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W.P.Nos. 22551 of 2010 & 8646 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos. 22551 of 2010 & 8646 of 2021

and

M.P.No. 1 of 2010

W.P.No. 22551 of 2010

Neyveli Lignite Corporation Limited,
Rep. by its Director (Personnel),
Neyveli - 607 801.

... Petitioner

Vs

1. The Presiding Officer,
Central Government Industrial-Cum-Labour Court,
Shastri Bhavan, Chennai - 600 006.

2. B. Arasu

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for all the records of the first respondent herein, pertaining to the order in I.D.No.41 of 2006 and to quash the same.

For Petitioner : Mr.N.A.K.Sarma

For R1 : Labour Court

For R2 : Mr.D.Prabhu Mukunth Arunkumar



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W.P.No. 8646 of 2021

WEB COPY B. Arasu

... Petitioner

Vs.

Neyveli Lignite Corporation Limited,
Rep. by its Director (Personnel),
Neyveli - 607 801.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned award dated 29.01.2010 in I.D.No.41 of 2006 on the file of the Central Government Industrial Tribunal quash the same and allow the I.D.No.41 of 2006 praying to quash order of punishment dated 19.07.1999 and 30.11.1999 and reinstate the petitioner with all consequential service and other attendant benefits as entitled under law.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondent : Mr.N.A.K.Sarma

ORDER

These two writ petitions are challenging the very same award of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai, dated 29.01.2010 made in I.D.No. 41 of 2006.



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2. By the said award, while considering the claim of the workman relating to reinstatement with back wages, the Industrial Tribunal upheld the fairness of the enquiry and found that there was evidence on record to prove the charge. However, it interfered with the punishment by holding that it was unjustified and unduly harsh and changed it to compulsory retirement. Aggrieved by which, both the management as well as the workman are before this Court.

3. Mr. N.A.K.Sarma, the learned counsel appearing on behalf of management would submit that once the Industrial Tribunal holds that it is a case where the enquiry was fair and proper. In the enquiry, ample evidence was let in by the management, including examining Elangovan, to whom the goods were said to be handed over. After appreciation of evidence, having come to the conclusion that the management has let in sufficient evidence to prove the charge, it is an error to interfere with the quantum of punishment. The quantum of punishment can only be interfered with, if the punishment is grossly disproportionate to the charge levelled. In this case, the charge levelled is about missing of 15 boxes of filter paper. Extreme negligence as



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well as missing of the goods is alleged against the workman. For such charge, the punishment of dismissal from service cannot be held to be improper or disproportionate. Therefore, the Industrial Tribunal erred in interfering with the punishment.

4. Per contra, Mr.D.Prabhu Mukunth Arunkumar, the learned counsel appearing on behalf of the workman, by taking this Court through the preliminary enquiry report as well as the charge and the relevant register, would submit that it can be seen from the very register that on several occasions, the employees have put a bracket and received the goods. In this case, it is categorically established that said Elangovan has signed the register by a bracketing. While suspicion is drawn from the fact that there is overwriting near the bracket, the authorities completely overlooked two facts: one, the entire register is handwritten and maintained with one entry after the other. A perusal of the register, the space which is given for writing 'whatman filter paper 15 numbers' and the next entry on 01.07.1997, it cannot be said that there is any interpolation. It appears natural and normal. Secondly, the concerned paper is not some material that can be stolen and



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sold for any price in open market and nobody will be benefited by stealing or taking away the said filter papers. That is a specific product which can be used only in the particular process. This coupled with the fact that the papers were very much available untill the year 1999 and the next procurement is by the management only in the year 1999, would go to show that the entire 40 boxes of filter paper were very much available and it is only on mistake and on suspicion that the charge memorandum was issued. Any amount of suspicion cannot become proof. In this case, the workman has been found guilty only on suspicion, but not on proof. Therefore, he would submit that this Court should interfere with the punishment and should order reinstatement with back wages.

5. I have considered the rival submissions made on either side and perused the material records of the case.

6. In this case, it can be seen that the enquiry was held to be fair and proper. Even before this Court, there is no argument regarding the impropriety in the enquiry or that any principles of natural justice were



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violated. That be the case, the jurisdiction of the Industrial Tribunal, with reference to Section 11A, is to determine whether the findings regarding the guilt of the charge are based on evidence and whether the punishment is unduly harsh or disproportionate. As far as the second question is concerned, the Domestic Enquiry Authority had considered the evidence of the said Elangovan and the manner in which the brackets were drawn, the interpolation, etc. Though it has not been categorically found that the workman committed theft of those boxes, it was held that the workman, being the storekeeper, is liable for the episode. Once he was entrusted with the job of maintaining the stores, the discrepancies in the entry pointed a finger towards him. Therefore, the Domestic Enquiry Officer held the charges to be proved and the Industrial Tribunal agreed with the same.

7. The contention of the learned counsel appearing for the workman is that they did not consider the fact of the availability of the papers and also it's worth etc. Further, he submit that they have not proved that it is only the workman who has interpolated and meddled with the bracket. In the domestic enquiry, the level of proof is only up to the preponderance of probability,



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WEB COPY 8. It is to be noted that the workman has also attained the age of superannuation with effect from 31.07.2024. During the course of the hearing, this Court requested the learned Counsel for the management to come up with a concrete statement as to what will be the difference between superannuation and compulsory retirement and what are the benefits which will be paid to the workman. The following statement in writing is made before this Court and the same is extracted hereunder:-

“Comparison Chart of benefits in case of Superannuation & Compulsory Retirement

	<i>Eligibility in case of Superannuation</i>	<i>Eligibility in case of Compulsory Retirement</i>
<i>Contributory Provident Fund</i>	<i>Yes</i>	<i>Yes</i>
<i>Gratuity</i>	<i>Yes</i>	<i>Yes</i>
<i>Leave Encashment of Earned leave and Half Pay Leave</i>	<i>Yes</i>	<i>Yes</i>
<i>Superannuation Pension</i>	<i>Yes</i>	<i>Yes</i>
<i>Retirement Travelling Allowance</i>	<i>Yes</i>	<i>Yes</i>
<i>Post-Retirement Medical Insurance (PRMI)</i>	<i>Yes</i>	<i>Yes*</i>
<i>Post-Retirement Medical Assistance (PRMA)</i>	<i>Yes</i>	<i>Yes*</i>

Note:

** In case of Compulsory Retirement from Service, the benefits of PRMI & PRMA will not be provided if the employee whose service is separated (dismissed/terminated) from service on account of*



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disciplinary action for acts/omissions involving.

(i) Violent or riotous behaviour in the premises of establishment.

(ii) Any misconduct involving moral turpitude.

The spouse of such separated (dismissed/terminated) employee will also be ineligible to avail the benefits under the scheme.

9. Thus, it can be seen that the date of punishment will be taken as date of compulsory retirement and the benefit such as the entire Contributory Provident Fund, gratuity, leave encashment, superannuation pension and retirement travelling allowance, all will be granted except the Post-Retirement Medical Insurance (PRMI) and Post Retirement Medical Assistance (PRMA).

10. In that view of the matter, considering the overall facts and circumstances of the case, I do not find any reason to interfere with the award of the Labour Court. Accordingly, finding no merits, these writ petitions stand dismissed. Consequently, connected miscellaneous petition is closed. No costs.

17.12.2024

Neutral Citation: Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

nsI

To
The Presiding Officer,
Central Government Industrial-Cum-Labour Court,
Shastri Bhavan, Chennai - 6.

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