



W.P.Nos.22524 & 41108 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.22524 & 41108 of 2005

A.Ulaganathan

... Petitioner in W.P.No.22524/2005

The Workmen of Gem Granite Factor
Rep.by Gem Granite and Group Workers Union
282-N-Block, Anna Nagar East
Chennai 600 102.

... Petitioner in W.P.No.41108/2005

Vs.

1.The Presiding Officer
I Addl.Labour Court
High Court Compound
Chennai 600 104.

2.The Management of Gem Granite
146, Injambakkam
Chennai 600 041.

...Respondents in W.P.No.22524/2005

1.The Presiding Officer
Principal Labour Court
High Court Compound
Chennai 600 104.



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2.The General Manager

Gem Granite, 146, East Coast Road

Injambakkam, Chennai 600 041. ...Respondents in W.P.No.41108/2005

Prayer in W.P.No.22524/2005 : Writ Petition 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 in ID.No.722 of 1999 and quash its impugned award made therein dated 22.12.2004 insofar as the first respondent has negative the claim of service, with backwages and with all other attendant and consequential benefits and to pass such other order or direction as this Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No.41108/2005 : Writ Petition 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 in ID.No.818 of 1999 and quash its impugned award made therein dated 08.12.2004 insofar as the first respondent has denied and negative the claim of the petitioner for granting the relief of reinstatement in service, with backwages and with all other attendant and consequential benefits to 56 workmen and pass such other order or direction as this Court may deem fit and proper in the circumstances of the case.



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For Petitioners in
both W.P.Nos. : Mr.K.M.Ramesh
Senior Counsel
Assisted by
Mr.S.Appavu

For Respondents
in both W.P.Nos. : Mr.M.R.Dharani Chander for R2
R1 – Labour Court

COMMON ORDER

These Writ Petitions are connected, taken up together, and disposed of by this common judgement.

2. The brief facts leading to the filing of these Writ Petitions are that in 1998, there were about 33 permanent workers and 23 probationers who were working with the Management. While so, aggrieved by the fact that all the office bearers of the trade union were transferred suddenly from Chennai to Karnataka, they resorted to an instantaneous strike, leading to the framing of charges against the permanent workmen and, thereafter, the conduct of a domestic enquiry and dismissing them from service. The



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probationers were terminated. It is recorded that pending the industrial dispute before the Labour Court, it seems that out of 23 probationers, 17 workmen settled with the management. In respect of the balance of six probationers, one probationer is said to have died, and the balance of five probationers continued the case. Of the 33 permanent workmen, nine of them settled the case and 24 of them continued the case.

3. The Labour Court took up the matter for enquiry. On behalf of the Workmen, four witnesses were examined and exhibits *Ex.W.1* to *Ex.W.9* were marked. No oral evidence was let in on behalf of the management. However, exhibits *Ex.M.1 to Ex.M.661* were marked. The Labour Court considered the case of both parties. As per the dictum of the Honourable Supreme Court of India reported in *NCC and Building Materials Vs. State of Haryana*¹, wherein, the Supreme Court held that even the preliminary issues can also be considered along with the regular issues, the Labour Court concluded that it need not go into the question as to the fairness of the domestic enquiry separately. Thereafter, it considered and gave a finding that the domestic enquiry has been conducted in detail and ample



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opportunities have been given to the Workmen and the domestic enquiry is fair and proper. Further, it considered the question of whether the punishment is justified or not and came to the conclusion that the punishment is justified and rejected the claim of the Workmen. Apart from the claim petition filed by the Trade Union in respect of all the workmen, one workman had also individually filed a claim petition and in both matters, awards were passed rejecting the claim as above.

4. Heard Mr K.M.Ramesh, the learned Senior Counsel appearing on behalf of the Workmen and Mr M.R.Dharani Chander, the learned counsel appearing on behalf of the respondent management.

5. It is the contention of the learned Senior Counsel appearing on behalf of the Workmen that, in this case, the award of the Labour Court is liable to be set aside. It has erred in taking up the issue relating to the fairness of the domestic enquiry along with the other issues. The law has since been settled that the fairness of the domestic enquiry has to be separately taken up as by way of the preliminary enquiry and preliminary award has to be passed.



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Only thereafter the parties have to be permitted to let in evidence for its exercise under Section 11-A of the Industrial Disputes Act, 1947. Then, the questions as to whether there is any evidence for the proof of the charges and the proportionality of the punishment has to be considered.

6. Secondly, he would submit that the Labour Court also did not consider the primary contention of the Workmen that, in this case, earlier, the management had punished the Workmen by way of imposing a punishment of 8 days wage cut and thereafter, the proceedings once again taken are all illegal. He would further submit that the justifiability of the punishment should also be considered in the wake of the subsequent events. The transferred Trade union office bearers who did not join the transferred post on account of whom the strike was conducted were granted the benefit by way of a complaint under section 33-A of the Industrial Disputes Act, and they were reinstated into service with back wages. The allegations against these Workmen are that they supported the said trade union office bearers and indulged in a flash strike that lasted for a few hours. When an 8-day wage cut was resorted to, then this Court should consider the question as to the



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punishment. The judgement of the Honourable Supreme Court of India in

Gujarat Steel Tubes Limited vs Gujarat Steel Shiv Mazdoor Sabha (AIR

1980 SC 1896)¹ whereunder regarding this kind of reactional strikes, it is held that imposition of the punishment as termination from service is unjustified and improper.

7. Per contra, Mr M.R.Dharani Chander, the learned counsel appearing on behalf of the petitioner Management would submit that on a careful perusal of the claim statement made in both the cases, it can be seen that even before the Labour Court the pleadings were only on the merits of the charges and as to the desirability of the punishment. The fairness of domestic enquiry was not called into question. The plea that the Workmen were not permitted to cross-examine the witness was never raised. Thus, the Labour Court is right in taking up the proof of charge and the justifiability of the punishment straightaway.

8. He would further submit that it can be seen that an 8-day wage

¹(AIR 1980 SC 1896)



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cut was not imposed as a punishment. The wage cut is independent of the disciplinary proceedings. When the Workmen resort to illegal strikes, wage cuts can be resorted to without prejudice to the departmental action. In any event, the said wages were also redeposited with the appropriate Authority. Therefore, the management's right to impose punishment is not taken away by the initial wage cut and subsequent redeposit.

9. The Domestic Enquiry Authority has considered the evidence on record and has come to the conclusion that the strike is illegal. When the Workmen resorted to illegal strikes, considering the nature of the industry and the kind of prejudice caused to the production, it cannot be said that the punishment is excessive. He would submit that even the issue regarding the transfer of the Trade Union office bearers ultimately went in favour of the management. The transfer was held to be within the powers of the management. So, the Workmen are not justified in contending that the punishment is disproportionate.

10. During the course of the arguments, both sides learned



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counsel would submit that on the previous occasions by referring to

Lok-Adalat and also by holding talks pending the Writ Petition, the matter

could not be settled, as what was offered by the management and what was

prayed for by the Workmen could not be bridged, as the gap was higher and

therefore, the matter is not settled. Before proceeding to decide the issue on

merits, it can be seen that, in this case, it is not in dispute that considering the

nature of the industry i.e., quarrying of granites that is governed by Rules and

the judgements relating to obtaining prior environmental clearance etc., the

activity of the management was drastically reduced, which fact is also taken

into account by both the Workmen as well as the management. From the

beginning, some of the workmen and the management have taken a

conciliatory approach and many of them have since been settled pending the

industrial dispute. Only with reference to those of them who have not settled,

a legalistic approach is adopted by both sides and the matter is pending in

Courts for such a long period. It is brought to the notice of this Court that

without prejudice to their rights, in the year 2023, a sum of Rs.1,50,000/- was

offered as compensation, which was a little lesser for the workmen to accept.



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11. In this background, this Court proceeds to consider the case of the parties. The finding of the Labour Court that it can take up the issue of fairness of the domestic enquiry along with the other issues is incorrect. Though the said finding is wrong, on a complete reading of the claim statement it cannot be said that the workmen questioned the fairness of the domestic enquiry. The plea was on the merits of the charges and the evidence in the Domestic Enquiry.

12. The only questions that remain to be seen are (i) whether there is evidence for the charges; (ii) whether the imposition of the punishment of dismissal from service is proper; and (iii) what relief can be granted to the Workmen. Even though arguments were made in length by both the learned counsel in detail concerning the exhibits, I am of the view that, without going into detail regarding whether the 8-day wage cut is a punishment or not, even assuming for a moment that the management is entitled to take disciplinary proceedings, it can be seen in the backdrop that,



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out of 12 office bearers, 4 went and joined the transfer place. The balance 8 office bearers also got the relief of reinstatement. It is also to be noted that the power of the management to transfer them had also been recognised and approved by the Labour Court and Tribunal. Against that backdrop, when the management earlier thought fit to deduct 8 days' wages and thereafter redeposit, the question of the justifiability of the punishment should be considered.

13. It is in this context that, even assuming that the domestic enquiry was fair and proper and there is evidence regarding the charge, the Labour Court has still powers under Section 11-A to come to the aid of the Workmen if the punishment is unduly harsh on the Workmen. Given the background of the flash strike and overall facts and circumstances, the imposition of the punishment is unduly harsh. Even concerning the probationers, it can be seen that the Workmen have been employed for a long time, and therefore, I am not in a position to accept that they were simply probationers when they have mustered all the evidence and marked the relevant documents to show that they were in service for about five years and



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they cannot be simply discharged.

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14. At the same time, in respect of the relief that can be granted to the Workmen, firstly, 26 years have now gone by. The quarrying activities are also not there and the fact remains that the management has also since retrenched or settled most of its employees except for two employees who are said to be now working. There is a prohibition of quarrying minerals, such as granites, without prior environmental clearance. Therefore, instead of reinstatement with back wages, this is a fit case where compensation can be awarded in lieu of reinstatement with back wages. Normally, the Court has to calculate the damages by taking into account 3.3 years of wages and addition for loss of future employment. Therefore, I am of the view that directing the management to pay a compensation of Rs.2,00,000/- to each of the workmen would be just and proper considering the overall facts and circumstances of the case.

15. In view thereof, this Writ Petitions are partly allowed on the following terms:

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1) The domestic enquiry held by the management is not specifically questioned by the Workmen and therefore, there is no question of passing any preliminary award with reference to the domestic enquiry;

2) The termination of service of the probationers is incorrect as they were continued for a longer period and they can no longer be termed as probationers therefore, in the absence of a domestic enquiry against them, the non-employment is illegal;

3) In respect of the regular workmen, the punishment of dismissal from service is unduly harsh and hence not justified;

4) The Workmen will not be entitled to reinstatement, and are awarded compensation in lieu of reinstatement and back wages;

5) The management is directed to pay a sum of Rs.2,00,000/- each in respect of 5 probationers and 21 regular Workmen within a period of four weeks from the date



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of receipt of the website-uploaded copy of this order without waiting for the certified copy of the order;

6) If the said compensation is not paid within the said time thereafter, it will carry interest at the rate of 9% per annum from today.

No costs.

09.12.2024

Neutral Citation : Yes
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To

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I Addl. Labour Court
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2.The Presiding Officer
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D.BHARATHA CHAKRAVARTHY, J.

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