



W.P.No. 23337 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

W.P.No. 23337 of 2012

and

M.P.No.1 of 2012

The Management of
M/s. Thirumagal Mills Ltd.,
Katpadi Road, Gudiyatham – 632 602.
Vellore District, rep. by its
Assistant General Manager - Commercial

... Petitioner

vs.

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

2. A.B.Babu

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in ID No. 153 of 2008 and quash its award dated 07.04.2012 in so far as it grants relief of reinstatement, 50% back wages and other attendant benefits to the second respondent.

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

For R1 : Labour Court



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For R2 : Mr. S.T.Varadarajulu

ORDER

The instant writ petition has been filed assailing the order of the Principal Labour Court, Vellore passed in I.D.No.153 of 2008 dated 07.04.2012.

2. The brief facts which gives rise to the instant writ petition is that, the second respondent joined the petitioner's Management on 24.02.1995. While so, according to the petitioner herein, the employee abandoned his work since 24.02.2005. Hence, domestic enquiry was conducted and ultimately on proving of charge, he was terminated from service on 19.01.2006. It appears that the employee raised an Industrial Dispute, wherein the Labour Court has found that there was no fairness in the domestic enquiry and the Management was directed to prove the charges before the Labour Court. However, the Labour Court found that the unauthorized absence of the petitioner since 24.02.2005 though proved, the punishment of termination is too harsh. Hence, ordered to set aside the order of termination and directed to reinstate the petitioner with continuity of service along with 50% of the back wages.



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3. The learned counsel for the petitioner would vehemently contend that the respondent has abandoned his job and that though the mill was not functioning, it does not mean that the petitioner was not allotted any work. On the other hand, it was the respondent employee who abandoned the service. Therefore contended that the findings recorded by the Labour Court that there was an absent by the respondent, is sufficient to hold that the punishment imposed by the Management is fair and proper which does not require any interference. In this regard, the learned counsel for the petitioner has relied upon the judgment of this Court in *Peer Mohamed & Co., Madras vs. Mohamed Hussain and another* reported in (1968) 2 LLJ 98), and also the judgment of the Hon'ble Supreme Court in *LIC of India vs R.Dhandapani* reported in (2006) 13 SCC 613.

4. Per contra, the learned counsel appearing for the respondent employee would contend that, though it is the contention of the petitioner that the employee was unauthorizedly absent since 24.02.2005, it is an admitted case of the Management that, since February 2005, the Mill was not functioning. Therefore, the absence of the petitioner cannot be termed as unauthorized absence, as the mill is under closure. It was also



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the contention of the respondent that, only because of the pendency of the application before the authority concerned for the Permanancy of the employment, the petitioner Management has initiated the disciplinary proceedings to victimise the employee. It is also the specific contention of the respondent that while exercising the power of judicial review unless the order of the Labour Court is perverse, this Court cannot go into the merits of the matter to re-appreciate the evidence as an Appellate Court.

5. Heard both sides and perused the materials available on record.

6. The sum and substance of the learned counsel for the petitioner is that, the employee was unauthorizedly absent since 24.02.2005. It is also pertinent to mention here that the Labour Court has also come to a conclusion that the employee was absent since 24.02.2005. Now the issue is, whether the same is unauthorized absence and whether the order of termination is an appropriate punishment.

7. In this regard, the learned counsel for the respondent would invite the attention of this Court that though it is the case of the Management that the respondent employee was absent since 24.02.2005, according to the evidence of the Management witness, the mill was not



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functioning from February 2005, and that the Mill was reopened only in the month of June 2005. However, while perusing the enquiry proceedings initiated by the Management, an enquiry was commenced and findings was given against the employee before the mill was reopened. Therefore, the defense put forth by the respondent employee that there is a victimisation by the Management cannot be ruled out.

8. As already discussed, whether the punishment of termination is proportionate to the gravity of charges is to be seen. In this case, the only charge is that the unauthorized absence of the petitioner. Whereas as rightly observed by the Labour Court, the mill was under closure at the relevant point of time where the petitioner was absent. Only in that context, the labour Court has found that the punishment of termination is too harsh.

9. At this juncture, this Court would like to refer the judgement relied by the learned counsel for the petitioner in ***Peer Mohamed & Co., Madras vs. Mohamed Hussain and another*** reported in ***(1968) 2 LLJ 98***). In the above judgment, the single judge of this Court has held that the person who is having the don't care attitude cannot be rewarded with an order of reinstatement.



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10. The learned counsel for the petitioner has also relied upon the yet another judgment of the Hon'ble Supreme Court in **LIC of India vs R.Dhandapani** reported in (2006) 13 SCC 613 which is held as follows:-

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

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those



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findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”

11. According to the above ratio, the Labour Court while exercising the power under Section 11A of the Industrial Dispute Act has to exercise the said power judiciously, and it is the duty of the Labour Court to record reason as to how the punishment is grossly disproportionate. It was also held by the hon'ble Supreme Court that there should not be any misplaced compassion at the expense of the legitimacy of the process. If that being the case, the same will lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

12. Therefore, the sum and substance of the above ratio is that whether the Labour Court has given a sufficient reason as to the disproportionality of the punishment. In this regard, it is appropriate to extract para 16 of the order of the Labour Court:-

“16. As I already said the respondent office was not running in a regular manner since all the workmen went on voluntarily retirement and the mill was not functioning.



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Further more the petitioner also filed a petition before the Competent officer for his permanency in job. Admittedly he was working from 1995 to till the date of termination. So even if the Court comes to the conclusion that the petitioner was absented from duty from 24.02.2005 and not a case of habitual absenteeism the punishment is too harsh. Further more the petitioner had worked for more than 240 days and also he is a permanent employee of the respondent establishment and considering the judgment of the High Court of Madras reported in 2011 (I) LLJ P 646 in TNTSC Villupuram Vs Joint Commissioner of Labour (Conculation) Chennai and another he is entitled to get reinstate in service with continuity of service, and all other attendant benefits. But he is entitled to get back wages 50% only.”

13. The Labour Court though found that the petitioner was absent since 24.02.2005 has recorded its reason as to why the reinstatement is to be awarded. According to the Labour Court, though the petitioner was absent at the relevant point of time, the Mill was under closure. Only in that context, the Labour Court has come to the conclusion that the punishment is disproportionate to the gravity of the charges. At this juncture it is pertinent to mention here that, the Writ Court while exercising the power of Judicial review cannot sit over the judgment of the Labour Court as an appellate Court. It is pertinent to mention here that since because there is a possibility of yet another possible view, cannot be a reason to interfere with the order of the Labour Court unless



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such finding is perverse. According to this Court, the reason assigned in Para 16 of the Labour Court award is well reasoned and this Court could not find any perversity over the same. Therefore, this Court is of the indubitable view that the petitioner has not made out any ground to interfere with the order of the Labour Court.

14. In the result, the writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
nsl

To

The Presiding Officer,
The Principal Labour Court,
Vellore.

C.KUMARAPPAN,J.

nsl



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