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WP.Nos.26781 & 27063 of 2014 and 13181 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.09.2024
Pronounced on	16.12.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

WP.Nos.26781 & 27063 of 2014 and 13181 of 2015
and
MP.Nos.2, 2 & 3 of 2014

WP.No.26781/2014

1.The Management of Sidhaarth Exports Pvt.Ltd.,
Rep. By its Director,
Ethirajulu Sathyanarayana.

2.Ethirajulu Sathyanarayana.

3.Rajeshwari

4.Sidhaarth Endapalli ... Petitioners

Vs.

1.The Principal Secretary to Government,
Labour and Employment (D1) Department,
Secretariat,
Chennai.

2.The Presiding Officer,
Labour Court, Coimbatore.



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3. The Inspector of Labour,
Coimbatore.

4. A. Kurunthasalam

...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a WRIT OF CERTIORARIFIED MANDAMUS praying to call for the records pertaining to G.O.Ms. No. 364 dated 13-08-2014 issued by the 1st Respondent ordering criminal prosecution against the Petitioners for non implementation of the award dated 12-11-2009 passed by the 2nd Respondent in ID No. 43 of 2000 and quash the same and consequently forbear the 3rd Respondent from filing a complaint before the Judicial Magistrate Court, Mettupalayam against the Petitioners under Section 29 of the Industrial Disputes Act, 1947 for non implementation of the award dated 12-11-2009 passed by the 2nd Respondent in ID No. 43 of 2000.

WP.No.27063/2014

1. The Management of Sidhaarth Exports Pvt.Ltd.,
Rep. By Executive Director,
Mr.Sidhaarth Endapalli.
Kembanaikenpalayam,
Karegoundenpalayam Post.,
Annur, Coimbatore District.

...

Petitioner

Vs.



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1. The Principal Secretary to Government,
Labour and Employment (D1) Department,
Secretariat,
Chennai.

2. The Presiding Officer,
Labour Court, Coimbatore.

3. A.Kurunthasalam
T.No.27c, C/o.Coimbatore District
Mill Thozhilalar Sangam,
Aituc, 99, Rangam street, Kottor,
Coimbatore-641 009. ...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a WRIT OF CERTIORARIFIED MANDAMUS praying to call for the records pertaining to the award dated 12-11-2009 passed by the 2nd Respondent in I.D.No.43/2000 in so far it directs reinstatement of the Petitioner with continuity in service without payment of backwages and other attendant benefits from 01-9-1999 till the date of reinstatement and quash the same and consequently uphold the order dated 01-09- 1999 issued by the Petitioner dismissing the 3rd Respondent from services of the Petitioner.

WP.No.27063/2014

A.Kurunthasalam
T.No.27c, C/o.Coimbatore District



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Mill Thozhilalar Sangam,
Aituc, 99, Rangam street, Kottor,
Coimbatore-641 009.

...

Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Coimbatore.

2.1.The Management of Sidhaarth Exports Pvt.Ltd.,
Rep. By Executive Director,
Mr.Sidhaarth Endapalli.

...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a WRIT OF CERTIORARIFIED MANDAMUS praying to call for the records pertaining to the award dated 12.11.2009 passed by the 1st respondent in I.D.No.43/2000, quash the same in so far as depriving the petitioner full backwages and other attendant benefits and consequently direct the 2nd respondent to pay the petitioner full backwages and other attendant benefits from the date of dismissal to the date of award in addition to the relief of reinstatement with continuity of service already granted, award costs.

In all WPs.

For Petitioner

: Mrs.Nalini Chidambaram, Senior counsel
for Mrs.C.Uma in
WPs.26781 & 27063 of 2014
: Mr.V.Ajaykhose in WP.No.13181/2015



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For Respondents : Mrs.M.Jayanthi, AGP for RR1 to 3
in WP.26781/2014
R1 in Wp.no.27063/2014

: R2- Court in WPs.26781 & 27063/14
: R1- Court in WP.No.13181/2015
: Mr.V.Ajaykhose for R4 in WP.No.26781/14
: Mrs.Nalini Chidambaram, Senior counsel
for Mrs.C.Uma for R2 in WP.No.13181/15

COMMON ORDER

For the sake of convenient discussion, the petitioner in W.P.No.13181 of 2015 is described as Workman and the 1st petitioner in the other two Writ Petitions in W.P.Nos. 26781 & 27063/2014 are described as Company/Management and the 1st respondent in WP.Nos. 26781 & 27063/2014 is referred to as the Government.

2. This Court heard the submissions made by either side learned counsels and perused the materials available on records.

3.The workman was employed in the Spinning department of the



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Company. He attempted to commit rape on a 40-year-old married woman staff on 03.10.1998 in a broad daylight at Achampalayam Village, which is located close to the factory premises. On 05.10.1998, a complaint was filed by the victim against the workman at Annur Police Station and an FIR also came to be registered in Crime No.439/1998 under Section 354 of IPC.

4. After investigation, a charge sheet has been filed before the Judicial Magistrate, Annur, in CC. No.87/99. Pending enquiry, the workman was suspended from service on 06.10.1998. Charges have been framed against him under Clause 15(b), 15(9) and 15(39) of the certified standing orders applicable to the 3rd respondent in W.P.Nos.26781 & 27063 of 2014. On 12.10.1998 the Inspector of Police, Annur Police Station, informed the management that the workman was arrested and sent to judicial custody in Sub Jail, Avinashi.

5. An enquiry officer was appointed for conducting a domestic enquiry against the workman. After the conclusion of the enquiry,



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charges against the workman were proved and he was served with a show cause notice before imposition of punishment. On 01.09.1999 he was issued with an order of dismissal. The workman raised an industrial dispute in I.D. No. 43/2000 before the 2nd respondent on the following two grounds:

- (i) the alleged offence was not committed within the premises of the 1st petitioner and
- (ii) the alleged offence is not a misconduct within the purview of the certified standing orders.

6. The award came to be passed by the Labour Court by holding that the management has the power to impose punishment of dismissal even if the misconduct is shown to have been committed outside the premises. However, by holding that the punishment of dismissal is disproportionate to the charge, the Labour Court directed the Management to reinstate the workman with continuity of service but without back wages with all other attendant benefits. Hence, the management has filed the Writ Petitions in W.P.Nos.26781 &



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7. The workman had filed W.P.No.13181/2015 challenging that portion of the award denying him the benefit of back wages and other attendant benefits. The petitioners 2 to 4 in W.P.No.26781 of 2014 have got a letter dated 11.10.2013 from the Assistant Commissioner of Labour (Conciliation), Coimbatore stating that the final award dated 12.11.2009 passed by the 2nd respondent in I.D.No.43/2000 has come into effect as on 09.04.2010. The non-compliance of the award is in violation of Sec. 29 of the ID Act. The Management and its Directors have informed through a letter dated 04.11.2013 that the writ petition has been filed challenging the award passed in I.D.No.43/2000.

8. In fact, in the execution proceedings filed by the workman in E.P.No.206/2013 in CP.No.234 of 2010, a full satisfaction was recorded on 18.02.2014 and thus, the matter has been settled with the workman. Despite the same being intimated by the management to the office of the Assistant Commissioner of Labour (Conciliation), Coimbatore, the



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Government Order came to be passed in G.O.(D)No.364 dated 13.08.2014 that the management had committed an offence under Section 29 of the I.D.Act for non implementation of the award dated 12.11.2000.

9. The learned counsel for management and the directors who have filed writ petition in W.P.No.26781 of 2014 and other writ petition in W.P.No.27063 of 2014, through which an award of the labour Court was challenged, have submitted that the management had engaged any advocate and instructed him to file the Writ Petition even in the year 2009; but the advocate did not take further steps.

10. Among other contentions raised by the management in WP.No.27063/2014, it is stated that the misconduct committed by the workman is serious in nature and it has been proved. Even the labour Court did not disagree with the fact that the charges against the workman is proved and his act can be construed as a misconduct. The act on the part of the workman has brought disrespect to the management and the other workers scared to come to work thereafter. So it is submitted that



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the labour Court ought to have taken a serious note in the matter of punishment also and should have confirmed the same.

11. The learned counsel for the workman submitted that the writ petitions filed by the management challenging the award have to be dismissed in view of the delay and laches. There is no apparent error in law and facts and there is no perversity in the award and it does not violate the principles of natural justice and hence, the award should be confirmed. It is further submitted that the offence of misconduct, attributed to the workman should establish a connection between the misconduct and the employment. As the alleged misconduct is in no way connected to the employment, it cannot be considered as a misconduct within the terms of the standing orders of the management. It is further submitted that the workman has not been punished by the criminal Court and hence he did not commit any offence that would amount to '*moral turpitude*'.



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12. The workman attempted to commit rape on a 40 year old married woman employee on 03.10.1998 at about 9 am at a Village located close to the employment premises. This raised an alarm in the village, as there were more woman employees employed. The above occurrence sent a shock wave and they scared to come to work. As the petitioner had violated Clause 15(6), 15(9) and 15(39) of the certified standing orders, domestic enquiry was initiated. The misconduct committed by the workman brought bad reputation to the management and affected the morale of the woman employees.

13. During the trial in CC.No.87/1999 the workman and the victim had compounded the offences by filing petition before the Judicial Magistrate, Annur. The workman was not given any honourable acquittal and he was acquitted only due to compounding of the offences. The labour Court after having found that the misconduct proved, ought to have upheld the order of dismissal. The person in charge of the management had even paid fees to his advocate through cheque on



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23.07.2010 and asked him to make the papers ready to challenge the award in I.D.No.43/2000 and they were also informed that he had engaged a counsel and he had filed the writ petition challenging the award dated 12.11.2009. Only on 10.05.2010, the management received a letter stating that the final award dated 12.11.2009 was published at the display board of the Coimabatore labour office on 09.03.2010 and it came into effect on 04.04.2010.

14. In fact, the workman has sent a letter stating that he should be reinstated without prejudice to his writ petition challenging the portion of the award denying back wages. The management had informed the workman stating that he cannot be reinstated into service as the award has been put under challenge. In fact the workman has filed a computation petition in CP.No.234/2010 to compute the wages payable to him from the date on which he has been ordered to be reinstated and the said computation petition was contested by the management. However, that has been allowed on 27.06.2012.



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15. The workman had filed an execution petition to execute the award passed in C.P.No.234/2010 and full satisfaction has been made in the same. In the computation proceedings itself the management counsel, after filing vakalat, had failed to appear. So far as the management is concerned, they have paid the fees to the counsel and thought that the writ petition has been filed and it is pending. In fact the counsel had handed over the copy of the draft writ petition affidavit to the management and hence they have genuinely believed that things have been done in accordance with law.

16. As the counsel failed to appear and list the matter before the Court, the management could not find it in a better position and had been given with a notice by the Assistant Commissioner of Labour (Conciliation), Coimabtoire, stating that the government order has been issued as per the award and the management and its directors are liable to be prosecuted for not implementing the award.

17. As per section 29 of the I.D. Act, if a person commits breach of



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any terms of settlement of the award, he will be punished with the imprisonment not exceeding six months or with fine or both. If the breach continues, a further fine of Rs.200/- per day will be imposed. The said violation ought to have been committed only with an intention to violate the orders. For the sake of convenience, the provision under Section 29 of the ID Act is extracted as below:

Section 29 in The Industrial Disputes Act, 1947

29. [Penalty for breach of settlement or award. *[Substituted by Act 36 of 1956, Section 20, for Section 29 (w.e.f. 17.9.1956).]*

- Any person who commits a breach of any terms of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both,][and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] *[Inserted by Act 35 of 1965, Section 6 (w.e.f. 1.12.1965).]* [and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.] *[Substituted by Act 36 of 1956, Section 20, for Section 29 (w.e.f. 17.9.1956).]*

18. From the correspondence between the management and their counsel, it appears that the management had instructed the counsel to file a writ petition. In fact the counsel had himself advised that the



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management has got good grounds and advised to go on appeal. As required by the learned counsel for the management had also paid the fees and obtained receipt from the counsel.

19. After having engaged a counsel and paid the fees, it is quite natural for anyone to believe that the matter would be taken forward. Only because the management believed that the writ petition has been filed, they have been sending reply to the workman that they cannot consider his reinstatement before the judgement is given in the writ petition.

20. So the continuous action on the part of the management does not reflect any intentional violation on the order but they genuinely believed that the writ petition has been filed as stated by its counsel challenging the award. Even in the computation petition filed by the workman, the management had engaged the very same counsel and after having appeared before there, the counsel did not follow the matter and that also ended into an exparte order.



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21. In fact the management had sincerely paid the amount as ordered in the award of the computation petition and in this regard full satisfaction has been recorded. Only after the management received notice from the office of the Assistant Commissioner of labour [conciliation] Coimbatore about the Government Order issued for imposing the award they could have known about the failure on the part of their counsel to file the writ petition. So only in this extraneous situation the management had been given with the notice for violating the order.

22. As stated already the violation of an order inviting prosecution should be an intentional one. In the instant case the violation was not intentional and things went beyond the control of the management and its directors. It was their counsel who did not take the matter forward to file the writ petition as advised. Even in the event of not filing the writ petition he should have informed the management that the writ petition has not been filed. But he did not do that also.



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23. Though there is a delay on the part of the management in filing the writ petition it has been proved before the Court that the delay was not wanton and it was due to the inaction on the part of the counsel engaged by the management in filing the writ petition in time. So the delay cannot be held against the management without looking into the merits of its contentions.

24. All the materials filed by the management would show that the government order came to be passed due to circumstances beyond the control of the management and in fact the workman himself has been challenging the award and the same is pending in WP.No.13181/2015, I feel the G.O is liable to be set aside.

25. On the complaint given by the victim woman, FIR has been registered and it has been culminated into a charge sheet and the case has also been taken on file in C.C.No.87/1999. As there was some understanding arrived between the *defacto* complainant and the



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workman, a petition was filed under Section 320 Cr.P.C to compound the offences and thereby the workman got acquitted.

26. On perusal of the order of the labour court, it is seen that the labour court has gone at length about the charges and how it would fit clauses 15[39] of the standing orders of the management. As per the clause 15[39] the action on the part of the workman ought to have brought disrepute or loss to its revenues etc., After the woman employees came to know about the occurrence they would have felt scared to come for work. The families would be anxious about their safety and they would also prevent them from coming to work. As the workman was the employee of the petitioner's management, his act would be viewed as unbecoming conduct which would bring disrepute to the management, irrespective of any settlement arrived between the workman and the victim. The act on the part of the workman at any stretch cannot be considered anything less than misconduct within the meaning of clause 15[39] of the standing orders applicable to the management.



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27. Though the labour Court was clear about the commission of the misconduct and that it has been proved, the labour Court appears to have influence due to the compounding of the offence before the trial court. The labour court also presumed consent on the part of the victim also without any basis.

28. The facts that the workman had been charge sheeted for the criminal offence for outraging the modesty of a woman which amounted to misconduct and that has been proved in the departmental enquiry are sufficient to terminate his service by imposing a punishment of dismissal. The labour Court, had gone beyond the scope and observed that the act of the workman deserved a punishment less than dismissal. A workman is expected to behave himself in a way that he does not bring any embarrassment or bad name to his company. Whether or not his act brought disrepute to the company ought to have been the focus to estimate the gravity of the charges. The labour Court has misguided itself and made a distinction by considering the place where the act was committed. The seriousness of the act ought to have weighed more than



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the place. As the findings of the labour Court to reduce the punishment appears to be perverse, it requires interference. As the award of the labour court is allowing the reinstatement is found fault, it is needless to state that the workman's claim for back wages would fail.

29. In the result,

(i) The Writ petition in **W.P.No.26781/2014 is allowed** and the G.O.Ms. No. 364 dated 13-08-2014 issued by the 1st Respondent ordering criminal prosecution against the Petitioners for non implementation of the award dated 12-11-2009 passed by the 2nd Respondent in ID No. 43 of 2000 is hereby quashed;

(ii) The Writ petition in **WP.No. 27063/2014 is allowed** and the award dated 2011-2009 passed by the 2nd Respondent in I.D.No.43/2000 in so far it directs reinstatement of the Petitioner with continuity in service without payment of backwages and other attendant benefits from 01-9-1999 till the date of reinstatement is hereby quashed and the order



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dated 01-09- 1999 issued by the Petitioner dismissing the
3rd Respondent from services of the Petitioner is upheld.

(iii) The Writ Petition in **W.P.No,13181 of 2015** is
dismissed.

(iv) No costs. Consequently, the connected miscellaneous
petitions are closed.

16.12.2024

Index : Yes
Internet : Yes
Speaking order
Neutral Citation : Yes

jrs



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R.N.MANJULA, J.

jrs

To
The Principal Secretary to Government,
Labour and Employment (D1) Department,
Secretariat,
Chennai.

2.The Presiding Officer,
Labour Court, Coimbatore.

3.The Inspector of Labour,
Coimbatore.

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