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WP.No.27742 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27742 of 2017
& WMP.No.29709 of 2017

- 1.K.Ramalingam (died)
- 2.Vijayalakshmi
- 3.Arul Mozhi
- 4.R.Arukkani

(P2 to P4 were substituted as legal heirs of the deceased 1st petitioner vide order dated 07.12.2022 in WMP.No.31390 of 2022 by MSRJ)

...Petitioners

Vs

- 1.The Management of Tamil Nadu
Textile Corporation Ltd.,
Power Loom Complex, Sivagiri,
Erode District.

- 2.The Presiding Officer,
Labour Court, Salem.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to award passed in I.D.No.605/2004 dated 12.4.2017 by the second respondent - Labour Court, Salem under Section 2A(2) of the Industrial Disputes Act 1947, quash the same, direct the first respondent herein to reinstate the petitioner in service with continuity of service and full back wages and consequently direct the first respondent to pay compensation to the petitioner.



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For Petitioners 2 to 4 : Mr.Venkataswamy Babu
For Respondent-1 : Mr.S.Saravanakumar

ORDER

This is a petition filed by the first petitioner - workman seeking to quash the award dated 12.4.2017 in I.D.No.605 of 2004 on the file of the second respondent and to direct the first respondent to reinstate the first petitioner in service with continuity of service and full back wages and also to pay compensation.

2. The facts leading to filing of this case are as follows :

(i) The first petitioner was employed with the first respondent as a weaver from 27.10.1982. He was a permanent employee in the Weaving Department for 17 years. There was a wordy quarrel between the supervisor and the first petitioner on 31.5.1995 due to change of shift on 30.5.1995, which ended in filing of a complaint by the supervisor with the Factory Manager. Based on that, the first petitioner was issued with a show cause notice and a suspension order came to be issued against the first petitioner on the very same day.



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(ii) Though the first petitioner submitted his explanation, not satisfied with that, an enquiry was conducted during 25.11.1995 to 16.12.1995. In the enquiry report, the charges levelled against the first petitioner were stated to be proved. Thereafter, the second show cause notice was issued, for which, the first petitioner sent his reply. However, the reply given by the first petitioner was rejected and he was imposed the punishment of dismissal from service by order dated 02.4.2002 with effect from 03.4.2002. According to the first petitioner, he was not paid even paid the subsistence allowance.

(iii) Since the conciliation proceedings initiated at the instance of the first petitioner ended in failure, Pursuant to that, he raised an industrial dispute before the second respondent, who also recorded on 28.4.2015 finding that the domestic enquiry was vitiated as the first petitioner was not paid the subsistence allowance. However, the industrial dispute was dismissed by the second respondent by the impugned order. Aggrieved by that, the first petitioner originally filed this writ petition.



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3. Learned counsel for the Petitioners 2 to 4 would submit that for the alleged misconduct, the punishment of dismissal imposed by the management is highly disproportionate. Hence, the findings rendered by the Labour Court that the punishment of dismissal is proportionate to the charges against the workman is not sustainable and accordingly, the same is liable to be interfered with. He further submitted that during the pendency of the Writ Petition, the workman passed away and his legal heirs are substituted.

4. Per Contra, learned counsel appearing for the 1st respondent management would submit that the Labour Court has properly appreciated the entire evidence placed before it while passing the award and has rightly come to the conclusion that the punishment of dismissal is proportionate to the charges proved against the petitioner. The evidences already appreciated by the Labour Court cannot be re-appreciated by this Court under Article 226. Further, there is no violation of principles of natural justice, as both the parties have been heard while passing the award.



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5. Heard the learned counsel for petitioners 2 to 4 and the learned counsel appearing for the first respondent management.

6. The allegation made against the workman is that he misbehaved with the supervisor, for which he was issued with a charge memo and after conducting enquiry, he was removed from service. As against the said dismissal, the workman raised a dispute under Section 2A-(2) of the Industrial Disputes Act, 1947 which was erroneously dismissed by the Labour Court vide impugned award in I.D.No.605 of 2004 rejecting the claim made in the petition finding that the punishment of dismissal imposed by the management is proportionate to the charges proved against the workman.

7. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

8. It has been the consistent view of the Courts that it is always



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within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or



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when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

9. From the decision it clearly shows that whether the punishment imposed shocks the conscience of the Court, the Court is duty bound to interfere with the same. In the present case, the delinquency is the misbehaviour of the workman with his supervisor for which the punishment of dismissal from service is too severe, which is liable to be interfered with. The workman has not denied the misconduct, but the gravity of the misconduct is not of such a nature that it warrants dismissal from service. Therefore, this Court is of the view that the award passed by the Labour Court requires interference. It is seen from the records that during the pendency of the Writ Petition, the first petitioner died and petitioners 2 to 4 were substituted as his legal heirs. This Court further recorded vide order dated 11.1.2023 that since the first petitioner expired, the question of reinstatement would not arise. However, the workman is entitled for



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backwages and continuity of service.

10. Accordingly, the award passed by the Labour Court stands modified to one of stoppage of increment for a period of two years without cumulative effect, which would meet the ends of justice considering the misconduct of the workman and the respondent management is directed to compute and pay all the terminal benefits and backwages to the legal heirs of the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

11. This Writ Petition stands allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

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To
The Presiding Officer,
Labour Court, Salem.



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