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WP.Nos.11437 & 16586 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2024

PRONOUNCED ON : 31.07.2024

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THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

WP.Nos.11437 & 16586 of 2014

and

MP.No.1 of 2014

WP.No.11437 of 2014

K.Desingu

... Petitioner

- Vs -

1. The Presiding Officer,
Labour Court, Puducherry
Puducherry Union Territory of Puducherry.
2. The Managing Director,
M/s.Power Soap Ltd.,
R.S.No.94/1, Sembiapalayam,
Korkadu Post,
Pondicherry-10.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 1st respondent in relating to the impugned order passed in ID.No.17 of 2012 dated 23.07.2013 and set aside the same, consequently direct the 2nd respondent to reinstate the petitioner in his service with, full back wages, continuity of service and all other attendant benefits, award costs.



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For petitioner : No Appearance

For Respondents : R1-Court
Mr.John Zachariah for R2

WP.No.16586 of 2014

The Managing Director
Power Soaps Limited,
R.S.No.94/1, Sembiapalayam,
Korkadu Post,
Puducherry-605 110.

... Petitioner

- Vs -

1. The Presiding Officer,
Labour Court at Pondicherry
Pondicherry.

2. K.Desingu

... Respondents

Writ petition filed under Article 226 of the Constitution of India,
praying to issue a writ of Certiorari, to call for the records on the file of the
1st respondent connected with ID No.17 of 2012 and quash the award dated
23.07.2013.

For Petitioner : Mr.John Zachariah

For Respondents : R1-Court
R2-No Appearance



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COMMON ORDER

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Both the writ petitions have been filed assailing the order of the Labour Court at Puducherry in ID.No.17 of 2012. The writ petition in WP.No.11437 of 2014 was filed by the workman to set aside the order of the Labour Court and prayed for a reinstatement. Whereas, the Management also preferred the writ petition in WP.No.16586 of 2014 to set aside the order of awarding compensation of Rs.80,000/- and prayed for dismissal of the industrial dispute.

2. For the sake of convenience, the parties will be referred to according to their litigative status in WP.No.11437 of 2014 filed by the workman.

3. The brief facts which give rise to the instant writ petitions is that, the petitioner was working in the respondent-Industry. While he was in service, he raised a question in respect of unfair labour practice. Hence, to victimise the petitioner, the respondent-Management issued show cause notice on the imaginary misconduct and conducted domestic enquiry, and ultimately, terminated the service of the petitioner.



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4. The Labour Court, after hearing both the parties has found that the charges levelled against the petitioner was proved, and also found that the petitioner is not entitled for a reinstatement, however, awarded compensation of Rs.80,000/-. The said order is being challenged in the present writ petitions.

5. Despite the name is printed in the cause list, no one is appeared on behalf of the petitioner in WP.No.11437 of 2014.

6. The learned counsel for the respondent-Management in WP.No.11437 of 2014 and the petitioner in WP.No.16586 of 2014 would vehemently contend that the petitioner has attempted to cause the industrial disharmony, by instigating riotous conduct to support the workmen, who consumed liquor. He would further submit that the petitioner has berated the managerial staff and ultimately disrupted peaceful working atmosphere of the factory. Therefore, the learned counsel appearing for the Management would contend that they lost confidence with him and that his continuance in the factory would become unsafe. Hence, contended that having proved the charge against the petitioner, there is no necessity for them to pay a



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compensation. However, the learned counsel would also submit that without prejudice to their contentions, they have already deposited the compensation of Rs.80,000/-.

7. I have given my anxious consideration to the submissions made by the learned counsel appearing on behalf of the respondent-Management.

8. On perusal of records, the enquiry was not conducted in a proper manner, for the misconduct of instigating other workers to cause disharmony in the factory and for causing law and order problem, a charge memorandum was issued to the workman on 28.12.2009. After receiving the charge memorandum, workmen submitted explanation. On receiving explanation and having not satisfied with the same, the Management initiated a domestic enquiry. It appears that on 23.08.2010, the Enquiry Officer has submitted an enquiry report holding that the charges levelled against the petitioner has been proved. It is also the matter of record that the petitioner was issued with the second show cause notice dated 22.09.2010. To the second show cause notice, the petitioner has given a reply on 11.10.2010. Having not satisfied with the reply, the petitioner was imposed with the punishment of



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termination of service vide order dated 22.09.2010. But, the learned counsel for the petitioner contended that the domestic enquiry was not conducted in fair and proper manner. But while considering the above procedure followed by the Management, the ratiocination of the Labour Court that the Enquiry was conducted in a fair and proper manner is liable to be accepted.

9. It is also relevant to mention here that the petitioner instigated violence and also berated the Management officials to safeguard erring employees one Mr.Elumalai and Vijay, from the disciplinary proceedings for the misconduct of consuming liquor, while they were in service. It appears that both of them have admitted their guilt and have been relieved from service on receipt of their terminal benefits. Therefore, the conduct of the petitioner in instigating violence and interference in the harmony of the industry would definitely a serious misconduct. Naturally, the Management would definitely lose confidence against the workman, who caused such a grave misconduct. Therefore, the termination order issued against the workman cannot be held unreasonable and perverse.

10. It is pertinent to mention here that in order to delineate the power



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

11. 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 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



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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***



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exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(Emphasis supplied by this Court)

12. 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:-

“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 if 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.”

13. 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.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is 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.



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(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. In the present case, the Labour Court on arriving at a conclusion about the fairness of the enquiry and rational behind the enquiry report, did not find any reason to exercise the power under Section 11A of the Industrial Disputes Act so as to interfere with the punishment of termination. This Court is in full agreement with the findings rendered by the Labour Court.

15. It is the vehement argument of the Management that when the Labour Court arrived at a conclusion that there was a misconduct and that the petitioner workman is not entitled for a reinstatement, awarding of compensation is irrational, which according to them would amount to perverse. But, the Labour Court, considering the family circumstances of the workman, shown a sympathy upon the petitioner and taking into consideration of his long service, awarded a compensation of Rs.80,000/-. Therefore, even if this Court has got any different view cannot be a ground to interfere with the reasoned order, while exercising the power of judicial review unless it is perverse. It appears that the Management has also



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deposited such amount before the Court. Therefore, at this length of time, this Court does not want to interfere with the awarding of compensation as the Labour Court recorded reason for such awarding. Therefore, this Court does not find any ground to interfere with the order of the Labour Court and the same is liable to be confirmed.

16. Thus, both the writ petitions are dismissed. No costs.
Consequently, connected MP is also closed.

31.07.2024

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Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/No

To

The Presiding Officer,

Labour Court, Puducherry

Puducherry Union Territory of Puducherry.



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C.KUMARAPPAN, J

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