



WP.Nos.27391 of 2012 & 9533 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2024

PRONOUNCED ON : 30.07.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

WP.Nos.27391 of 2012 & 9533 of 2013

WP.No.27391 of 2012

S.C.Srinivasan

... Petitioner

- Vs -

1. The Presiding Officer,
II Addl.Labour Court,
Chennai.
2. The Management of
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai-600 002.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the Award dated 27.6.2012 in I.D.No.5/2001, quash the same in so far as dismissing the petitioner claim for reinstatement with continuity of service, back wages and other attendant benefits and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits, award costs.



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For petitioner : Ms.Porkodi
for Mr.V.Ajoy Khose

For Respondents : R1-Court
Mr.P.Kannankumar for R2

WP.No.9533 of 2013

The Management of
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai-600 002.

... Petitioner

- Vs -

1. S.C.Srinivasan
2. The Presiding Officer,
II Addl.Labour Court,
Chennai.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records pertaining to the Award dated 27.6.2012 made in I.D.NO.5 of 2001 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.Vinothraj
For Respondents : Ms.Porkodi
for Mr.V.Ajoy Khose for R1
R2-Court

COMMON ORDER

Both the writ petitions have been filed assailing the order of II Additional Labour Court, Chennai passed in I.D.No.5 of 2001 dated 27.06.2012.



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2. The workman challenged the above order by filing a writ petition in WP.No.27391 of 2012 seeking an order of reinstatement instead of compensation. However, the Management challenged the above order by filing a writ petition in WP.No.9533 of 2013 assailing the order to set aside the compensation awarded by the Labour Court and prayed to dismiss the Industrial Dispute.

3. The facts which are necessary for the disposal of the instant writ petitions are that, the workman joined the respondent-Management as a driver on 07.07.1995. It is the submission of the workman that he had undergone training from 12.06.1995 to 06.07.1995, and thereafter, deputed to Adyar Bus Depot and worked as a driver since 07.07.1995. It is his specific contention that he worked for more than 240 days continuously in a year. While so, the vehicle driven by him met with an accident on 27.09.1998 and that there was no rash and negligent on his part. In pursuance thereof, the Management denied the employment since 25.10.1999 and terminated him from service orally. It is the submission of the petitioner that he was not issued any charge memo and that no domestic enquiry was conducted. It was also the contention of the petitioner that without following the procedures laid down under Section 25F of “The Industrial Disputes Act”



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[hereinafter shall be referred to as “ID Act” for the sake of convenience], he was illegally terminated from service. Hence, he prayed before the Labour Court for reinstatement of service with continuity of service and back wages.

4. The said application was resisted by the Management by contending that the workman was appointed as a driver on a casual basis. While so, on 27.09.1998, he drove the vehicle with rash and negligent and caused a fatal accident. After the said accident, the workman stopped coming duty since 29.10.1998. It is the further submission of the Management that, the petitioner is a temporary employee and that there is no necessity to conduct enquiry and he was not removed or dismissed from Corporation and his name is still in roll. Therefore, the Management prayed to dismiss the Industrial Dispute.

5. The Labour Court, after having considered the oral and documentary evidence has arrived at a conclusion that, the Management did not follow the procedures as mandated under Section 25F of the ID Act, and ultimately found that the oral termination is illegal. However, considering the antecedent of the workman, being the person causing fatal accident, directed the Management to pay a sum of Rs.1,00,000/- as compensation in



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lieu of reinstatement.

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6. The above order was assailed by the workman seeking reinstatement. However, the Management assailed the same order praying for dismissal of the Industrial Dispute.

7. The learned counsel for the Management would vehemently contend that since the workman being the casual Labour, there is no necessity to conduct any enquiry and that no order of termination was passed by the Management, and it was the workman, who abandoned his service. Therefore, contended that the order passed by the Labour Court is liable to be interfered with.

8. Per contra, the learned counsel for the workman would vehemently contend that, the petitioner has continuously worked for more than 240 days, and that there was no negligence on his part in the alleged accident. It is the further contention of the petitioner that, all of a sudden the Management has orally terminated his service without following the procedures mandated under Section 25F of the ID Act and also not followed the principles of natural justice. Therefore, the learned counsel for the workman would contend that the awarding of compensation at Rs.1,00,000/- in lieu of reinstatement is incongruous. Hence, prayed to modify the order of the



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Labour Court and prayed to direct the Management to reinstate the workman.

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9. I have given my anxious consideration to either side submissions.

10. It is pertinent to mention here that whenever a writ petition is filed against the order of the Authority, the Writ Court while exercising the power of judicial review may interfere with the said order, if such order has been passed by an incompetent Authority or if such order has been passed without following the principles of natural justice, besides when the order of the Authority is unreasonable, arbitrary and perverse. Except the circumstances enumerated hereinabove, the Writ Court cannot re-appreciate the evidence as an Appellate Authority and give a different finding.

11. In order to delineate the power of judicial review, this Court would like to refer the few precedents so as to understand the concept of the judicial review, with lucidity.

12. In *B.C.Chaturvedi Vs. Union of India* reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment



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and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

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18. *A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.***

(Emphasis supplied by this Court)

13. In *Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava* reported in (2021) 2 SCC 612, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-



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“25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

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29. The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

Through the above judgments, the following principles are emerging:-

- (i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.



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(ii) The power of judicial review is not like an appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority are perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

14. If we proceed with the instant case with the touchstone of the above principles, it becomes necessary for this Court to arrive at a conclusion that whether the finding of the Labour Court in respect of a non-compliance of Section 25F of the ID Act, and awarding of compensation, is in accordance with law. The Labour Court has recorded a finding that the workman had worked for more than 240 days in a year. This finding was based on the assertion made by the workman in his claim petition, and that such assertion has not been disputed by the Management. The Labour Court



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has also recorded that, in spite of the workman entered into the witness box and deposed that he has worked for more than 240 days continuously in a year, the Management did not attempt to discharge their onus of proof so as to dispute the assertion of the workman. Only on the above premise, the Labour Court arrived at a conclusion that the workman has continuously worked for more than 240 days in a year. Such finding according to this Court is well merited, and deserved to be approved. Thus, while exercising the power of judicial review, since because there is a possibility of a different conclusion, cannot be a reason to interfere with the order of the Labour Court, when the Labour Court has assigned a cogent reason to reach such conclusion. Therefore, this Court is also in full agreement with a view expressed by the Labour Court that the workman had worked 240 days continuously.

15. However, it was contended by the Management that the workman has abandoned his service. But, through the narrations made hereinabove, it would amply clear that on account of fatal accident committed by the workman, he was not provided with the work. Therefore, the contention put forth by the Management that he has abandoned the service cannot be accepted at all. It was also contended by the Management that the workman



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being the casual worker, there is no necessity to conduct enquiry was rightly rejected by the Labour Court by following the judgment of this Court in ***The Management, State Express Transport Corporation (Tamil Nadu) Limited Vs. The Presiding Officer and another*** reported in **2010 SCC OnLine Mad 3596**. The relevant paragraph in the above judgment is paragraph 7 and the same reads as follows:-

“7.The Supreme Court in Firestone tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management reported in 1973 (1) SCC 813 has held that the case of no enquiry and a vitiated enquiry stand on the same footing and the employer is entitled to lead evidence to substantiate the charge for the first time before the Court. The contention of the petitioner was that he was only engaged on daily wages cannot be accepted since the certified standing orders of the corporation do not make any distinction between casual and permanent workman in case of dismissal. In all such cases, if the termination arose out of a misconduct, then it requires an enquiry should be conducted. Since no enquiry was conducted and no legal evidence was let in, the labour court was right in holding that it was a case of termination simpliciter attracting the provisions of Section 25F of the ID Act.”

16. Therefore, from the above narration, it is amply clear that the finding recorded by the Labour Court that the petitioner was working



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continuously for more than 240 days in a year, and that he was retrenched without following the procedure contemplated under Section 25F of the ID Act is perfectly in order. Once the retrenchment is not in accordance with the provisions of the ID Act, then the termination became illegal and as a sequel, this workman is entitled for a reinstatement. However, the Labour Court on some justifiable reason, in lieu of reinstatement, awarded compensation. As rightly observed by the Labour Court, the decision of the Management not to provide work that too in a public transport as a driver, where he has caused a fatal accident, is perfectly justifiable and only in that background, the Labour Court has also not ordered for reinstatement.

17. Therefore, the contention raised by the workman that he must be reinstated in the respondent-Management cannot be countenanced as his past conduct goes counter to his request. Therefore, now the point remains to be considered is, whether the awarding of compensation of Rs.1,00,000/- in lieu of reinstatement is justifiable or not is to be seen.

18. Admittedly, the petitioner was a casual labour. Immediately after the termination, he raised an industrial dispute and the industrial dispute was pending till June 2012 almost for 11 years. It is the finding of the Labour Court that the workman has not been gainfully employed in the interregnum.



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The Management could not put forth any valid ground to dispute such finding. Therefore, in this given circumstances, when the retrenchment was illegal and for having contested the case for a period of 11 years, that too without having any gainful employment, the attempt made by the Labour Court to balance the above situation by awarding compensation is justifiable. Coming to the quantum, considering the above peculiar nature of this case, award of Rs.1,00,000/- is just compensation and does not require any interference. Further, even if this Court has reason to believe that the compensation awarded is on the little higher side, the same could not be stretched as perverse to substitute another finding. Besides, the Management also has not put forth any ground as to how the compensation awarded is irrational or arbitrary.

19. Therefore, this Court does not find any ground to interfere with the well considered order of the Labour Court.

20. In the result, both the writ petitions are dismissed. No costs.

30.07.2024

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Index : Yes/No

Speaking Order : Yes/No



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NCC : Yes/No
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To

1. The Presiding Officer,
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Chennai.



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C.KUMARAPPAN, J

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