



W.A.No.1497 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.06.2024

Delivered on: 22.10.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.1497 of 2021

R.Krishnan

...Appellant/Petitioner

Vs

1.The Management of Graigmore Estate
Kullakumby Post -643 218
The Nilgiris.

2.The Presiding Officer
The Labour Court, Coimbatore-18

...Respondents/respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against
the order dated 08.02.2021 in W.P.No.741 of 2006.

For Appellant : Mr.V.Ajoy Khose

For Respondents : Mr.Anand Gopalan for T.S.Gopalan&Co.
For R1
R2- Court.



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JUDGMENT

Per J.NISHA BANU, J.

This Writ Appeal is preferred as against the order dated 08.02.2021 passed in W.P.No.741 of 2006, whereby the learned Single Judge confirmed the award passed by the Labour Court and thereby, held that the dismissal of the appellant/writ petitioner was perfectly justified.

2. The facts of the case has been elaborately dealt with by the learned Single Judge in the Writ Petition. The contentions raised by the appellant before the Single Judge that the appellant/employee was not afforded any assistance in the enquiry was highly unfair and unjust and principles of natural justice not followed by the enquiry officer was rejected by the learned Single Judge. The learned Single Judge held that on proper appreciation of evidence, the Labour court confirmed the order of dismissal passed by the Management. Thereby, the learned Single Judge dismissed the writ petition.

3. Challenging the said dismissal order and findings, this writ appeal is filed by the employee. The learned Senior counsel appearing for the appellant-employee would submit that in respect of all the three watchmen in respect of



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same charge, the union sought for relief; in respect of all the three, the management has reinstated the other two workmen, but refused to reinstate the appellant alone.

4. According to the learned counsel for the appellant, the family of the appellant is suffering without employment and his entire family has got ruined and made to struggle and suffer for their livelihood. Therefore, the learned Senior counsel would submit that the appellant has approached the management and pleaded apology as in the case of other two employees, but the action of the Management in not considering the apology of the appellant would amount to victimisation and discriminatory. The learned senior counsel would also contend that enquiry proceedings was not conducted in a fair manner and without giving opportunity to the appellant, in a hasty manner, the petitioner was dismissed from service. The non observance of principles of natural justice is prejudice to the appellant. The Labour court failed to consider that the enquiry was conducted in unfair and illegal manner; the learned Single Judge also failed to appreciate the same and confirmed the findings of the Labour court.



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5. The learned senior counsel as a residual argument would submit that as per calculation of the employee, the total amount would come more than Rs.18 lakhs. However, the appellant/employee was ready to accept a sum of Rs.5 lakhs apart from gratuity and PF amounts.

6. The learned counsel for the appellant, in support of his contentions, cited the following judgments: -

- (i) Deli Cloth and General Mills Vs Ludh Budh Singh [(1972) 1 SCC 595]
- (ii) C.Kumaraswami v. Third Additional Labour Court [1993-I LLN 785]
- (iii) Colour-Chem. Ltd., V. Alaspurkar A.L.& Ors [C.A.No.510 of 1992]
- (iv) Mgmt. Cheran Trs. Corpn. V. G.Balasubramaniam [2003 (3) LLN 301]
- (v) Tata Engineering & Locomotive Co. Ltd., Vs. Jitendra PD Singh and another [(2001) 10 SCC 530]
- (vi) State of Uttar Pradesh and others Vs. Rajpal Singh [(2010) 5 SCC 783]
- (vii) Madura Coats. Ltd., V. P.O., Labour Court [2004 (1) LLN 767]
- (viii) M.V.Bijlani V. Union of India and others [(2006) 5 SCC 88]
- (ix) Collector Singh Vs. L.M.L. Limited, [(2015) 2 SCC 410]

7. Mr.Anand Gopalan, learned counsel for the 1st respondent/Management would submit that the appellant was the watchman who was to oversee whether the assigned workmen were regularly attending to the work. The concerned two workmen who failed in their work and the



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petitioner/appellant were proceeded with by way of disciplinary action for the aforesaid misconduct and they were all dismissed. Those two employees expressed apology and let off with a minor punishment and they resumed to work.

8. The learned counsel for the 1st respondent would submit that the incident happened on 01.05.1999 and the petitioner refused the allegation of his failure to oversee the work. On 26.05.1999, termination order has been passed. The appellant-employee raised Industrial Dispute in I.D.No.204 of 2000. The Labour court declined to grant any relief in the ID. The appellant-employee did not examine himself and did not examine any witness before the Labour court. The management does not admit the plea of the petitioner that at some point of time, he expressed apology.

9. According to the learned counsel for the 1st respondent-Management, the appellant's last drawn wages is $63.88 \times 26 = \text{Rs.}1,660.88$ including DA; he was in service from 01.07.1985 to 16.05.1999 and that the appellant already reached the age of superannuation.



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10. Upon hearing the submission made by the learned counsel for the appellant/employee and the 1st respondent and on perusing the materials available on record, the point for determination in this appeal is as under:

- i) Whether the appellant has been provided fair and reasonable opportunities in the Domestic Enquiry or not?
- ii) Whether the Appellant is entitled for reasonable compensation or not?

11. The appellant stated that he was not provided with enough time to prepare for cross examination of witnesses of management and added that the enquiry was conducted in a hasty manner. The respondent asserted that the enquiry adhered to principles of natural justice, as the appellant was informed of the accusations against him, he was given sufficient opportunity to respond and thereby, a fair procedure was followed by the enquiry officer.

12. It is seen from the records that in pursuance of the charges, enquiry was fixed and according to the appellant-workman, within 10 days of the commencement of the enquiry, enquiry officer submitted his final report.



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Thereafter, on 18.05.1999, the 1st respondent-Management issued a show cause notice and sought reply from the workman within 72 hours. On 24.05.1999, since the enquiry officer's report was in English., the appellant-workman sought for Tamil translation and the workman also submitted that enquiry was not conducted in a fair and proper manner and also pointed out defects in the report. However, on 26.05.1999, the appellant-workman was dismissed from service.

13. Yet another argument advanced by the learned counsel for the appellant is that the appellant has specifically pleaded before both the Labour court and before the Single Judge that the appellant was not provided with enough time to prepare for cross examination of the management's witnesses, however, the same was not considered by the Labour court as well as the Writ Court. It is transpired that the appellant has not even provided with the list of witnesses before proceeding with the cross examination. Therefore, it is very clear that very hastily and in an undue and unwarranted hurry, without observing principles of natural justice, without even affording any opportunity to the appellant to prepare himself for cross examination of the management witnesses, in an unfair manner, the enquiry has been conducted. The denial of



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reasonable opportunity of defence is clear in this case. Therefore, in our view, the learned Single Judge has failed to consider the scope of the principles of natural justice. It is the right of the accused to give him reasonable opportunity for cross examining the witnesses. When the same was not provided, it is nothing but refusal and that was not recorded in the proceedings.

14. In so far as the argument of the learned counsel for the appellant that the 2nd witness in the enquiry was the one who issued the charge memo, he appointed the enquiry officer and he was the one appeared in the enquiry in support of the management and further he acted as a Disciplinary Authority and imposed punishment and such action of the management is contrary to the statutory principle. Therefore, the termination proceedings did not provide a fair and justifiable reason to place the appellant at the time of the incident and has not proved his guilt. Further the said termination/dismissal order passed by the Management have no justifiable reasons and further the requirements of an enquiry when not substantially fulfilled, the enquiry cannot be accepted. Therefore, in the present case, the enquiry proceedings were vitiated by violation of principles of natural justice, but the learned Single Judge failed to consider these principles and erroneously justified the action of the management.



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15. The discrimination by the management is blatant. When all the three persons were alleged that they were all jointly responsible for the alleged incident, when the charges are same and identical in relation to one and the same incident, it is not open for the disciplinary authority to give different treatment in respect of the appellant alone. When the act of the other two workmen were viewed liberally and they being reinstated because they admitted guilt and punishing the appellant alone because he refused to admit guilt is a discriminating treatment by the management and it is a clear case of discrimination and victimization.

16. Upon perusing the judgments relied upon by the learned counsel for the appellant particularly the decision reported in **(1998) 3 SCC 192 [Colour-Chem Ltd., Vs. A.L.Alaspurkar and others]** and the decision reported in **1990 2 LLN 831 [S.V.Angappan Vs. Tamil Nadu Electricity Board and another]**, we hold that the punishment of dismissal in a given set of case and enquiry proceedings, is grossly disproportionate in the light of the nature of the misconduct or the past record of the appellant-workman.



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17. The case laws relied on by the learned counsel for the 1st respondent-Management does not apply to the facts of this case. The decision reported in **(2005) 8 SCC 46** is the case where the persons who was alleged to have caused mischief was proved of his guilt. The said case law cannot be applied herein. The other decisions are also distinguishable in the facts of the case.

18. In the light of the foregoing discussions, the points are answered in favour of the appellant. We find that the appreciation of evidence by the Labour court and the Writ court, is found to be wholly unsatisfactory. Therefore, the conclusion arrived at by the Labour court as well as the learned Single Judge requires interference by us. We are of the view that there cannot be any order of reinstatement and hence in lieu of reinstatement and backwages, to meet the ends of justice, compensation of Rs.5,00,000/- and eligible PF and Gratuity amounts should be payable by the management to the appellant-workman.

19. In the result, the impugned order passed by the learned Single Judge in W.P.No.741 of 2006 dated 08.02.2021, confirming the award of the Labour Court is set aside. This Writ Appeal is allowed. The 1st respondent Management



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is directed to pay compensation of Rs.5,00,000/- [Rupees Five Lakhs only] and gratuity and PF payable to the appellant within a period of six weeks from the date of receipt of copy of this judgment, failing which, the said amount is payable with interest @ 9% per annum thereon. No costs.

Internet: Yes/No
nvsri

(J.N.B.J.) (P.D.B.J)
22.10.2024

To

The Presiding Officer
The Labour Court, Coimbatore-18



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**J.NISHA BANU ,J.
and
P.DHANABAL,J.**

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