



W.A. No. 3221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 3221 of 2023

&

C.M.P. No. 26345 of 2023

The Managing Director,
A & F Overseas Trade Limited,
Uruvaiyur Village,
Mangalam Road,
Mangalam Post,
Pondicherry – 605 110.

..Appellant

Vs.

1. The Presiding Officer,
Labour Court, Pondicherry.

2. N. Govindasamy

..Respondents

Prayer: Writ Appeal as against the order dated 15.06.2023 passed in
W.P. No. 13370 of 2010.



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For Appellant :: Mr.G. Haroon Al Rasheed

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For Respondents :: R1 Court
Ms. Ramapriya Gopalakrishnan
for R2

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The employer is before this Court in this intra court appeal challenging the order of the learned Single Judge in confirming the award dated 03.03.2010 passed by the Labour Court, Pondicherry in I.D. No. 53 of 2005.

2. A resume of facts that are absolutely necessary and germane for the disposal of this writ appeal would run thus:

The 2nd respondent workman joined the service of the appellant Management, which is involved in the production of Shoe-uppers and has its factory at Uruvaiyar Village, Pondicherry, on 31.07.1991 and on account of misconduct committed by the workman, charge sheet was issued on 26.06.2003. As the employee evaded enquiry, an exparte enquiry was conducted and based on the findings of the Enquiry Officer *vide* his report dated 23.12.2003 and after issuance of second show cause notice, the workman was dismissed from service on 07.04.2004. Questioning the



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dismissal from service, the workman raised an industrial dispute in I.D. No. 53 of 2005, which was referred to the Labour Court, Pondichery by means of reference and after adjudication, the Labour Court came to the conclusion that the domestic enquiry held was not fair and proper and by award dated 03.03.2010 allowed the industrial dispute and directed the Management to reinstate the workman with full backwages and other attendant benefits with continuity of service. Aggrieved by the said award, the Management had preferred the writ petition and by the order under challenge, the writ petition came to be dismissed holding that the Labour Court was perfectly right in holding that the enquiry and termination of the 2nd respondent workman was in violation of principles of natural justice and that the award of the Labour Court warrants no interference. Hence, the present writ appeal.

3. Heard both parties.

4. The main contention of the employer/Management before all the three forums is that once the domestic enquiry is held to be bad, the employer should have been given an opportunity to let in evidence to establish the charges. Though *prima facie* we agree with the said contention, in the absence of such a plea that the employer should be given



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an opportunity to let in evidence to prove the charges, in case, the domestic enquiry is held to be not fair and proper, more so, in the light of the judgment of the Hon'ble Apex Court rendered in ***Shankar Chakravarti V. Britannia Biscuit Co. Ltd (1979) 3 SCC 371***, the employer need not be reminded of its duties by the Labour Court and the Labour Court is empowered to direct reinstatement with all consequential benefits. The said principle has been applied and the Labour Court has granted the relief. The learned Single Judge also did not agree with the contention of the employer and refused to interfere with the award of the Labour Court.

5. One of the contentions placed before the Bench was that the factory itself was closed on 09.10.2019 and the said fact was not brought to the notice of the learned Single Judge. The closure aspect has not been disputed by the employee. According to the learned counsel appearing for the employee, even assuming for the sake of argument that the closure is justified, the employee would be entitled to all the monetary benefits in terms of the award till the date of closure. Moreover, apart from backwages and other benefits, closure compensation has got to be extended to the



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employee on par with similarly placed employees.

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6. The employee, who was issued with a charge memo in the year 2003, was dismissed from service in the year 2004 and almost two decades have gone by from the date of dismissal. At this distance of time, as rightly held by the learned Single Judge and in the light of the judgment of the Apex Court, stated *supra*, the employer need not be given an opportunity to establish the charges. Besides, when the factory itself has been closed, reinstatement of the employee may not be possible.

7. The employee was drawing a sum of Rs.1,914/- per month as a Cutting Supervisor and he had also not filed any petition seeking wages under Section 17B of I.D. Act before the learned Single Judge. Though, normally, this Court would have granted the entire relief to the employee upto the date of closure apart from closure compensation, taking note of the fact that much water has flown and also the last drawn wages of the employee, we are of the view that the award of the Labour court and the order of the learned Single Judge needs to be modified as reinstatement, in



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the present circumstances of the case, is not possible. Therefore, we direct the appellant Management to pay a sum of Rs.4,25,000/- (Rupees Four Lakhs Twenty Five Thousand only) towards full and final settlement of all the claims of the workman including statutory dues like Gratuity, Provident Fund, etc within a period of two months from the date of receipt of a copy of this order.

8. In the result, the award of the Labour Court and the order passed by the learned Single Judge is modified to the extent indicated above. However, it is made clear that this shall not be treated as a precedent. The writ appeal stands disposed of accordingly. No costs. Connected C.M.P. is closed.

nv

19.12.2023

(S.V.N.J.) (K.R.S.J.)

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

nv

To
The Managing Director,

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A & F Overseas Trade Limited,
Uruvaiyur Village,
Mangalam Road,
Mangalam Post,
Pondicherry – 605 110.

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19.12.2023