



W.P.No.5935 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM:

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

W.P.No.5935 of 2004

M/s.Faiveley Transport Rail Technologies India Limited,
PB No.39,
Harita,
Hosur 635 109, Tamil Nadu.
(Petitioner substituted vide order
Dated 11.11.2024 in W.P.No.5935/2004) ... Petitioner

Vs.

1. The Presiding Officer
Labour Court
Salem.
Mr.M.Ramesh (deceased)
2. Kavitha
3.Dhanalakshmi
4.Gowtham Kiran
(R2 to R4 substituted as LR of deceased
M.Ramesh vide order Dated 03.11.2020 in
WMP.No.18839/2020 in WP.No.5935/2004) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of certiorari, calling for the records of the first respondent in ID.No.110/98 quash its award dated 08.10.2003.

For Petitioner : Mr.Raghunathan
for M/s.T.S.Gopalan& Co.

For Respondent 1 : Labour Court
For respondents 2 to 4 : Mrs.V.Porkodi



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for Mr.V.Ajoy Khose

ORDER

This writ petition is filed challenging the award of the Labour Court in ID.No.110/98 .

2. The brief facts leading to the writ petition are that by order dated 15.12.1985, the original 2nd respondent in the writ petition namely M.Ramesh was appointed as an Operator under the petitioner management. Even in the order of appointment, it was mentioned that the 2nd respondent/workmen during his period of service will be liable to be transferred to any division of the company or associate or any of their group of companies existing or to be formed in future in any place if required. While so, on 28.09.1995, the workmen was transferred to Jhansi. It was also mentioned in the order that an additional sum of Rs.1000/-(rupees thousand only) will be paid for his stay at Jhansi. However, the workmen did not comply with the transfer order and kept on sending representations that he should be retained in Hosur itself. In view of his non-compliance, on 17.05.1996, a charge memorandum was



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issued and disciplinary action was initiated. After conduct of a domestic enquiry and after issue of 2nd show cause notice, by order dated 04.02.1997, an order of dismissal from service was passed. Aggrieved by the same, the 2nd respondent/workmen raised a dispute. Upon the conciliation failing, the Labour Court took up the claim in I.D.No.110 of 1998 and by the award dated 08.10.2003 impugned in the writ petition, granted the relief of reinstatement to the workmen however without any backwages. Challenging the same, the present writ petition is filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents 2 to 4.

4. The learned counsel for the petitioner submitted that the Labour Court has already found that the procedure adopted by the petitioner management during the enquiry was fair and proper. Once that is held, thereafter, the jurisdiction of the Labour Court to interfere with the punishment lies in a narrow compass. As per the judgment of the Hon'ble Supreme Court of India in the case of ***The Workmen of M/s. Firestone Tyre and Rubber Co. of India(PVT.) Limited Vs The Management and Others***, the punishment can be interfered with only if



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it is found that it is so harsh so as to suggest victimization. The Learned counsel would rely upon Paragraph 32(9) of the said judgment. The Learned counsel would further rely upon the judgment of the Hon'ble Supreme Court of India in the case of **LIC of India Vs R. Dhandapani** reported in **(2006) 13 SCC 613** more specifically Paragraph No.7 of the said judgment where under the jurisdiction of the Labour Court under Section 11-A of the Act is further delineated and explained that the punishment imposed by the management can be interfered with if it is wholly and shockingly disproportionate to the degree of guilt of the workmen concerned. By merely using the word disproportionate, the punishment should not be interfered with.

5. The learned Counsel would further rely upon the judgment of Division Bench of this Court in the case of **Engine Valves Limited Vs Labour Court, Madras and another** reported in **1991 1 LLJ 372** more specifically relying upon Paragraph 18 of the said judgment to contend that the Labour Court has an obligation to consider whether the punishment imposed is disproportionate or shockingly severe to the charges proved. Taking this Court to the explanation given to the charge memorandum, he would submit that this is not a case where the workmen



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is prevented by any illness or through any mitigating circumstances. In his reply, he has categorically stated that earlier he complied with the order of transfer to Calcutta because he is unmarried and now he is married and therefore he won't go. It is his contention that the transfer order itself is incorrect and therefore, he will not obey. Therefore, he would submit that in this case the workmen has decided not to go to the place of transfer namely Jhansi and as a matter of fact continued with another avocation of his brick selling business. Therefore, when the action of the workman is willful and deliberate and with no intention at all to go and join in the transferred place, the finding of the Labour Court that the punishment is disproportionate to the charge levelled is totally uncalled for and unwarranted.

6. He would further submit that when the workmen was involved in other gainful business and has chosen not to join, the management cannot be put to loss in any manner whatsoever. He would further submit that the workmen has now since died on 05.06.2019 pending the writ petition. Until his death, the 17-B wages were also been paid. The Management, cannot be mulcted with the liability for the default of the workmen himself. He would submit that the transfer order was sending



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the workmen to the associates' place where the system is being supplied to the associate/ customer where the petitioner is supposed to attend to the work. The business of the petitioner management itself is to supply braking systems and therefore, the nature of work requires posting of these workmen wherever the systems are being supplied and being operated. Therefore, the transfer order which was issued to the workmen was in order. In any event, the workmen did not choose to challenge the transfer order. When the workmen choose to sit at home and indulge in his own business, neither challenging the transfer order nor complying with the same, the indulgence shown by the Labour Court is undue sympathy and therefore, has to be interfered with by this court. Though the wordings in the order is transfer, it is only a deputation and an additional allowance of Rs.1000/- per month was also being paid for boarding and lodging since the petitioner has to stay at Jansi and do the work in the said place of the associate.

7. Per Contra, the learned counsel appearing on behalf of the respondent workmen would submit that it is true that there is a provision to transfer the workmen to any division of the management company or its associates or any other group of companies. But however, there is no



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denial of back wages and ordered reinstatement. She would further submit that now the workmen had died and it is only the benefits which have to be paid to the legal heirs who are the respondents 2 to 4 in the writ petition.

9. In support of her contentions, the learned counsel would also rely upon the judgment in the case of *Jawaharlal Nehru University VS Dr.K.S.Jawatkar and others* reported in *1989 Supp(1) SCC 679* to contend that the transfer to a different entity is without jurisdiction.

10. With regard to the alternative employment of the workmen is concerned, the learned counsel for the respondents 2 to 4 would submit that they have filed documents before this court to show that the said brick business is done only by the mother of the workmen. It was also done only with the loan which is granted much after the dismissal order. Therefore, the business does not belong to him and merely on the letter which is produced, it cannot be contended that the workmen was otherwise gainfully employed.

11. I have considered the rival submissions made on either side



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and perused the material records of the case.

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12. Firstly, this case lies on a narrow campus. As far as the disciplinary enquiry is concerned, the Labour Court has found that the procedure followed is fair and proper. Therefore, the scope of interference of the Labour Court as contended by the learned counsel for the petitioner is delineated by the Hon'ble Supreme Court of India in Paragraph No.32(9) of the judgment in the **Firestone** case cited supra, which is extracted hereunder.

“32(9). Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization”.

13. It is further explained in Paragraph No.7 of the judgment relied upon by the learned counsel for the petitioner in the case of **LIC of India Vs R.Dhandapani** which is also extracted hereunder:-

7. “It is not necessary to go into in detail regarding the power exercisable under Section 11-A



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of the Act. The power under said Section 11- A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient”.

14. Therefore, the only question to be decided by this Court is that whether the exercise of the power by the Labour Court is within the four corners of law as delineated. Firstly, as contended by the learned counsel for the respondents 2 to 4, it can be seen that the charge against the workmen is the non compliance of the order of transfer. In this regard, when earlier the workmen was sent to Calcutta by an order dated 09.06.1995, it also mentions deputation. But however, even though the present purpose which is pleaded by the management is to go to the customer's place and attend to the work, the order reads as the transfer



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order. It is in this context, the findings of the Labour Court in paragraph

14 is extracted here under :-

14. *“The main grievance of the petitioner is that these persons who are willing for being transferred to Jhansi have not been transferred. Admittedly, the petitioner did not apply for being posted at Jhansi. Those who have been applied for being posted at Jhansi have not been transferred but the petitioner was transferred to Jhansi. Admittedly, in Jhansi, the management has no office. Even after the transfer of petitioner another person was posted at Jhansi instead of the petitioner, since the petitioner was not reported for duty at Jhansi. It is true that the petitioner has not obeyed the order of the management. But, it cannot be considered to be a serious one considering the facts and circumstances of the case”.*

15. It is in this context of the finding that the labour court proceeds further to consider the proportionality of the punishment. Under Section 11A, the Labour Court is entitled to adjudicate whether the order of discharge or dismissal is justified or not. The interference should be by clear and cogent reasoning that it is unduly harsh or shockingly



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disproportionate to the charges levelled. The Labour Court has given its reasoning in paragraph 15 of the award in this context and held that in the overall facts and circumstances of the case, especially in the backdrop of the transfer order and the findings in respect thereof, considering the fact that the 2nd respondent/workmen is transferred from Hosur to Jhansi and that he was only a workmen in the grade of the operator, held that instead of being dismissed from service, granted the relief of reinstatement however, while cutting the 100% back wages by way of punishment. Therefore, when the Labour Court has exercised its discretion within the four corners of law, I am unable to interfere with the same. It cannot be termed as perverse or totally unjustified.

16. Now, pending the writ petition, the workmen has also since passed away on 05.06.2019. Considering the fact that the brick business is established subsequently and though it is in the name of the mother, it also shows that the workmen was also involved in the said business and considering the fact that the last drawn minimum wages of Rs. 3339/- has been paid by way of direction under Section 17-B of the Act till his death, I am of the view that to balance both the interests of the management and the legal heirs of the workman, and I hold that till the



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date of the death of the workmen until 05.06.2019, no further back wages need to be paid by the petitioner management. However, I am not interfering with the other aspects of the award of the Labour Court and therefore, the original second respondent namely M.Ramesh, the workman, shall be deemed to be in service of the petitioner management till the date of his death i.e., 05.06.2019 and considering him as died while in service, all the benefits which are due to the legal heirs including all the terminal benefits shall be paid to the respondents 2 to 4. The said exercise shall be carried out by the petitioner management within a period of eight weeks from the date of receipt of a copy of the order.

17. If the petitioner management fails to settle the terminal benefits within the period of eight weeks as stated above, then, thereafter the same shall carry further interest at the rate of 10% per annum from 05.06.2019 till the date of disbursement.

18. With the above directions, this writ petition stands disposed of.

No costs.

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Index: Yes

Speaking Order: Yes



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Neutral Citation: Yes
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D.BHARATHA CHAKRAVARTHY, J.

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To

The Presiding Officer
Labour Court
Salem.

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