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W.P.No.13363 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.13363 of 2010

1.G.Jayavelmurugan (died)

2.J.Prema

...Petitioners

Vs.

1.M/s.Simpson and Company Limited,
(Shardlow India Division),
Hosur Gardens,
Sembiam,
Chennai - 600 011.
(R1-cause title amended as per order dated 28.10.2024
(memo filed in Court)

2.The Presiding Officer,
Principal Labour Court,
Chennai-104

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of 2nd respondent which is made in I.D.No.547 of 2000 dated 22.10.2009, quash the same, and consequently, direct the 1st respondent/Management to treat the petitioner as retired from service on attaining superannuation on 01.02.2007 and to pay all the service benefits to the petitioner with interest.



W.P.No.13363 of 2010

For Petitioners : Mr.C.Prem Kumar

WEB COPY For Respondents : Mr.A.Rexy Josephine Mary
for Mr.C.Mohan for R1
R2 – Labour Court

ORDER

Originally, G.Jayavelmurugan, the workman had filed this Writ Petition challenging the order of the 2nd respondent made in I.D.No.547 of 2000, dated 22.10.2009.

2.Pending the Writ Petition, the workman has since died his legal representatives are brought on record as the petitioners.

3.The case of the petitioner is that when the petitioner was only discharging his duties and was getting the key of the vehicle and merely because the official who came in the way only asked him to be careful while asking for vehicle, and a false complaint is given and the charge is orchestrated as if he abused the officials of the Management in filthy language and a false charge was levied against him. The petitioner gave a detailed explanation denying the charges by his explanation dated 20.05.1999. However, an enquiry was conducted and the charge was held to be proved and the punishment of dismissal from service was imposed.



W.P.No.13363 of 2010

4. Aggrieved thereby, the petitioner raised an Industrial Dispute and upon failure of the Conciliation, the matter was taken up before the Principal Labour Court, Chennai in I.D.No.547 of 2000. The Principal Labour Court, Chennai, without appreciating the facts and circumstances of the case dismissed the claim of the workman. As against him, the present Writ Petition has been filed.

5. The Writ Petition is resisted by the respondent/Management by relying upon the Exhibits which are marked during the course of enquiry.

6. Mr. C. Prem Kumar, learned counsel appearing on behalf of the petitioner taking this Court through the Award passed by the Principal Labour Court, Chennai, would contend that in this case, in the domestic enquiry, even though the charge against the petitioner is that in the presence of the particular official, the petitioner used the filthy language and the said official was not examined. Even before the Labour Court, no evidence was let in on behalf of the Management. Though when the prime witness who said to have been the eye witness is available and the best witness is not brought before the enquiry and even before the Labour Court, no other witness was examined. Thus, when the evidence is available with the Management the same is not produced in the domestic enquiry and then the findings of the Enquiry Officer as well as the



W.P.No.13363 of 2010

Labour Court are perverse. The Labour Court ought to have seen that the petitioner only picked up his key as he supposed to drop the Executive Director.

Therefore, the charge is absolutely not at all made out. Even assuming that the charge is proved, the Labour Court ought to have seen that the isolated charge against the petitioner is that he sustained the staff of the Management by using filthy language. Therefore, the said isolated incident/ charge cannot be said in the punishment of dismissal from service. The punishment is disproportionate and therefore, he would submit that this Court should interfere.

7.*Per contra*, Mr.A.Rexy Josephine Mary, learned counsel for the respondent/Management would submit that in this case before the Labour Court no evidence was let in on behalf of the workman. When the Management sought to let in evidence, the petitioner/workman had no objection for marking of documents. Since there is enough evidence in the domestic enquiry to prove the charge and the statements were consented to be marked by the workman, all those documents have been marked as M1 to M.21 and the Labour Court considered the statements given by the witnesses and then came to the conclusion that the charges are duly proved. The Labour Court has also considered the issue of proportionality of the punishment in detail and considering the kind of language which was used and the behaviour of the writ



W.P.No.13363 of 2010

petitioner, confirmed the punishment imposed by the respondent. She would specifically contend that the said eye witness to the incident, namely, Thiagarajan was also examined as second witness in the enquiry and his statement in Ex.M.2 also marked before the Labour Court. Therefore, she would submit that there is nothing for this Court to interfere at this stage.

8.I have considered the rival submissions made on either side and perused the material available on record.

9.In this case, after conduct of the domestic enquiry, the petitioner was dismissed from service. When the original Writ Petitioner raised an industrial dispute he ought to have let in evidence on his side in support of his defence. No evidence whatsoever has also been let in on behalf of the petitioner side. Not stopping with that the petitioner has also consented for the Management to mark their documents. The statements which were obtaining during the course of domestic enquiry from the various witnesses are marked as Ex.M.1 to M.5. This apart, all the documents including the charge sheet and the other documents relating to incident were marked as exhibits.



W.P.No.13363 of 2010

WEB COPY

10. In view of the overwhelming evidence which was produced before the Labour Court, the Labour Court has held the charges as proved. The other contentions of the learned counsel is that even finding that the charges has proved, the Labour Court ought to have held that the charge is not one warranting the punishment of dismissal from service. As far as the charge pertaining to abusing and threatening the Management staff in a filthy language is concerned, it is true that the Courts have taken views both ways that the punishment of dismissal from service can be imposed and the punishment of dismissal from service is excessive.

11. However, it can be seen that the question whether the punishment is excessive or not has to be taken into consideration with specific reference to the context. In this case, the Labour Court went into details in respect of the every words spoken by the petitioner, at the time of granting the key, when he passed through the reception and outside and the nature of the filthy language which was used is also specifically noted and extracted by the Labour Court and after a detailed analysis of the evidence on record, the Labour Court found the punishment of dismissal as justified. I do not find any strong reason so as to dislodge the findings of the Labour Court which is based on the appraisal of the



W.P.No.13363 of 2010

evidence on record, especially, when the petitioner has not got into the box to refute those allegations and has not even to pleaded the mitigating circumstances. There is no merit in this Writ Petition.

12.The learned counsel would also rely upon the Judgment of the Division Bench of this Court dated 25.05.2023 in W.A.No.1835 of 2021 in the case of S.Raja v. M/s.Hindustan Unilever Limited, Tea Factory Manager, Puducherry and would contend that in a similar circumstance, this Court ordered reinstatement of the concerned employee. However, on the facts of the present case, it cannot be accepted in the instant case.

13.Since the original Writ Petitioner has also passed away taking his dismissal as valid, if any amount of Provident Fund or any other dues are to be paid by the respondent/Management, the same shall be paid to the 2nd petitioner, namely, the wife of the 1st petitioner J.Prema. The arrears, if any, shall be paid within a period of one month from the date of receipt of a copy of this order. If no amount remains to be paid, the same shall be intimated in writing by the 1st respondent to the 2nd petitioner J.Prema.



W.P.No.13363 of 2010

WEB COPY Accordingly, this Writ Petition is disposed of. No costs.

07.11.2024

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

To

The Presiding Officer,
Principal Labour Court,
Chennai-104



WEB COPY



W.P.No.13363 of 2010

D.BHARATHA CHAKRAVARTHY, J.

mps

W.P.No.13363 of 2010

07.11.2024