



W.P.No.6911 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16.11.2023

ORDER PRONOUNCED ON : 29.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.6911 of 2009

The Management of
Amalgamations Repco Ltd.,
'J' Gardens, G.N.T. Road,
Chennai – 600 010.

... Petitioner

vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.M.N.Murugesan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records from the file of the first respondent herein in I.D.No.247/2003 and to quash its award dated 10.10.2008.

For Petitioner : Mr.Gopalakrishnan for
M/s.T.S.Gopalan & co.

For R1 : Court

For R2 : Mr.Balan Haridas

* * * * *



W.P.No.6911 of 2009

WEB COPY

ORDER

This Writ Petition is filed to call for the records from the file of the first respondent herein in I.D.No.247/2003 and to quash its award dated 10.10.2008.

2.The Management will be referred to as the petitioner and the second respondent will be referred to as the respondent.

3.The petitioner is a manufacturer of Automobile components. The respondent was appointed as a labourer on 01.09.1988. From 1998 there was heavy recession in the industry and therefore the Management resorted to various measures like introducing voluntary retirement scheme and also re-allocation of work etc. The respondent as a measure of re-allocation was transferred from F.P.S. Section to Machine Shop as per the terms of the settlement dated 19.02.2000 entered into with the Union. On 12.01.2002, the respondent went to the factory to submit the ESI fitness certificate along with the leave application to the Personnel Department. At around 02.15 p.m. the respondent entered into the Personnel Department where a group discussion with respect to some matters was going on. The respondent without



any provocation suddenly raised his voice against one Hariharan (MW1). The said Hariharan on seeing the unruly behaviour of the respondent went to his cabin, but the respondent followed him and started quarrelling with him. The respondent pushed the chair menacingly against Hariharan with an intention to assault him and shouted at him in derogatory language. Mr.Hariharan and the Senior Executive of the Personnel Department Mr.J.Purushothaman gave a complaint on the incident to the petitioner. The petitioner therefore issued an order of suspension on 17.01.2002 to the respondent. The respondent gave his explanation to the charge sheet on 01.02.2002 and as his explanation was unsatisfactory a domestic enquiry was conducted against the respondent. The enquiry officer submitted his report on 20.06.2002 which was given to the respondent on 20.06.2002. The respondent submitted his comments to the enquiry report on 06.07.2002. On receipt of the respondent's comments a second show cause notice was issued to him to show cause on the punishment to be imposed on him. The respondent submitted his reply on 30.07.2002, and thereafter the petitioner considering the gravity of the misconduct dismissed the respondent from service vide order dated 20.08.2002 with retrospective effect from the date of suspension i.e. 07.01.2002. Aggrieved by the dismissal order, the respondent raised a dispute under Section 2-A of the Industrial Disputes Act and the same was numbered as I.D.No.247 of 2003 before the Labour Court. The Labour



W.P.No.6911 of 2009

Court by its preliminary order dated 05.04.2007 found that the enquiry was not properly conducted by the petitioner and so permitted the petitioner to lead evidence before it to establish the charges. Before the Labour Court both the parties led evidence, both orally as well as documentary. The respondent examined himself as WW1 and marked Ex.W1 to Ex.W15 and the petitioner examined two witnesses viz., Mr.Hariharan and Mr.J.Purushothaman and marked Ex.M1 to Ex.M6 including the charge sheet, explanation and the complaint. The Labour Court on an appreciation of the entire evidence on record and on the basis of the arguments of the learned counsel held that the respondent was not guilty of the charges and therefore directed the petitioner to reinstate him with full backwages, continuity of service and all other attendant benefits. Aggrieved by the award of the Labour Court, the writ petitioner has filed the above writ petition.

4.It is the respondent's case that the order of dismissal was an act of victimisation and therefore the same cannot be sustained. According to the respondent, on 06.04.1999, the respondent was asked to go on voluntary retirement, but he refused as he had 24 years of service left and also because he was the sole bread winner of the family. The respondent vide his letter dated 18.04.1999 recorded the aforesaid fact, which was denied by the petitioner vide letter dated 20.04.1999.



W.P.No.6911 of 2009

The respondent again wrote a letter on 21.04.1999 requesting the petitioner not to force him to go on voluntary retirement. The petitioner sent a reply on 26.04.1999 stating that the matter stood closed. Thereafter the petitioner shifted the respondent from Finished Product Stores to Machine shop. In the place of the respondent, the petitioner engaged a contract labourer in the Finished Product Stores. The respondent worked in the Machine shop and later he was shifted to DP-Assembly Section. In the said section, the respondent applied protoseal oil to clutch blades and on 21.11.2000, while he was working in the said section he suddenly fainted. The respondent was given first aid and thereafter shifted to ESI Hospital, Ayyanavaram. The Doctor, who treated the respondent advised him to avoid exposure to protoseal oil. Therefore, the respondent was shifted to Machine shop in November 2000. According to the respondent during the months of August, September, October and November, 2001, the said Hariharan again asked the respondent to go on voluntary retirement. The respondent appraised Mr.Hariharan about his family position and asked him not to threaten him to take voluntary retirement. In the month of December, 2001, the respondent was suddenly asked to work in the DP Assembly Section knowing pretty well that the respondent was allergic to protoseal oil and was advised against exposure to the same. On 11.01.2002, the respondent suddenly fell sick and fainted and he was taken for first aid and thereafter taken to the ESI Hospital, Ayanavaram



W.P.No.6911 of 2009

and the Doctor again advised him not to get exposed to protoseal oil. The respondent on 12.01.2002 went to the company to apply for ESI leave along with the Doctor's report and it is during that time that the alleged incident is said to have taken place. According to the respondent, the above proceedings clearly established that he was victimised and therefore the termination order was only a ruse to eject him from service.

5.The learned counsel for the petitioner submitted that the Labour Court erred in it's finding that the charges were not proved. The learned counsel further submitted that the finding of the Labour Court that the facts of the case clearly proved that the respondent was victimised was erroneous. The learned counsel further submitted that the Labour Court erred in thinking that the complainant Mr.Hariharan at whose instance the disciplinary proceedings were initiated was not an employee and therefore the standing orders could not be invoked on his complaint. The learned counsel lastly submitted that the Labour Court erred in interfering with the punishment.

6.The learned counsel for the petitioner in support of his contentions relied on the following Judgments of the Hon'ble Supreme Court.



W.P.No.6911 of 2009

WEB COPY *S.C.Sharma reported in (2005) 2 SCC 363; and*

“1.Kendriya Vidyalaya Sangathan and Another Vs.

2.Rajasthan State Road Transport Corporation, Jaipur Vs.

Phool Chand reported in (2018) 18 SCC 299.”

7.The learned counsel for the respondent on the other hand submitted that the findings of fact of the Labour Court were based on the evidence on record and therefore the same could not be interfered with by this Court Under Article 226 of the Constitution of India. The learned counsel therefore submitted that the award of the Labour Court should not be interfered.

8.The learned counsel for the respondent relied on the following Judgments of the Hon'ble Supreme Court and the High Court of Madras in support of his contention that the finding given by the Tribunal could not be interfered with unless and until such findings were based on no evidence.

1.Indian Overseas Bank and others Vs. Om Prakash

Lal Srivastava reported in (2022) 3 SCC 803;



W.P.No.6911 of 2009

2. *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak*

WEB COPY *Mahavidyalaya (D.Ed.) and others* reported in (2013) 10 SCC

324;

3. *Indian Overseas Bank Vs. I.O.B. Staff Canteen*

***Workers' Union and another* reported in (2000) 4 SCC 245;**

4. *The Management of Addison & Company Limited Vs.*

The Presiding Officer, II Additional Labour Court, Chennai

in *W.A.No.1946 of 2019 dated 18.02.2020*; and

5. *Syed Yakoob Vs. K.S.Radhakrishnan and Others*

reported in (1964) 5 SCR 64.

9.I have heard both the learned counsels and I have perused the materials on record.

10.It is not disputed that the petitioner is engaged in the manufacturer of automobile components and that the respondent was appointed as a Labourer on 01.09.1988. It is the case of the petitioner that there was recession in the Industry in 1998 and therefore various measures like introducing voluntary retirement scheme



W.P.No.6911 of 2009

and also re-allocation of work etc were undertaken by the Management. On

12.01.2002 the respondent went to the petitioner's factory to submit his ESI fitness certificate along with the leave application to the Personnel Department. It is the petitioner's case that at around 02.15 p.m., when Mr.Hariharan and Mr.J.Purushothaman (Senior Executive Personnel) were holding group discussion with respect to certain matters that the respondent entered the Department and without any provocation suddenly shouted at Mr.Hariharan (MW1). It is stated that on seeing the unruly behaviour of the respondent, Mr.Hariharan went to his cabin, but the respondent followed him, started quarreling with him and pushed the chair menacingly at Mr.Hariharan with an intention to assault him. Therefore, Mr.Hariharan and Mr.J.Purushothaman, Senior Executive, Personnel gave a complaint to the petitioner on the unruly behaviour of the respondent. Hence a suspension order was passed on 17.01.2002 and the respondent submitted his explanation on 19.01.2002 against the same. Thereafter domestic enquiry was conducted, which culminated in the dismissal order dated 20.08.2002. But it is the respondent's case that no such incident occurred. According to the respondent as he did not accede to Mr.Hariharan's threats to go on voluntary retirement he was victimised and ejected from service by the illegal order of termination. The respondent therefore raised a dispute which was numbered as I.D.No.247 of 2003.



W.P.No.6911 of 2009

The Labour Court in the award discussed the entire evidence and conclusively found that the respondent's plead that he was victimised by the petitioner was proved. The Labour Court therefore set aside the termination order. Aggrieved by the Labour Court Award the petitioner has filed the above writ petition.

11. From the narration of the facts of the case it is seen that the respondent was asked to go on voluntary retirement, but he refused stating that he had long years of service and that he was the sole bread winner of the family. The respondent was initially transferred to Machine shop from the Finished Product Store and thereafter shifted to the DP-Assembly Section, where he was made to apply protoseal oil to clutch plates. As the respondent fainted while applying the protoseal oil, the Doctor, who treated him in the ESI Hospital, Ayyanavarm, advised him to avoid exposure to the same. On the basis of the report of the Doctor the Management shifted the respondent again to Machine shop. It is not known why the Management transferred him again to DP-Assembly Section in spite of knowing pretty well that the respondent was allergic to protoseal oil and was advised exposure to the same. On transfer again to DP Assembly Section, while the respondent was discharging his duties he again fell sick and fainted due to his allergy to protoseal oil. The ESI Doctor, who treated him once again advised him not to get exposed to protoseal oil. It was when the petitioner approached the Management on 12.01.2002, to apply for the ESI leave along with the



W.P.No.6911 of 2009

Doctor's report that the alleged incident is said to have taken place. From the above facts it is clear that the incident alleged is only a ruse to eject the respondent. The respondent is justified in his contention that he was victimised for not accepting the VRS offered by the petitioner. The fact that the respondent was shifted from one Department to another and he was made to remain in DP-Assembly Section inspite of the Doctor's report clearly shows that the respondent was victimised for refusing to accept VRS. I am therefore of the view that the factual finding of the Labour Court cannot be interfered with.

12.It is pertinent to note here the Judgments relied on by the learned counsel for the respondent in the case of ***Indian Overseas Bank Vs. Om Prakash Lal Srivastava*** reported in ***(2022) 3 SCC 803***, wherein the Hon'ble Supreme Court in paragraph No.17 of the Judgment held as follows:

“17.We would like to emphasise at the threshold that there are certain inherent legal limitations to the scrutiny of an award of a Tribunal by the High Court while exercising jurisdiction under Article 226 of the Constitution of India. We may refer to the Judgment of this Court in GE Power India Ltd. Vs. A.Aziz. If there is no jurisdictional error or violation of natural justice or



W.P.No.6911 of 2009

WEB COPY

error of law apparent on the face of the record, there is no occasion for the High Court to get into the merits of the controversy as an appellate Court.”

13. Similar view has been expressed in the Judgment of the Hon'ble Supreme Court in the case of ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and another*** reported in (2000) 4 SCC 245. The Hon'ble Supreme Court in paragraph No.17 held as follows:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re- appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having



WEB COPY

been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken.”

14.The Judgment of the Hon'ble Supreme Court in the case of **Syed Yakoob Vs.**

K.S.Radhakrishnan and others reported in **(1964) 5 SCR 64**, reads as follows:

“16.....If that be so, a decision based on facts found by the Tribunal cannot be reopened on the plausible plea that a further enquiry should be made because that would be just. If findings of fact were allowed to be disturbed by High Courts in such writ proceedings, that may lead to an interminable search for correct findings and would virtually convert the High Courts into Appellate Courts competent to deal with questions of fact. That is why we think, in entertaining petitions for writs of certiorari, it is necessary to remember that findings of fact recorded by special Tribunals which have been clothed with jurisdiction to deal with them, should be treated as final between the parties, unless, of course, it is shown that the impugned



W.P.No.6911 of 2009

WEB COPY

Labour Court only when there is a jurisdictional error, violation of principles of natural justice or error apparent on the face of the record.

6.The High Court while entertaining Writs of Certiorari cannot enter into the merits of the controversy and it shall normally not interfere with the factual findings of the Tribunal unless it is found to be perverse”

16.Following the above legal principles I find that the factual findings of the Labour Court which are based on proper appreciation of the evidence on record cannot be dislodged. As the findings of the Labour Court are based on materials which are relevant for the purpose, the same cannot be interfered merely because another view may be possible. I therefore find no reason to interfere with the finding of the Labour Court and hence the same is confirmed.

17.The learned counsel for the petitioner relied on the Judgments reported in the case of ***Kendriya Vidyalaya Sangathan and Another Vs. S.C.Sharma*** reported in ***(2005) 2 SCC 363*** and ***Rajasthan State Road Transport Corporation, Jaipur Vs.***



W.P.No.6911 of 2009

Phool Chand reported in **(2018) 18 SCC 299** on the issue of backwages. The legal proposition stated in the aforesaid Judgments is not disputed. It is trite that the proposition of law will have to be applied to the fact situation of the case. In the present case, it is clearly established that the respondent was victimised and therefore the termination order of the petitioner is illegal and unjustified.

18.The Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others** reported in **(2013) 10 SCC 324** has clearly laid down that in the case of wrongful/illegal termination the award of backwages is the normal rule and therefore I find no merits in the contention of the learned counsel for the petitioner that the respondent is not entitled to backwages. Hence the said contention is rejected.

19.For all the above reasons, the writ petition stands dismissed as meritless.
There shall be no order as to cost.

29.01.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-speaking order
ah

To



W.P.No.6911 of 2009

1.The Presiding Officer,
Principal Labour Court, Chennai.

2.The Management of
Amalgamations Repco Ltd.,
'J' Gardens, G.N.T. Road,
Chennai – 600 010.

N.MALA, J.

ah

W.P.No.6911 of 2009



WEB COPY



W.P.No.6911 of 2009

29.01.2024