



W.A.No.2603 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.03.2023

Coram:

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

Writ Appeal No.2603 of 2021
and
C.M.P.Nos.17034 and 19026 of 2021

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The Managing Director,
M/s.S & S Power Switchgear Equipment Ltd.,
No.4, EVR Street, Sedarapet,
Puducherry-605 111.

.. Appellant

Vs.

E.Poongavanam

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 17.09.2020 passed by the learned Single Judge, in
W.P.No.12964 of 2020 on the file of this Court.

For appellant : Mr.M.R.Dharanichander

For respondent: Mr.P.R.Thiruneelakandan



W.A.No.2603 of 2021

JUDGMENT

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

The present appeal has been filed against the order dated 17.09.2020 passed in W.P.No.12964 of 2020, confirming the Award of the Labour Court in setting aside the order of dismissal of the respondent/employee, dated 18.04.2015 and directing the Management (appellant) to reinstate him into service with effect from 18.04.2015 and with full back-wages and other monetary benefits and however, there shall be cut in increment for a period of two years with cumulative effect.

2. According to the Management, the employee was involved in serious misconduct using abusive language and assaulting one Saravanan on 07.11.2013. The employee had joined service in the year 1988 as Trainee and he had rendered so many years of unblemished service, except for the incident in question. Though it has been contended by the learned counsel for the appellant/Management that the employee has bad past record, no evidence has been produced before the Labour Court to prove the same and



W.A.No.2603 of 2021

hence, to prove such contention, he relied on documents, which are not produced before the Labour Court, but the same cannot be accepted by this Court, as laid down in 1992 (2) LLJ 101 (Madras High Court) (Madras Aluminium Company Ltd., Mettur Dam Vs. Labour Court, Coimbatore and another), wherein it has been held as follows:

"7. It is not in dispute that while the matter was argued before the Labour Court, neither the Tamil Nadu Boilers Attendants Examination Rules were referred to or pressed into service by the petitioner/management, nor any details regarding the initial appointment of the juniors of the second respondent who were confirmed in service, be it a helper or in any other capacity, were produced for the consideration of the Labour Court. It is not given to any of the parties to a proceeding to introduce points and produce the records at different stages as it suits them. The parties before the Labour Court have invited the decision of the Labour Court on the basis of certain materials, and on a particular plea raised before it and if that be so, it is not open to one of the parties to the proceedings before the Labour Court to try to introduce new materials which involve factual verification regarding the correctness of the claims now made before this Court and thereby attack the findings, and conclusions of the Labour Court. The submissions that are sought to be raised in the form of reply-affidavit and any advanced at the time of arguments were not even thought of as a challenge to the very award even at the time of



filing of the writ petition. Consequently, in my view, it is not given to the petitioner/management to attack the award of the Labour Court on grounds either advanced or on materials which were never placed before the said Court at the appropriate point of time. This Court, exercising jurisdiction under Art.226 of the Constitution, is concerned with any error apparent on the face of the record and the correctness of the award *vis-a-vis* the said infirmity cannot be tested with reference to plea and materials now sought to be urged and introduced at the time of hearing."

3. This Court, in the above decision, has categorically held that the documents which have not been marked before the Labour Court, cannot be introduced for the first time before the High Court, more so, the appellant/Management is a private Management.

4. The respondent-employee was charge-sheeted for serious misconduct in terms of the Standing Orders in Clause 14-3(g), 9(h) and (i). Not satisfied with the explanation of the respondent/employee, domestic enquiry was conducted on various dates commencing from 27.12.2023 and as many as 27 sittings were conducted and during the domestic enquiry, the employee was given an opportunity to put forth his defence. The Enquiry



W.A.No.2603 of 2021

Officer submitted report and based on the report, and after giving due opportunity to the employee, he was dismissed from service on 18.04.2015.

Aggrieved by the dismissal order, an industrial dispute was raised by the employee and after conciliation, the matter was taken up by the Labour Court, Puducherry, on the reference made by the Central Government.

5. Before the Labour Court, the employee examined himself as P.W.1 and marked six documents as Exs.P-1 to P-6. The Management examined one Balakrishnan as R.W.1 and marked eleven documents as Exs.R-1 to R-11. After analysing the entire evidence on record, the Labour Court came to the conclusion that the domestic enquiry was fair and proper and also held that there is no question of victimisation and the allegation of rivalry union activity and personal animosity are found to be baseless. As the contention of the employee was that he has resigned from one Union and joined the other Union, is not supporting the activities of the Management. The Labour Court further held that abusive language was used by the respondent and the respondent/employee assaulted Saravanan, and the same was also proved, but the Labour Court also held that it was not on account of the Union rivalry activities, and after extracting the various dates of



W.A.No.2603 of 2021

enquiry, the Labour Court held that there was no violation of principles of natural justice. However, the Labour Court interfered with the punishment holding that the punishment imposed on the respondent/employee was shockingly disproportionate to the gravity of the offence, when particularly an employee had put in 14 years of unblemished record of service. Relying upon the judgment of the Apex Court reported in AIR 1982 SC 1552 (Rama Kanat Misra Vs. State of UP and others), the Labour Court held that using filthy language and threatening posture, would not entitle the employer (Management) to take extreme step of imposing the capital punishment of dismissal from service.

6. The only issue before this Court is as to whether the Labour Court is empowered to interfere with the order of the Management imposing different punishment in that place.

7. In the above context, Section 11-A of the Industrial Disputes Act, will come into play and for the sake of convenience, Section 11-A of the Industrial Disputes Act is extracted hereunder:

Section 11-A: Powers of Labour Courts, Tribunals
and National Tribunals to give appropriate relief in



W.A.No.2603 of 2021

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."

8. The above extracted Section 11-A was tested in the judgment of



W.A.No.2603 of 2021

the Supreme Court, reported in 1973 (1) LLN 278 = 1973 (1) SCC 813

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Ltd. Vs. The Management and others), wherein it was held as follows:

"26. We have exhaustively referred to the various decisions of this Court, as they give a clear picture of the principles governing the jurisdiction of the Tribunal when adjudicating disputes relating to dismissal or discharge.

27. From those decisions, the following principles broadly emerge:-

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employee is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the findings of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.



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W.A.No.2603 of 2021

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality or validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his



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W.A.No.2603 of 2021

action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the Management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The Workmen*, 1971-1-SCC 742 within the judicial decision of a Labour Court or Tribunal."

... ..

"58. We have already expressed our view regarding the interpretation of Section 11A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases



WEB COPY



W.A.No.2603 of 2021

where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence in order to make the Section applicable even to disputes, which had been referred prior to the coming into force of the section, there should be such a clear, express and manifest indication in the section. There is no such express indication. An inference that the section applies to proceedings, which are already pending, can also be gathered by necessary intentment. In the case on hand, no such inference can be drawn as the indications are to be contrary. We have already referred to the proviso to Section 11A which states 'in any proceeding under this section'. A proceeding under the section can only be after the section has come into force. Further the section itself was brought into force some time after the Amendment Act was passed. ..."



W.A.No.2603 of 2021

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9. The purpose of the enactment to introduce Section 11-A in the year 1971 was to empower the Labour Court to re-appreciate the evidence and come to a different conclusion and in case the punishment is shockingly disproportionate to the charge(s) levelled against the employee, the punishment shall be interfered with.

10. The power of the Civil Court is completely different from that of the Labour Court. The Civil Court can decide the issues between the parties based on the contract and on the contrary, the Labour Court is empowered not only to decide the issues based on the contract, but also is empowered to create a new contract. Hence, we are of the view that the impugned Award of the Labour Court, as confirmed by the learned Single Judge, need not be interfered with, as the Labour Court has imposed the punishment of stoppage of increment in the wages for a period of two years with cumulative effect.

11. As stated supra, the employer / Management has not produced the past record of the employee (respondent), which means that the past record



W.A.No.2603 of 2021

of the respondent/employee is clear. The Labour Court in paragraph 15 of the impugned Award, has held that there was no past record of mis-conduct against the respondent-employee.

12. During the course of arguments, learned counsel for the appellant/Management submitted that the appellant/Management has already been closed and all the employees have been extended with Voluntary Retirement Scheme (VRS) benefits.

13. It is submitted by the learned counsel for the respondent/employee that the employee was drawing wages under Section 17-B of the Industrial Disputes Act of an extent of Rs.19,204/- per month. If the employee is deemed to be in service, he would be entitled to all the benefits from the date of dismissal, except the punishment that has been imposed by the Labour Court in substitution of the dismissal from service.

14. Since it is stated by the learned counsel for the appellant/Management that the Company has been closed down, we are of the view that the employer (Management) need not pay the back-wages from the date of dismissal till the date of Award and that instead of stoppage of increment for a period of two years with cumulative effect, the back-



W.A.No.2603 of 2021

wages is deprived.

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15. It is stated that a sum of Rs.5.5 lakhs had been paid as wages under Section 17-B of the Industrial Disputes Act, until February 2023.

16. Since the other employees have been extended the benefit of VRS, to an extent of Rs.16.23 lakhs, the present employee shall also be extended the VRS benefits in order to shorten the life of litigation and give quietus to the matter and the Management is directed to pay a sum of Rs.16.25 lakhs (rounded off) inclusive of all benefits including Gratuity, apart from PF contribution, which can be deducted from the back-wages and remitted together with the employer's share without interest and without damages, as the wages are being paid only now. The amount of Rs.16.25 lakhs shall be spread over from the date of the Award of the Labour Court till the date of this judgment. The employee shall avail the benefits of the Income Tax, if any.

17. The Management shall comply with the above directions of this Court within a period of three months from the date of receipt of a copy of this judgment. It is made clear that the wages paid under Section 17-B of the Industrial Disputes Act, cannot be adjusted from Rs.16.25 lakhs, but



W.A.No.2603 of 2021

employer is permitted to deduct the actual employee's share of PF contribution.

18. With the above observations/directions, the Writ Appeal is disposed of. There shall be no order as to costs. Consequently, C.M.Ps. are closed.

(S.V.N., J) (R.K.M., J)
10.03.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

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W.A.No.2603 of 2021

S. VAIDYANATHAN, J

and

R. KALAIMATHI, J

CS

W.A.No.2603 of 2021

10.03.2023

Page No.16/16