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W.P.No.39924 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.39924 of 2005

G.C.Palanisamy (deceased)

2.P.Unnathal

3.P.Vijayalakshmi

4.P.Thangamani

5.P.Sivasubramanian

... Petitioners

**(P2 to P5 are substituted as LR's of
deceased P1, as per order dated
03.12.2024 in W.P.No.39924/2005)**

Vs.

1.The Labour Court, Coimbatore
rep.by its Presiding Officer
Coimbatore.

2.G.E.M. Manufacturers Limited
Post Box No.2006, Ganapathy
Coimbatore 641 006.

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, after calling for the records relating to the award dated 20.04.2005 passed by the first respondent Labour Court, Coimbatore, in I.D.No.246 of 1998 and quash the same as being illegal and unjust and direct the second respondent to grant all the benefits due to the petitioner arising out of reinstatement with continuity of service, back wages and all other attendant benefits until he reached the age of superannuation.

For Petitioners : Mr.Govarthan
for M/s.Row & Reddy

For Respondents : Mr. P.Raghunathan for R2
Labour Court - R1

ORDER

This Writ Petition is filed challenging the award of the Labour Court, Coimbatore, made in I.D.No.246 of 1998, dated 20.04.2005. By the said award while upholding the dismissal of the Workman from service, considering the overall facts and circumstances of the case the Labour Court



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directed payment of gratuity alone for the services of the Workman till the date of his non employment i.e., gratuity and terminal benefits by holding that he should be deemed to have been retired on the date of his dismissal from service i.e., from 01.01.1998 and held that he will not be entitled for any other back wages. Aggrieved by the same, the Workman is before this Court.

2. Heard Mr.Govarthan, the learned counsel appearing on behalf of the petitioner Workman and Mr.P.Raghunathan, learned counsel appearing on behalf of the second respondent Management.

3. Mr.Govarthan, the learned counsel appearing on behalf of the Workman would submit that this is a case in which the charge is made out of a single isolated incident. Inside the cabin of the management, it is alleged by the management that the petitioner had manhandled the manager and also abused him in harsh and filthy language. He would submit that the domestic enquiry was held to be not fair and proper. Both the parties let in evidence with reference to the charge. In this case, *W.W.2* who is a co-worker and who was not at all involved in the incident was having his seat near the cabin of the



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manager. The manager's cabin made of glass. *W.W.2* had witnessed the incident had spoken to in favour of the Workman. Therefore, that independent witnesses has to be given due credit of. Secondly, it can be seen that the petitioner did not have any bad antecedent whatsoever and had put in a long number of 34 years of service as on date of the incident. He was the leader of the trade union espousing the cause of the employees. The matter should be viewed from that context. If viewed from that context, it would be clear that it is only the manager who provoked the Workman and in spite of the same the Workman did not manhandle or do anything else except to retort to the manager. Therefore, merely to victimise the Workman, he has been framed with a false charge of manhandling. He would submit that the discrepancy in the evidence of the management witness as if the Workman attacked him in the cheek and on the shoulder etc., would disprove the very allegation. The Labour Court further ought to have considered that there is enough motivation for the management to frame and victimise the Workman. Under the circumstances, the Labour Court ought to have interfered with the punishment of dismissal and also ought to have held that even assuming that the incident had happened, the punishment of dismissal from service especially after long



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number of years of service, was unduly harsh and disproportionate to the incident complained of.

4. Per contra, Mr.P.Raghunathan, the learned counsel appearing on behalf of the second respondent Management would submit that this is a case involving a particular incident of abusing and manhandling. This has to be decided by appreciation of the evidence. The Labour Court after appreciation of the evidence held the charge as proved. It need not go by a detailed forensic analysis and if the behaviour of the Workman is proved to the extent of preponderance of probability that he behaved in an aggressive manner when the same is also partly witnessed by the other management witness and when the manager injured witness had spoken about the incident, the Labour Court was right in not granting the relief prayed for by the Workman. In any event, the Labour Court has also ordered payment of gratuity for the entire period of service.

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



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6. As rightly contended by the learned counsel for both the parties, this case relates about the particular incident. It is true that the Workman had put in long years of service and he has a blemishless service. On one particular day when he entered into the cabin of the manager, it is the case of the Workman that the manager indulged in mocking about a letter being given without even properly signed and not in the letterhead etc., and provoked the Workman. Even then the Workman behaved himself and only retorted to the manager and did not manhandle him, he did not also abuse him.

7. In respect of the same incident, it is the version of the management that after coming inside the cabin, the Workman got angry because the manager pointed out about the letter not being in a letter head or duly signed and abused him in filthy and disrespectful language and also manhandled him, by hitting him on his shoulders. According to the management, even when the heated exchange was taking place, he had



pressed the buzzer and the other witness entered who also partly witnessed the incident. Immediately, the complaint was made in writing by the person who witnessed the incident and the Workman was placed under suspension. When these are the two versions, in support thereof, there can be no documentary evidence but only the oral evidence. The Workman examined himself as *W.W.1* and the co-employee who had a seat near the cabin of the manager was examined as *W.W.2*. Similarly, the manager, the injured witness was examined as *M.W.1* and the other person who entered his chamber was examined as *M.W.2*. Therefore, this case rests upon the appreciation of the oral evidence. I have also gone through the entire chief examination and cross examination of both sides witnesses. Both sides witnesses have stood their ground and neither side was able to make any inroad by way of cross examination. The only thing this Court finds in the evidence of the independent employee *W.W.2* is that he has stated that after coming out of the cabin, the Workman came to his seat and told him that the manager was telling him about the letter not being signed and being in the letterhead. However, the Workman did not tell him about the attempt of the manager and the other witness to frame him.



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8. Secondly, the Labour Court has also taken into consideration that if the manager and the other witness were trying to frame him, there was no immediate complaint from the Workman to the higher management in that regard. Therefore, on an appreciation of the evidence, the Labour Court in exercise of its power under Section 11-A of the Industrial Disputes Act, taken a view. Further the Labour Court proceeded to consider the nature of the misconduct alleged and the long years of service and has held that instead of holding the petitioner as dismissed from service as of 01.01.1998, it held that the petitioner shall be deemed to have been retired from service and without granting backwages, the benefit of gratuity can be granted to him. I am of the view that no exception can be taken in respect of the same. However, when the Labour Court has proceeded to grant the benefit of gratuity by taking the date of retirement is concerned, in this case, it ought to have further seen from the cross examination of the Workman that his date of birth is 03.08.1944. Therefore, he completes 58 years by August 2002.



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9. Therefore, I am of the view that the interest of justice should be served if the said date, namely 30.08.2002 is substituted instead of on 01.01.1998 for the relief of gratuity that is granted by the Labour Court.

10. Accordingly, this Writ Petition is disposed of on the following terms;

(i) *the findings and the conclusion reached by the Labour Court are confirmed, except for the direction to the management to treat the workman as being retired from service with effect from 01.01.1998 and instead the management shall treat the workman as having been retired from service with effect from 30.08.2002 and pay the gratuity for the service up to 30.08.2002;*

(ii) *However, the Workman will not be entitled to any other backwages or other benefits*



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except the gratuity;

(iii) The balance of gratuity payable shall be calculated and paid to the legal heirs of the workman, in accordance with law, within a period of four weeks from the date of receipt of copy of this order.

No costs.

05.12.2024

Neutral Citation : No
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To

The Labour Court, Coimbatore
the Presiding Officer
Coimbatore.



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D.BHARATHA CHAKRAVARTHY, J.

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