



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.21072 of 2016

and

W.M.P. (MD) .Nos.15063 of 2016 and 387 of 2018

The Management,
M/s.Bluemount Paper and Boards (P) Limited,
Mangamma Salai,
South Veeravanallur,
Karukurichi Post,
Tirunelveli District,
Represented by its Managing Director

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.C.Venkatesh Perumal

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned Preliminary Award dated 17.05.2016 as well as the consequential Final Award dated 11.07.2016 passed by the first respondent in I.D.No.84 of 2015 and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew,

For R-1 : Labour Court

For R-2 : Mr.R.Krishnan

ORDER

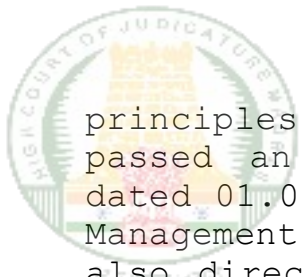
This Writ Petition is filed to quash the award dated 17.05.2016 as well as the consequential Final Award dated 11.07.2016 passed by the first respondent in I.D.No.84 of 2015.



2. The petitioner Management is a private limited company and is engaged in the manufacture and sale of paper and boards. The second respondent was employed in the PMC section of the petitioner factory. The second respondent conduct was far from satisfactory and he was a habitual offender. In earlier occasions also, the second respondent has committed same misconduct and he was punished with suspension order dated 07.11.2012 and 23.11.2012 for a period of 7 days and 14 days respectively. Despite the same, the second respondent failed to correct himself and continued to indulge in various misconducts. Because of omissions and commissions, the second respondent committed serious misconducts under Clauses 21(1), 21(2), 21(4), 21(11), 21(37), 21(72) and 21(77) of the Certified Standing Orders of the petitioner factory. Therefore, a charge memo dated 12.03.2013 was issued. The charges framing charge against the second respondent which are as follows:

- a) The petitioner was sleeping while on duty in the C shift on 06.01.2013 at about 3.40 a.m.
- b) Despite knowing that one should not leave the machine in motion before the arrival and taking over by the reliever, on 10.01.2013 the petitioner had left the work place even before the reliever had come and taken charge.
- c) The petitioner failed to inform the authorities about the twisting of press belt while he was working in the C shift on 27.01.2013 and the negligence had led to the stoppage of machine for 2 hours leading to production loss of an average 6MT resulting in a loss of Rs.1,50,000/-.
- d) When memos were given to the petitioner for the above misconducts, the petitioner had refused to receive the same.

3. The second respondent submitted an explanation which was not satisfactory and hence an enquiry officer was appointed. When the enquiry was conducted on 02.04.2013, the second respondent was granted opportunity, allowed to peruse the records and examine the witness. In the enquiry Ex.M-1 to Ex.M-27 were marked. But finally, when the second respondent was asked to sign in the enquiry procedures recorded by the enquiry officer, he refused to sign and staged a walk out from the enquiry premises. Thereafter, the enquiry officer submitted a report, wherein the charges were held to be proved. The management accepted the enquiry report and issued a second show cause notice dated 16.05.2013 along with the report. The explanation submitted by the second respondent was not satisfactory and the Management dismissed the second respondent vide order dated 01.08.2013. Against which I.D.No.84 of 2015 was raised. The Management had filed counter affidavit and marked 36 documents on its side and 14 documents were marked on the side of the workman. The first respondent passed preliminary impugned award dated 17.05.2016 holding that there is violative of



principles of natural justice. Finally, the Labour Court is passed an award dated 11.07.2016, wherein the dismissal order dated 01.08.2013 was quashed and the Labour Court has directed the Management to grant continuity of service and other benefits and also directed the Management to pay salary from 01.08.2013 until the second respondent was reinstated based on Rs.6400/- as salary. Aggrieved over the same, the present Writ Petition is filed.

4. At the time of admission, this Court has granted interim stay of the impugned order. In the meanwhile, the second respondent has filed a petition to grant 17b wages. However, the same was pending. There is no order to pay 17b wages by this Court.

5. When the Writ Petition was taken up for final hearing, this Court has directed the parties to negotiate for amicable settlement. But both the petitioner as well as the second respondent claimed various demands. Therefore, there was no amicable settlement between them. Therefore, this Court proceeded to hear the case on merits.

6. The allegation against the second respondent is that he slept during C shift on 06.01.2013 at about 3.40 a.m. The second respondent not only slept but also left the machine in motion and even left the place before the subsequent employee has taken charge. Moreover, the second respondent has failed to inform the authorities about the twisting of press belt while he was working in the C shift on 27.01.2013 and the negligence on the part of the second respondent had led to the stoppage of machine for 2 hours leading to production loss of an average 6MT resulting in a loss of Rs.1,50,000/-. The contention of the petitioner's Management is that the second respondent has repeatedly committed various mistakes and he was warned on several occasions and was imposed with the punishment of suspension. In spite of several opportunities, the second respondent has not rectified his mistakes. Therefore, finally having no other way, the Management has initiated disciplinary proceedings.

7. The contention of the petitioner's Management is that the Labour Court in the preliminary award is supposed to state the fairness of the disciplinary proceedings. However, the Labour Court proceeded to hold on merits itself. Moreover, the Labour Court has held that the charge memo itself illegal. Therefore, the Labour Court has acted in a biased way and for which the learned counsel appearing for the petitioner relied on the judgment rendered by the learned Single Judge in W.P.(MD)No.20615 of 2018 dated 21.06.2022, wherein it has held as under

15. Therefore, this Court is inclined to dispose of this writ petition with the following orders:



◆ That the evidence whatever has been recorded from the employee's side by examining W.W.1 or any other evidence further the Labour Court wants to get it from both parties, those evidence shall be only for the purpose of arriving at a conclusion as to the fairness of the domestic enquiry and not beyond that.

◆ It is made clear that based on these evidence now recorded or going to the recorded for deciding the preliminary issue as to the fairness of the domestic enquiry no decision can be taken by the Labour Court on the merits of the main I.D. raised by the employee.

◆ It is further made clear that any observation made by the Labour Court in the order impugned as to the conduct of the Management especially the Enquiry Officer who conducted the domestic enquiry shall not influence the mind of the Labour Court in deciding the issue as stated above.

8. In the present case, the Labour Court while considering the preliminary issue has taken the decision on merits as well. Therefore, this Court is of the considered opinion that the Labour Court has exceeded while considering the preliminary objection, whereby, the Management was left with no other option while conducting enquiry for passing the final award which would amount to pre-closure of the litigation. Therefore, the Labour Court has not conducted the enquiry properly. Moreover, the employee has slept while there was night duty. Sleeping may not be an offence but the employee has left the machine which is in a running stage and has caused break down of the machine and also failed to inform the authorities about the twisting of press belt which incurred loss to the Management. The paper industry is a continuous process industry, even a single minute stopping of the machine will lead to huge loss. Therefore, the Labour Court has not properly dealt with the case.

9. It is seen from the records that the second respondent is only 49 years of age at the time of filing of this Writ Petition. The Labour Court has granted reinstatement along with the backwages. This Court is of the considered opinion that the backwages cannot be granted for a non-employment period based on the principles of 'No Work No Pay'. However, the second respondent is entitled to reinstatement with continuity of service without backwages. Therefore, the Labour Court award is modified to the extent as stated supra. This order shall be implemented within a period of eight (8) weeks from the date of receipt of a copy of this order.



W.P.(MD).N



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10. In view of the above, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/07/2023

Sub Assistant Registrar (CS)

Nsr

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-18998[F] dated 31/03/2023)

W.P.(MD).No.21072 of 2016
30.03.2023

MK/08.07.2023 5P 3C