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W.P.Nos.42544 & 43080 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.42544 & 43080 of 2006

W.P.No.42544 of 2006

M.Selvaraj

...Petitioner

Vs.

1.The Presiding Officer
Labour Court, Coimbatore.

2.The Manager,
Southern Tree Farms Ltd.,
Burnside Estate,
Kothagiri ...Respondents

W.P.No.43080 of 2006

1.A.Mathavan
2.P.Raman
3.N.Chinnappan
4.P.Arumugam

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W.P.Nos.42544 & 43080 of 2006

5.C.Pongiyammal

6.C.Suresh

7.C.Kumar

8.C.Nageswari

9.C.Ramesh

10.C.Manikandan

...Petitioners

(P5 to P10 are substituted as LR's of deceased P3

N.Chinnappan, per order dated 05.04.2018 by MDJ

In W.M.P.No.38046 of 2017 in W.P.No.43080 of 2006)

Vs.

1.The Presiding Officer

Labour Court, Coimbatore.

2.The Manager,

Southern Tree Farms Ltd.,

Burnside Estate,

Kothagiri

...Respondents

PRAYER in W.P.No.42544 of 2006: Writ Petition has been filed under Article 226 of Constitution of India, pleaded to issue a Writ in the nature of Certiorarified Mandamus after calling for the records pertaining to the preliminary order dated 14.07.2004 and the final award 05.11.2004 passed by the first respondent in I.D.No.303 of 2000, quash the same and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, backwages and other attendant benefits, award costs.

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PRAYER in W.P.No.43080 of 2006: Writ Petition has been filed under Article 226 of Constitution of India, pleaded to issue a Writ in the nature of Certiorarified Mandamus after calling for the records pertaining to the common order dated 14.07.2004 on the preliminary issue regarding fairness of enquiry and the final award dated 05.11.2004 passed by the first respondent in I.D.Nos.299, 300, 301 & 302 of 2000, quash the same and consequently direct the 2nd respondent to reinstate the petitioners with continuity of service, backwages and other attendant benefits, award costs.

In Both the W.P.'s:-

For Petitioners : Mr.V.Ajay Khose

For R1 : Labour Court

For R2 : Mr.C.A.Diwakar

COMMON ORDER

These Writ Petitions are filed for a Certiorarified Mandamus to call for the records pertaining to the preliminary as well as the final awards made in I.D.Nos.299, 300, 301 & 3022 of 2000 on 14.07.2004 and 05.11.2004 and quash the same and consequently direct the respondent to reinstate the petitioners with continuity of service back wages and other attendant benefits.



2. The Workmen were employed as permanent workers at the Burnside Estate from 1987. On 14.11.1999, the petitioner Selvaraj and thirty other workmen were allotted plucking work in field No.7 by way of compensatory work. However, it happened to be a weekly holiday that is Sunday. As the fieldwork would be over by 1.00 p.m. the petitioner had planned to take his child to the hospital for vaccination in the afternoon. After the commencement of the work in the field, the officials of the second respondent asked the petitioner to report for work in the tea factory. The petitioner pleaded his inability to attend the work in the tea factory as he had already planned to take his child to the hospital after 1.00 p.m. Similarly, another workman, Sathyan, also pleaded his inability to attend the work in the tea factory, and he had planned to attend a marriage function in the afternoon. Thereafter, on 15.11.1999, to the petitioner in W.P.No.42544 of 2006, M. Selvaraj and the four petitioners in W.P.No.43080 of 2006, show cause notices were issued regarding the said incident. The allegation against the petitioner Selvaraj is that he not only resisted but abused the management staff with filthy language. The other petitioner also joined the wagon and resisted and even prevented the other workmen and spoke in a way that nobody should go to the factory and work in the afternoon.



3. The management did not accept the explanation of the workmen, and domestic enquiry was ordered. On 10.12.1999, the enquiry commenced. On 26.01.2000, the enquiry officer submitted his findings, holding the charge against the workmen proved. On 27.01.2000, the second show cause notice was issued, and all these petitioners were dismissed from service. Aggrieved thereof, the petitioners raised an industrial dispute against the dismissal order.

4. Upon failure of the conciliation, the present claim petition in I.D.No.303 of 2000 was filed. By a preliminary award dated 14.07.2004, the Labour Court held that the procedure followed in the domestic enquiry was fair and proper. However, the Labour Court still went into the merits of the charges and the proportionality of the punishment in the exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act and passed the final award on 05.11.2004. In the final award, the Labour Court reappraised the evidence and found that the charges against the workmen were proven. However, the Labour Court found that for the said incident, the punishment of dismissal from service was disproportionate. The Labour Court considered the nature of the misconduct alleged, and held that it may not be proper to reinstate the workmen as this case would come within the purview of the management losing confidence in the workmen since the incident is said to



have happened in the presence of many other workmen also. In view thereof, the Labour Court decided to grant compensation in lieu of reinstatement and back wages and awarded a sum of Rs.15,000/-. Aggrieved by which the present Writ Petitions are filed.

5. The Writ Petitions are resisted by the respondent management by filing a detailed counter affidavit. It is the case of the management that after the final award was passed in the year 2004, the workmen did not feel aggrieved and no further steps were taken by them. In the year 2005, the management chose to comply with the award. The management, by its letter dated 01.10.2005, enclosed the cheque for the compensation amount of Rs.15,000/- to the respective workmen. The said letter, as well as the cheques, were received. The cheques were also encashed by the workmen on 13.10.2005. Thereafter, the workmen sent a letter only on 19.10.2005, ante-dating it as 06/10/2005, as if they were receiving the said cheque without prejudice to their right to question the award. It is the case of the management that the workmen, having received the benefit under the award, having accepted the award, and encashed the cheque, are not entitled to challenge the award. It is the second contention that the final award itself was passed on 05.11.2004 and the present Writ Petition was filed only on 06.11.2006 thus there is a huge delay and



the Writ Petition is also liable to be dismissed on the ground of delay and laches.

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6. Heard *Mr. Ajay Khose*, the learned counsel for the petitioner and *Mr.C.A.Diwakar*, the learned counsel appearing on behalf of the respondent management.

7. *Mr Ajay Khose*, the learned counsel appearing on behalf of the petitioners would submit that even though he has raised several grounds concerning the fairness of the procedure and also regarding the validity of the preliminary award, as well as the findings of the Labour Court on merits of the charges, he would predominantly argue on two submissions. Once the Labour Court finds that the punishment is grossly disproportionate to the nature of the charges alleged against the workmen, then the Labour Court ought to have seen that the workmen would be naturally entitled to the relief of reinstatement with back wages. The question of payment of compensation would arise only in case of loss of confidence by the employer.



8. He would submit that even as per the allegation in the instant case, the incident took place because the workmen were being employed by way of a compensatory working day on Sunday. On a compensatory working day, when the workmen were deputed to the field for work, the fieldwork starts in the morning and ends by noon. After extracting their work in the field in the hot sun, when the management representative again asked them to go to the factory and work in the afternoon, the entire incident arose therefore taking into consideration the nature of the incident, it cannot be said that the management has lost the confidence and therefore the Labour Court ought to have reinstated the petitioner with all back wages.

9. It is his second contention that even assuming that the compensation has to be paid, the compensation has to be properly calculated and paid to the workmen. The Hon'ble Supreme Court of India had prescribed a formula in ***O.P.Bhandari Vs. Indian Tourism Development Corporation Ltd. And Others*** reported in [(1986) 4 SCC 337] and in paragraph 10 has held that normally compensation equivalent to 3.3 years of salary should be paid. The logic behind the said judgment was that the workmen should be able to draw interest by depositing the said amount, which



would be equivalent to at least 50% of the gross drawn pay which is drawn by the workmen. He would submit that the said formula itself is arrived at, taking into consideration the rate of interest prevailing at that point in time, which was normally between 14 and 18 %. Now the interest rate has come down even to less than 6% and therefore the number of months of salary should be further increased. He would further submit that the Hon'ble Supreme Court of India has further developed the said doctrine in the judgment in ***Workmen Vs. Bharat Fritz Werner Private Limited and another*** reported in [(1990) 3 SCC 565] wherein it has been held that apart from the aforesaid amount, a lump sum amount regarding the loss of future employment should also be considered. The learned counsel would also rely upon paragraph 24 of the said judgment. Therefore, he would submit that the amount of 15,000/- ordered as compensation in this case is extremely disproportionate.

10. Mr. *Ajay Khose*, learned counsel for the petitioners would submit that the question of whether the workmen, after receiving the compensation amount, are entitled to challenge the award or not is no longer *res integra*, and it has been decided by the Division Bench of this Court in ***Chandra Textiles Private Limited Vs. N.Palaniswami and others*** reported in [(1987) 2 LLN 121] wherein the



question was considered in detail by the Division Bench. The Division Bench has laid down a proposition that there cannot be a complete bar or an absolute proposition that after receipt of the compensation, the workmen cannot challenge the action. Each case has to be dealt with concerning the facts of the case, and the discretionary relief under Article 226 can be exercised even in cases where the workmen have received the compensation. The learned counsel would submit that the said legal position is also followed by another Division Bench of this Court in ***The Management of Tamil Nadu Textile Corporation Ltd Vs. Sundarapandian and others (W.A.(M.D)No.459 of 2019)*** and also the judgment in ***S.Raja Vs. Hindustan Unilesver Ltd.,(W.A.No.1835 of 2021)***.

11. Per contra, *Mr. Diwakar*, the learned counsel for management, would submit that the conduct of the workmen in this case has to be noted by the Court. When the award was in the year 2004, the workmen chose to challenge the award only in the year 2006. Even though there is no period of limitation for filing the Writ Petition, the delay and laches are huge in this case. In this case, there is not only mere delay but there is also accepting the compensation amount and encashing the cheque. The said conduct aggravates the delay. A Writ Petition can be entertained even with the delay but the party has to explain the delay and laches. In



this case, there is no pleading whatsoever in the affidavit filed in support of the Writ Petition explaining the delay and latches.

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12. It is his second submission that once the workman chooses to receive the compensation amount and encash the cheque, thereafter, belatedly, cannot be permitted to challenge the award. When a party to a judgment, receives the benefit under the judgment, thereafter, cannot resile from the said judgment under which he has received benefits. In support of his submission, the learned counsel would rely upon the judgment of a learned Single Judge of the Bombay High Court in ***Shalini Dilip Gamare Vs.. Industrial Home for Blind Women (2016 SCC Online Bom 15999)*** more specifically relying upon paragraphs 6, 8 and 9 of the said judgment. In the said case, by taking into account the conduct of the workman in receiving the compensation amount of Rs.1,25,000/- the Court had non-suited the workman. The learned counsel would also rely upon the judgment of the learned Single Judge of the Calcutta High Court in ***Sri Tushar Kanti Roy Vs. The Eighth Industrial Tribunal, Calcutta and others reported in (2012 SCC Online Cal 11669)*** more specifically by relying upon the penultimate paragraph of the judgment whereunder the Court relied upon the Kings Bench judgment in ***Dexters Limited Vs. Hill Crest Oil Company (Bradford) Limited, (1926) IKB 348*** under the opinion of Scrutton



L.J to hold that a person cannot be heard to say the judgment is wrong at the same time and to accept a payment due under the said judgment.

13. *Mr. Diwakar*, the learned counsel, would also submit that in this case, the finding of the Labour Court that the punishment is grossly proportionate to the charges is also erroneous. One of the charges in the instant case is abusing the management staff with filthy language. The abuse was in the presence of so many other workmen. He would rely upon the judgment of the Hon'ble Supreme Court in ***Orissa Cement Limited Vs. Adikanda Sahu [AIR (1959) SC 1288]*** and contends that abusing the Manager or management representative with filthy language should be considered a serious charge. He would rely upon paragraphs 2 and 4 of the said judgment. The learned counsel would also press into service the judgment of the Hon'ble Supreme Court of India in ***L & T Kotatsu Ltd Vs. N.Udyakumar [(2008) 1 SCC 224]*** for the same proposition concerning the jurisdiction of the Labour Court whereby, once the Labour Court finds that the enquiry is fair and proper and the charges are proved, the punishment need not be interfered with unless it is shockingly disproportionate. The learned counsel would rely upon the judgment of Hon'ble Supreme Court of India to contend that the Writ Petition should be dismissed for the delay and laches in ***Prabhakar Vs. Joint Director,***



Sericulture Department and another reported in [2015 15 SCC]

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14. I have considered the rival submissions made on either side and perused the material records of their case. As per the submissions made, the following questions arise for consideration in this case.

Q.No.i)Whether the Writ Petitions are liable to be dismissed on the question of delay and latches?

Q.No.ii) Are the workmen entitled to maintain the Writ Petitions after receiving the compensation amount from the management on the facts and circumstances of the instant case?

Q.No.iii)Whether the finding of the Labour Court with reference to the disproportionality of the punishment is fair and proper?

Q.No.iv)Whether the Labour Court was right in awarding compensation in lieu of reinstatement?

Q.No.v)Whether the compensation awarded by the Labour Court in order?

**Answers:-****Question No. (i):**

15. The final award in this case is passed on 05.11.2004. It can be further seen that the awards have to be bunched and notified in the gazette. It can be seen that the management itself sent a letter only on 01.10.2005, after receipt of the award, enclosing the cheque. The Court has to consider the period of delay and latches concerning the facts, circumstances and context of the case. The workmen involved are workmen doing physical and manual labour in the tea Estate in Kotagiri of Nilgiri Districts, which is a hilly terrain. For them to get a copy of the award and to approach this Court in November 2006, given the context, I do not see that the Writ Petition is hit by delay and latches.

Question No.(ii):

16. It is the contention on behalf of the learned counsel for the management that the workmen had accepted the award by encashing the cheque. On a perusal of the facts of this case, it is seen that the management having accepted the award decided to send a cheque to the workmen for the compensation amount vide its letter dated 01.10.2005. According to the workmen, they sent a letter on 06.10.2005 itself through a post that they were receiving the cheque without prejudice and that



they intended to challenge the award and they would be encashing the cheque without prejudice to their rights. Such a letter is according to the workmen was promptly sent on the next day itself. However, the management disputes the same. According to the copy of the letter, which is produced by the management, its date stamp on 19.10.2005, that is after the encashment of 13.10.2005. The said position is disputed because, in the counter filed by the management, the same was not expressly mentioned that the letter was received only on 19.10.2005. With regard to the averments in paragraph 17 of the affidavit, the management did not specifically state the date of receipt of the letter, etc. In that scenario, I find that the cheque was sent by the management on 05.10.2005, and the same was received by the workmen on 06.10.2005, and then they immediately sent a letter to the management on 06.10.2005 itself before the encashment of the same. Against the backdrop of the said findings, I am unable to agree with the judgments which are relied upon by the learned counsel on behalf of the management. Firstly, the judgment of the Calcutta High Court in *Sri Tushar Kanti Roy cited supra* is based on a Kings Bench judgment without considering the context of the labour jurisdiction. As far as the judgment of the Bombay High Court in *Shalini Dilip Gamare cited supra*, though an order is passed, the law in that regard has not been discussed in detail.



17. Per contra, the law on the point is fairly settled that inspite of receipt of compensation, the workman can still challenge the action of the management. The Hon'ble Supreme Court of India in ***Bhau Ram v. Baij Nath Singh***, 1961 SCC

OnLine SC 292 held as follows:

*“It seems to us, however, that in the absence of some statutory provision or of a well-recognised principle of equity, no one can be deprived of his legal rights including a statutory right of appeal. The phrase “approbate and reprobate” is borrowed from Scots law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L.J. in *Verschures Creameries Ltd.v.Hull and Neitherlands Steamship Co. Ltd.*[(1921) 2 KB 608]). The House of Lords further pointed out in *Lissendenv.C.A.V. Bosch, Ltd.*[(1940) AC 412] that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument. **In that case they held that the withdrawal by a workman of the compensation money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act.** Lord Maugham, after pointing out the limitations of the doctrine of approbate and reprobate observed towards the conclusion of his speech:*

“It certainly cannot be suggested that the receipt of the sum tendered in any way injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice.” (pp. 421-422). “

(Emphasis supplied)

18. The said dictum is also followed in ***M. Ramnarain (P) Ltd. v. State Trading Corpn. of India Ltd.***, (1983) 3 SCC 75 at page 104 held as follows:

“30...The question of the defendant-appellant having obtained an advantage under the decree does not therefore, really arise. In the case



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of **Bhau Ram v. B. Baijnath Singh** [AIR 1961 SC 1327 : (1962) 1 SCR 358 : (1961) 2 SCJ 601] this Court observed at SCR p. 362:

“It seems to us, however, that in the absence of some statutory provision or of a well-recognised principle of equity, no one can be deprived of his legal rights including a statutory right of appeal.”

19. A Hon'ble Division Bench of this Court in **Chandra Textiles Private Limited** cited *supra*, considered the issue in detail and speaking through Hon'ble Mr. Justice M. Srinivasan (as his lordship then was), held that a workman can receive the compensation under protest and still maintain a claim and the said conduct, cannot come within the mischief of approbation and reprobation and it is essential to extract paragraph 17 to 19 of the said judgment which reads as follows.

“17. The doctrine of "approbation and reprobation" has been elucidated in Halsbury's Laws of England, 4th Edn, Volume 16, at page 1012, paragraph 1507 thus:

The principle that a person may not approbate and reprobate expresses two propositions:

(1) that the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile, and

(2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent.

The House of Lords in Lissenden v. Bosch Ltd. (1940) 1 All.E.R. 425 : (1940) A.C. 412, has considered this



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doctrine at some length. In that case, an award of workmen's compensation at the rate of 12S.3d.per week was made in favour of a workman under the Act of 1925 in respect of his incapacity caused by industrial disease for the period from October, 1936 until the date of the hearing, namely, 31st October, 1938 together with the costs of the arbitration. The workman received and signed a receipt for the arrears of compensation due under the award and the taxed costs were paid to his solicitors. The workman thereafter appealed from the award in so far as it terminated the weekly payments of compensation on 31st October, 1938, on the ground that he had not wholly recovered from the effects of the industrial disease. It was held that in accepting the arrears of compensation, the workman was exercising a legal, right to be paid what admittedly was due to him, and, in serving his notice of appeal, he was exercising another and independent legal right of claiming the further relief to which he maintained he was entitled, and therefore, there was no case of election and the workman had a right of appeal. Viscount Maugham has observed as follows:

It is perhaps well to observe here that the equitable doctrine of election has no connection with the common law principle which puts a man to his election (to give a few instances only) whether he will affirm a contract induced by fraud or avoid it, whether he will in certain cases waive a tort and claim as in contract, or whether, in a case of wrongful conversion he will waive the tort and recover the proceeds in an action for money had and received. These cases mainly relate to alternative remedies in a court of justice. The history of the common law rules, the principles which apply to them, and the effect of the election are all very different from those which prevail where the equitable principle is in question. I will not attempt to summarise all the rules which are applicable to election in quity, but it is desirable for my present purpose to state some general propositions, which



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are not, I believe in doubt. In the first place, till Johnson v. Newton Fire Extinguisher Co. Ltd. (1913) 2 K.B. 111, the doctrine seems to have been confined, in England as in Scotland, to cases arising under wills and deeds, and other instruments inter vivos. In the second place, the doctrine is founded on the intention, explicit or presumed, of the testator in the case of a will, and of the author or donor in the case of instruments-namely, the intention that a man shall not claim under the will or instrument and also claim adversely to it. The intention, it may be added, is not presumed in the case of two clauses in the same will, and in such a case the doctrine does not apply. Nor could the doctrine be applied in the case of a married woman where either of the properties between which she would prima facie have to elect was subject to a restraint on anticipation, for the imposition of the restraint showed an intention that the married woman should not be put to her election; Re Vardon's trust (1885) 31 Ch.D. 275.

In the third place, the doctrine proceeds upon the principle, not of forfeiture, but of compensation. The beneficiary electing against an instrument is required to do no more than to compensate the disappointed beneficiaries. The balance of the property coming to him under the instrument he may keep for himself. In the fourth place, no person is taken to have made an election until he has had an opportunity of ascertaining his rights, and is aware of their nature and extent. Election is other words, being an equitable doctrine, is a question of intention, based on knowledge. My Lords, I am quite unable to see how this doctrine can be made to apply to the rights of a litigant to appeal either from a judgment or from an award of a county Court judge made under the Workmen's Compensation Act, 1925. For the present purpose, there is no difference between the two. Both are the result of judicial proceedings.



This decision of the House of Lords was quoted with approval and followed in [Bhau Ram Vs. B. Baijnath Singh and Others.](#) The relevant observations of the Supreme Court in that case run thus-

It seems to us, however, that in the absence of some statutory provision or of a well recognised principle of equity, no one can be deprived of his legal rights including a statutory right of appeal. The phrase "approbate and reprobate" is borrowed from Scots Law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L.J. in Verchures Chermeries Ltd. v. Hull and Netherlands Steamship Co. Ltd. (1921) 2 K.B. 608. The House of Lords further pointed out in Lissendem v. C.A.V. Bosch. Ltd. (1940) A.C. 412. that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument. In that case, they held that the withdrawal by a workman of the compensation money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act. Lord Maugham, after pointing out the limitation of the doctrine of approbate and reprobate observed towards the conclusion of his speech:

It certainly cannot be suggested that the receipt of the sum tendered, in any way, injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice.

The Supreme Court had occasion to consider the doctrine of approbation and reprobation in [R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others.](#) In that case, a suit was filed for specific performance of a contract and, in the alternative, for recovery of Rs. 7,500, being the amount of earnest money and Rs.15,000 as



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damages together with interest. The trial court granted a decree for return of the sum of Rs. 7,500. An appeal was filed in the High Court and, during the pendency of the appeal, the sum of Rs. 7,500 was deposited by the respondents herein in satisfaction of the decree passed by the trial court. In its judgment, the High Court had taken the view that the appellants in the appeal were disentitled to a decree for specific performance as the decree for Rs. 7,500 was satisfied. The Supreme Court had to consider the question whether that view of the High Court was correct. The Supreme Court took the view that the High Court was wrong in applying the doctrine of approbation and reprobation. The relevant passage runs thus:

*Coming to the last point, the High Court has held that the appellants were disentitled to a decree for specific performance because a statement was made at the bar that during the pendency of the appeal they had executed the decree of the trial Court and an amount of Rs. 7,500 had been deposited by the respondents pursuant to the execution proceedings. It is true that the appellants could not accept satisfaction of the decree of the trial Court and yet prefer an appeal against that decree. That may well have brought them within the principle that when the plaintiff has elected to proceed in some other manner than for specific performance, he cannot ask for the latter relief. This is what Scrutton, L.J. said in *Dexters Ltd. v. Mill Crest Oil Com. Bradford Ltd.* (1926) 1 K.B. 348 .*

So, in my opinion, you cannot take the benefit of a judgment as being good and then appeal against it as being bad.

It was further observed : It startles me to hear it argued that a person can say the judgment is wrong and, at the same time, accept payment under the judgment as being right. This illustrates the rule that a party cannot approbate and Reprobate at the same time. These propositions are so. well known that no possible



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exception can be taken to them. In the present case, however, the above rule cannot apply because the appellants had, by consistent and unequivocal conduct, made it clear that they were not willing to accept the judgment of the trial court as correct. It has already been mentioned at a previous stage that after the decision of the trial court the appellants had even applied on March 31, 1958 for an injunction restraining the respondents from selling or otherwise disposing of the plot as it was apprehended that they were trying to do so. It was stated in this application that the plaintiffs would be preferring an appeal, but it would take time to secure certified copies. An appeal was in fact preferred and seriously pressed before the High Court on the relief relating to specific performance. This relief is discretionary but not arbitrary and discretion must be exercised in accordance with the sound and reasonable judicial principles. We are unable to hold that the conduct of the appellants, which is always an important element for consideration, was such that it precluded them from obtaining a decree for specific performance.

In our case also, it can be seen that the first respondent had made it clear that he did not accept the award of the Labour Court to be correct.

18. Mr. Venkataraman, Learned Counsel for the first respondent, referred to the definition of the words, under protest in the Law Lexicon of Venkaramiah, Volume II. Besides that, he referred to [Superintendent \(Tech. I\) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai](#), which has considered the meaning of the words without prejudice. In the view which we have taken on the facts of the case, it is not necessary for us to consider those decisions. We rest content by pointing out that the conduct of the first respondent is not one from which it can be inferred in any manner that he had accepted the award of the Labour Court to be correct. On the other



hand, he has been unequivocally pointing out the other way.

19. In the view which we have taken on the facts of this case, the authorities relied upon by the Learned Counsel for the appellant will not apply to this case. Each case will have to depend on its own facts. In the present case, the conduct of the appellant was not such that he became disentitled to the discretionary relief under Article 226 of the Constitution of India, by the doctrine of approbation and reprobation or any other principle of law. The decisions cited by the Learned Counsel for the appellant will not help him in the present case.”

20. Thus, in the absence of any statutory bar and the absence of any specific principle of equity, the plea cannot be countenanced. In this case, it is the management that chose to comply with the award on its own and was not led by any action of the workman in this regard. I answer the question that despite encashing the cheque for a sum of Rs.15,000/-, the present Writ Petition is maintainable. Accordingly, I answer the question.

Question No.(iii):

21. It is the contention of the learned counsel for the management that the charge concerning abusing the official with filthy language is a serious one. At the same breadth, the learned counsel appearing on behalf of the workmen would rely



upon the judgments to contend that if the words are uttered by the workman in the heat of the moment, the same should not be held to be serious. However, no hard and fast rule can be laid concerning whether the charge relating to worldly quarrel is held to be serious or not. Abuse with filthy language has to be considered in the backdrop of the situation. The said day was a compensatory working day. The background of the workmen is that they are ordinary manual labourers working in the tea estate in the hilly terrain. Therefore, considering the context and the background of the workmen, in the facts and circumstances of the case, I am not in agreement with the learned counsel for the management that the charge should have been held as a serious charge warranting a punishment of dismissal from service. It can be seen that it is one isolated incident, and as such, the finding of the Labour Court that the punishment is disproportionate to the charges levelled is in order. Similarly, even with reference to the other workmen, it can be seen that the work in the field /estate was to be over by noon, whereas after extracting the fieldwork, they were also asked to go and work in the factory in the afternoon, which resulted in the conduct of the other workmen. Therefore, given the admitted facts and circumstances of the case, I agree with the Labour Court that even holding that the charge has proved the punishment imposed in this case is disproportionate to the charges levelled against the workmen and accordingly I answer the question.



Question No.(iv):

22. The Labour Court, instead of granting the relief of reinstatement with back wages, had held that on the facts and circumstances of the instant case, instead of reinstatement, it would award compensation. The non-employment happened in the year 2000, and we are in the year 2024. Therefore, I am not in agreement with the learned counsel for the workmen that, in this case, the Tribunal should have awarded reinstatement with back wages.

Question No.(v):

23. As far as the quantum of compensation is concerned, the Labour Court had not made any discussion except to state that the compensation of Rs.15,000/- is awarded. When the Labour Court decides to grant compensation in lieu of reinstatement with back wages, the said compensation cannot be an arbitrary or whimsical sum. As per the law laid down by the Hon'ble Supreme Court of India in ***O.P.Bhandari Vs. Indian Tourism Development Corporation Ltd. And Others*** cited supra it has to be 3.3 years wages. It is relevant to extract paragraph 10 which reads as follows:-

“10.In our considered opinion, compensation



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equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:-

1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

(iii) If he had been reinstated he would have earned the salary only upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his & lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.

No doubt he will not have the advantage of further promotion, but then what are his prospects, given the present relationship? Besides, the chances of promotion can be set off against the risk of a departmental disciplinary proceeding. Factors (i), (ii), (iii) and (iv) are of such great significance that compensation on the basis of 50% of his annual salary and allowances is much more to his advantage. We are thus satisfied that compensation in lieu of reinstatement on the aforesaid basis is more than reasonable.... “



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22. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in ***Workmen Vs. Bharat Fritz Werner Private Limited and another*** which is cited supra and paragraph 24 of the judgment is also extracted hereunder.

“24. In the instant case these five workmen were dismissed from service on April 7, 1978 and since then they are without employment. In view of the judgment of the Appellate Bench of the High Court they are entitled to half of the back wages for the period from the date of the order of dismissal, i.e. April 7, 1978 till July 27, 1984, the date of the decision of the Appellate Bench of the High Court. Under the order of the Appellate Bench of the High Court they would have been entitled to full wages for the period subsequent to [the said decision](#) on their reinstatement. The operation of the said direction with regard to reinstatement has, however, been stayed during the pendency of the appeals in this Court. From the counter affidavit of V. Manoharan dated 10th November 1984 filed in S.L.P.(C) Nos. 10150 to 10153/84(C.A. NOS. 4780-4783(NL) of 1984) it appears that on the date of the said affidavit, except C.L. Rajanna who was aged 32 years, the age of other four workmen was in the range of 42-43 years and that the age of superannuation in the Company is 58 years. At the time of dismissal, the total salary of these workmen was in the range of Rs.925/- to Rs. 1,200/- and at the time of filing of the affidavit in 1984 their salary would have been in the range of Rs. 2,125/- to Rs. 2,700/-. On that basis one half of the back wages of these workmen for the period from 1978 to 1984 would be about Rs. 50,000/- to Rs. 60,000/-. Taking into consideration the salary of the workmen at the time of the passing of the



order of Appellate Bench in 1984 and applying the criterion laid down by this Court in O.P. Bhandari's Case (Supra) the amount of compensation in lieu of reinstatement for the loss of future employment that should be payable to each workman would be Rs. 1,00,000/-. If that amount had been paid to the workmen in 1984, they would have earned Rs. 15,000/- per year as interest on the same during the period the appeals have been pending in this Court since 1984. These workmen have received Rs. 60,000/- awarded to them by the learned Single Judge under the interim order passed by this Court on December 3, 1984 and in addition to that they have received Rs. 12,000/- by way of interim relief during the pendency of the appeals before the High Court. In other words these workmen have so far received Rs. 72,000/- in all while they have been without employment since 1978. Taking into consideration the aforesaid facts and the circumstances we are of the opinion, that these workmen may be awarded Rs. 1,50,000/- each towards back wages and compensation for loss of future employment in lieu of reinstatement in addition to the sum of Rs.72,000/- which has already been received by them."

24. The logic behind the quantum of awards seems to be that the workmen should be in a position to realise at least 50% of the last drawn salary. Over and above, as an addition, loss of future employment is also considered by the Hon'ble Supreme Court of India. However, the same has to be applied by taking into account the wholesome consideration of the nature of the charges, the time lag, the status of the workmen the last drawn wages in total, etc. In this case, the wages of the workmen at that time are said to be Rupees 75/- per day and amounting to a sum



of Rs.2130 per month and thus annual wages of Rs.25,564/-. Going by the logic, the amount which is given to the workmen should be able to generate interest of a sum of Rs.12,500/- at the relevant point in time. Therefore, considering the rate of interest prevalent at the relevant point in time, I am of the view that approximately the compensation amount can be increased to a sum of Rs.1,00,000/-. Even though the Hon'ble Supreme Court of India has not laid down any categorical rule concerning the loss of future employment, considering the overall facts and circumstances of the case, I am of the view that another 25,000/- can be added to each of the workmen regarding the said relief also. In view thereof, the original amount of compensation, which is granted as 15,000/- is enhanced to Rs.1,25,000/- each in respect of each of the workman, the same shall be paid with further interest at the rate of 6% per annum from the date of the award till the date of payment.

25.In view of the answers to the above questions, the Writ Petitions are allowed in part on the following terms:

- i) The impugned awards of the labour court and its findings thereon are upheld except for the quantum of compensation;
- ii)The second respondent management is directed to pay a compensation



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amount of Rs.1,25,000/- each to the workmen with further interest at the rate of 6% per annum from the date of award till the date of payment;

iii) The amount of Rs. 15,000/- already paid can be deducted from the same;

iv) No costs.

07.11.2024

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Neutral citation :-Yes

To:

The Presiding Officer
Labour Court, Coimbatore.



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