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W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.Nos.30640, 30641 of 2018
and 13192 of 2019

and

W.M.P.Nos.35728, 35731,
35733 of 2018 & 13309 of 2019

MRL Industrial Co-op. Service Society Limited,
Manali, Chennai - 600 068.

Rep. by its Assistant Director,
(Industrial Co-operative)

Mr.P.Krishnamurthy ... Petitioner in all W.Ps

Vs.

V.Lakshmanan ... Respondent in W.P.No.30640 of 2018

S.Chellappan ... Respondent in W.P.No.30641 of 2018

Thulasiraman ... Respondent in W.P.No.13192 of 2019

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for issuing a Writ of Certiorari, to call for the records pertaining to the orders in I.D.No.531 of 2003, dated 22.12.2014, I.D.No.82 of 2004, dated 22.12.2014, I.A.No.73 of 2018 in I.D.No.434 of 2005, dated 12.10.2018 passed by the Presiding Officer, Principal Labour Court, Chennai and quash the same.



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

For Petitioner : Mr.C.Manohar Gupta for
in both W.Ps. Mr.M.Murali Vinodh

For Respondents : Mr.C.P.Hemkumar for
in both W.Ps. M/s.Ganesh & Ganesh

COMMON ORDER

The present Writ Petitions are filed challenging the orders passed by the Principal Labour Court, Chennai in I.D.No.531 of 2003, dated 22.12.2014, I.D.No.82 of 2004, dated 22.12.2014, I.A.No.73 of 2018 in I.D.No.434 of 2005, dated 12.10.2018.

2. The petitioner is a Registered Society and their Principal employer is the Chennai Petroleum Corporation Limited. They engaged the respondents/employees, out of which, two of them were skilled labour and one a driver. The petitioner society held a domestic enquiry against all the three employees for committing theft and they were found guilty. Accordingly, they were dismissed from service. Subsequently, they raised an Industrial Dispute before the Presiding Officer, Principal Labour Court, Chennai in I.D.No.531 of 2003, I.D.No.82 of 2004 and I.D.No.434 of 2005 under Section 2(A)(2) of the Industrial Disputes Act.



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

WEB COPY

In the said petitions, Chennai Petroleum Corporation, Chennai who is the Principal employer was not impleaded as a party respondent. Therefore, the employees filed I.A.Nos.574 and 575 of 2004 in I.D.No.531 of 2003 and I.D.No.82 of 2004 respectively seeking to implead the Chennai Petroleum Corporation as party to the Industrial Dispute. The said petitions were allowed by the Labour Court and it was also confirmed by this Court in W.P.Nos.29755 and 29756 of 2005 and thereafter Writ Appeal in W.A.Nos.1192 and 1199 of 2011 were filed and the Writ Appeals were dismissed, as against which Chennai Petroleum Corporation filed an appeal before the Supreme Court in ***Civil Appeal No.1455 of 2013 and 1456 of 2013***. The Hon'ble Supreme Court vide orders dated 20.02.2013 had set aside the orders passed by this Court and directed the Labour Court to dispose of I.D.No.531 of 2003 and I.D.No.82 of 2004 on their own merits without impleading the Chennai Petroleum Corporation as the respondent.

3. The petitioner/MRL Industrial Co-operative Service Society



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

Limited, Manali, Chennai represented by a Special Officer filed a counter in I.D.No.531 of 2003, I.D.No.82 of 2004 and I.D.No.434 of 2005 and contended that they did not have any objection to reinstate the petitioners with backwages. They did not also choose to cross examine the workmen in all the Industrial disputes and ultimately the Presiding Officer, Principal Labour court, Chennai allowed the petitions and directed the Writ Petitioner viz., MRL Industrial Co-op. Service Society Limited, Manali to reinstate the respondents herein into service with continuity of service along with 30% of backwages and all other attendant benefits. Aggrieved over the same, the present Writ Petitions are filed.

4. Mr.Manohar Gupta, learned counsel for the petitioners contended that the Labour Court without going into the merits of the case, had passed the Award merely based on the counter affidavit filed by them. He also relied on the decisions of the Hon'ble Supreme Court in ***the Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. the Management and Ors. reported in (1973) 1 SCC 813*** and contended that the Labour Court has no power to interfere with the punishment



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

imposed by the Management and that once the misconduct is proved, the Labour Court has to sustain the order of punishment.

5. The learned counsel also drew the attention of this Court to the principles governing jurisdiction of the Labour Court while adjudicating the disputes relating to the dismissal or discharge as indicated in the above said Judgement in ***the Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.*** (cited supra) which is extracted hereunder:

“39. 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.

40. 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 employer 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 finding 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 enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(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 and validity of the order, has 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 held first time in justification of the action taken only, if no enquiry has been or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, 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 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



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

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 v. The Workmen (1971] (1) S.C.R. 742, within the judicial decision of a Labour Court or Tribunal.

6. The learned counsel for the petitioner would therefore contend that the Labour Court without going into the merits of the case, had passed the Award and therefore the same is liable to be set aside.

7. Per contra, Mr.C.P.Hemkumar, learned counsel appearing for the respondents contended that the Writ Petitioner having contended



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

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that they did not have any objection to reinstate the respondents into service with all backwages and attendant benefits, they cannot now contend that the orders passed by the Labour Court is erroneous. According to him, the Industrial Dispute was raised in the year 2003 and the orders were passed in the year 2014 and one of the employees has attained the age of superannuation. He would therefore contend that the orders passed by the Labour Court is perfectly in order.

8. At the outset, it may be observed that the Writ Petitioner had not raised any objection in their counter affidavit with regard to reinstatement of the respondents into service. In fact it is specifically contended that they are in the process of paying full backwages to all their employees. The contention of the learned counsel for the petitioner is that the Special Officer had signed the counter affidavit without getting proper instructions from the concerned Authorities and therefore the order passed by the Labour Court based on the counter affidavit, is totally perverse. It is pertinent to point out that no action was initiated against the Special Officer who signed the counter affidavit on behalf of the



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

Management for his lapse. It is also seen from the records that the Principal employer viz., Chennai petroleum Corporation had given an undertaking before the Hon'ble Supreme Court in ***Civil Appeal No.1455 of 2013 and 1456 of 2013*** that they are ready to reinstate the respondents/employees to succeed in their claim in the Industrial Disputes in I.D.Nos.531 of 2003 and 82 of 2004. In the circumstances, the Labour Court was left with no option other than to allow the Industrial Disputes raised by the respondents under Section 2(A)(2) of the Industrial Disputes Act, 1947. However, the Labour Court had committed an error by awarding 30% of backwages to the respondents even though they had not proved in their claim that they were not gainfully employed elsewhere.

9. It is settled law that the initial burden is on the employee that they were not employed elsewhere during the relevant period. In the decision of the Hon'ble Supreme Court in ***Jagbir Singh vs Haryana State Agriculture Marketing Board and Another reported in (2009) 15 SCC 327***, it has been held thus :



by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of [Section 6-N](#) of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.



W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748].)

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

10. In the instant case, the employees were dismissed from service about 25 years back and it is difficult to believe that they were not employed elsewhere. It is not the case of the respondent that it is a wrongful termination of service by the petitioner as their charges were proved through departmental enquiry. In such circumstances, the Labour Court directing the Writ Petitioner to pay 30% of backwages is totally



11. Hence, the Award passed by the Principal Labour Court, Chennai is set aside only with regard to payment of 30% backwages. However, the petitioner management is directed to reinstate the Respondents in W.P.No.30640 of 2018 and W.P.No.13192 of 2019 viz., V.Lakshmanan and Thulasiraman respectively into service within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that since the Respondent in W.P.No.30641 of 2018 viz., S.Chellappan, has already attained the age of superannuation, he cannot be granted reinstatement.

12. With the above observation, this Writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

08.11.2023

Index: Yes/No
Speaking/Non-Speaking order
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W.P.Nos.30640, 30641 of 2018 & 13192 of 2019

R. HEMALATHA, J.

vum

W.P.Nos.30640, 30641 of 2018
and 13192 of 2019
and
W.M.P.Nos.35728, 35731, 35733
of 2018 & 13309 of 2019

08.11.2023