the allegation by his explanation dated



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19.3.2002. Enquiry was conducted but no enquiry findings was given. The petitioner was dismissed from service on 18.01.2006. The petitioner was removed from service illegally and against the principles of natural justice. The petitioner filed 2A petition before the Labour Officer, Conciliation. The conciliation proceedings taken by the Labour Officer failed and the failure report was filed. Hence, the petitioner filed Industrial Dispute to direct the respondent Management to reinstate him in service with all benefits. The Labour Court partly allowed the same by directing the Management to pay compensation of Rs.5,00,000/- in lieu of reinstatement into service. Challenging the same W.P.No.15172 of 2014 has been filed.

4. The brief facts of the case of the respondent Management are as follows:

The petitioner did not approach the Conciliation Officer and received failure report prior to rising of the industrial dispute and thus, the I.D itself is not maintainable. The petitioner joined service of the respondent on 1.11.1989 as an Operator II and his service was confirmed with effect from 1.8.1990. On 14.2.2002, Duraisamy barged into the Shift in charge cabin



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and started shouting loudly without any reason against C.T.Jayakumar, Assistant Manager Textiles. Therefore, charge memo was issued to him on 5.3.2002 and the enquiry was conducted on 14.6.2002. Based on the enquiry report, he was dismissed from service. But the Labour Court held that the dismissal of the petitioner is unfair labour practice and awarded a compensation of Rs.5 lakhs to the petitioner. Challenging the same, W.P.Nos.18348 and 18349 of 2014 have been filed.

5. Heard the learned counsel appearing for the petitioner/workman and the learned counsel appearing for the respondent Management.

6. Learned counsel would submit that the petitioner denied the charges levelled against him. On 14.02.2002, the petitioner merely made a representation to C.T.Jayakumar, Assistant Manager, Textiles, regarding missing chairs and difficulties experienced owing to that in operating the computer and beyond that nothing happened. Even in the enquiry, it was demonstrated that nothing happened as alleged in the charge memo and that the petitioner had merely made a complaint with C.T.Jayakumar about the missing of chairs and the consequent difficulties in operating the computer.



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This fact was confirmed even through the Management witnesses apart from the evidence of witnesses examined on the side of the petitioner. The Labour Court has also held that the petitioner had merely asked to treat the employees with humanity. The Labour Court ought to have reinstated the petitioner with full backwages and all other benefits as it has held that the punishment is disproportionate but had only granted compensation of Rs.5 lakhs.

7. Learned counsel would further submit that the alleged incident had taken place on 14.02.2002. However, the 2nd respondent with an intention to foist a false allegation, issued the charge memo only on 5.3.2002, by clear afterthought. The enquiry was concluded on 30.11.2004 and thereafter nothing happened. The petitioner was re-elected as Vice President of the Employees Union in the year 2006 along with new President who had replaced the previous incumbent who had occupied the office for 9 years. The Management was not happy about the new incumbent President and the Management thought that the petitioner is the instrumental for the victory of the new President. In such circumstances, the charge memo dated



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5.3.2002 which had been lying idle after 30.11.2004 was sought to be revived with sole intention to punish the petitioner. Without even furnishing enquiry report and without issuance of 2nd show cause notice, the Management passed an order of dismissal as against the petitioner on 18.01.2006, which is illegal.

8. Learned counsel for the petitioner/workman would submit that though the Labour Court held that the dismissal is invalid, even assuming that the allegations are proved, it will not amount to using vulgar words or abusive language and therefore, the Labour Court ought to have granted the normal relief of reinstatement with full backwages, continuity of service and all other attendant benefits. The Labour Court without semblance of pleading and evidence held that if the petitioner is reinstated, the bad blood which had developed between the petitioner and the management will spoil the working atmosphere and granted the compensation instead of reinstatement. The Labour Court after holding that the order of dismissal is an act of unfair labour practice ought to have passed an award directing the Management to reinstate the petitioner with full backwages, continuity of



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service and all other attendant benefits.

9. On the contrary, the learned counsel for the Management would submit that after having found that some of the charges were proved, the Labour Court failed to apply the evidence on record and has held that the dismissal was disproportionate. The Labour Court would not have straightaway mean that the act of dismissal would constitute an unfair labour practice. There is no reason stated as to why the termination of service of the employee constitute an unfair labour practice within the meaning of Industrial Disputes Act .

10. Learned counsel would further submit that even assuming that the award of the Labour Court is correct, insofar as the finding that the dismissal was unjustified because the report of the enquiry officer was not furnished to the employee is concerned, an opportunity ought to have been given to the Management to establish the acts of misconduct, but it was not done so. He would further submit that petitioner refused to accept the order of dismissal when it was served on him on 18.1.2006. The enquiry was prolonged due to the delay tactics adopted by petitioner and thus, the



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and also written in the interaction board against Shanmgavasan Manager, Textiles. In several decisions, the Hon'ble Supreme Court has held that the punishment of dismissal for using abusive language could not be held to be disproportionate but it should be borne in mind that if the punishment awarded by the management was required to be interfered, then the principle of proportionality between the gravity of the offence and the stringency of the punishment should be kept in mind.

14. In the instant case, there is only a single instance of using abusive language and there was no physical assault also. The order of dismissal is not justified considering the facts and the circumstances of the case. Thus, the Labour Court has rightly held that the punishment of dismissal is disproportionate. Though charge memo was issued in the year 2002 and enquiry was completed in the year 2004, only after the Union election was over and the petitioner was elected as Vice President along with new President, the Management had passed the order of dismissal from service in the year 2006. It is also the contention of the petitioner that the Management was not happy with the new President. Therefore, the conduct



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of the Management could be inferred as unfair labour practice.

15. It is also seen that the petitioner was charged for abusing some officers of the management within the premises of the factory and has also written in the interaction board against the officers and he was also holding a post in the Employees union. Therefore, this Court is of the opinion that findings rendered by the Labour Court that if the petitioner is reinstated in service, the bad blood which was developed between him and the management will spoil the working atmosphere, need not be interfered with. However, keeping in view the facts and circumstances of this case, this Court of the considered opinion that the compensation awarded by the Labour Court in lieu of reinstatement into service is meager and the interest of justice would be met if the compensation is enhanced from Rupees Five Lakhs to Rupees Ten Lakhs. Accordingly, the award passed by the Labour Court is modified only in respect of compensation alone which has been enhanced from Rs.5,00,000/- (Rupees Five Lakhs only) to Rs.10,00,000/- (Rupees Ten Lakhs only). The Management is directed to pay the aforesaid compensation, less the amount if any already paid, within a period of two



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months from the date of receipt of a copy of this order, failing which, the workman shall also be entitled to interest at the rate of 9% per annum thereafter. In all other aspects the award passed by the Labour Court is confirmed.

16. In the result, W.P.No.15172 of 2014 is disposed of. W.P.Nos.18348 & 18349 of 2014 are dismissed with the aforesaid modification in compensation. No costs. Consequently, miscellaneous petitions are closed.

28.02.2023

Index :Yes/No
Speaking/Non-speaking order
vsi



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J.NISHA BANU, J.

vsi

Pre-delivery order in
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