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W.P.No.28707 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.28707 of 2022
and W.M.P.No.28002 of 2022, 27630 & 27631 of 2024

International Flavors and Fragrances India Private Ltd.
Rep. by its Authorised Signatory,
No.1-5, Seven Wells Street,
St. Thomas Mount,
Chennai – 600 016.

Now at (New Address)
SKCL Triton Square, 2nd Floor, C3-C7
Thiru-Vi-Ka, Industrial Estate, Guindy,
Chennai – 600 032.

...

Petitioner

/vs/

R.Baskaran

...

Respondent

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the Labour Court, Kancheepuram in I.D.No.22 of 2011 and quash its preliminary order dated 10.11.2016 and final award dated 29.08.2022 in I.D.No.163/2019.



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

For Respondent ... Mr.L.Chandrakumar
for M/s.T.C.Gopalakrishnan

ORDER

This writ petition has been filed by challenging the award of the Labour Court, Kancheepuram dated 29.08.2022 made in I.D.No.163/2019.

2. The petitioner is the Management which has initiated disciplinary action against the respondent on the allegation that he had prepared inflated bills and thereby unlawfully enriched himself. The respondent has raised a preliminary issue as to the fairness of the domestic enquiry and that has been dealt as a preliminary issue and an order has been passed on 10.11.2016 by holding that the enquiry was not conducted in a fair and proper manner. However, the said order has not been challenged by the petitioner Management and during the proceedings in Industrial Dispute, the Management has let in evidence to prove the charges afresh. At the conclusion of the proceedings, the learned Presiding Officer,



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Labour Court has held that the charges against the respondent has not been proved and set aside the order of dismissal and directed the petitioner to reinstate the respondent along with 50% back wages.

3. Mr.P.Raghunathan, the learned counsel for the petitioner / Management, submitted that even though the charges have been proved by preponderance of probabilities, the Presiding Officer of the Labour Court has omitted to take into consideration of the same; though the Labour Court got convinced that there are certain corrections in the bills handled by the respondent, the Labour Court did not get convinced about the allegation that the corrections could have been done by the respondent; the preponderance has not been appreciated properly; the Labour Court has expected a standard of proof which is not required in the disciplinary proceedings to prove the charges against the employee; the petitioner did not prove that the respondent has been gainfully employed elsewhere by overlooking the fact that the respondent himself has not filed any affidavit stating that he is not employed elsewhere. Hence, it is contended by the learned counsel for the petitioner that there is no basis in awarding 50% of



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back wages to the respondent and hence the order of the Labour Court has to be quashed.

4. Mr.L.Chandrakumar, the learned counsel for the respondent, submitted that the respondent is working in the petitioner Management since the year 1996 and the allegations pertains to the transactions done in the year 2008; on the basis of the report given by a private agency with regard to the accounts scrutinized, the respondent has been given with the charges; a copy of the said report of the private agency was also not served on the respondent; the Labour Court has rightly observed that the bills were in the custody of the Management and hence it cannot be concluded that the respondent had tampered the bill.

5. The fairness of domestic enquiry has been taken as a preliminary issue and an order has been passed holding that the domestic enquiry is not fair and proper. Subsequent to the above order passed by the Labour Court, the Management has let in evidence to prove the charges. But the Labour Court is not convinced about the involvement of the respondent in the



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allegations raised against him. Though the discussion in the award it is stated that the bills are forged, in reality, the bills are genuine. The allegation is that the corrections were made in the bill in order to inflate the figures and thereby getting some enrichment for the respondent. The bills mainly relates to the expenses incurred towards boarding and lodging and travel expenses. In fact the bills are being accepted and sanctioned way back in the year 2008 without any objection. On getting suspicion on the bills submitted in the year 2009, the Management thought it fit to re-examine the bills pertaining to the earlier period in order to find out any malpractice. It is learnt that a private agency has been appointed in this regard to examine the bills and on the basis of the report given by the private agency, the charges have been made against the respondent.

6. The Labour Court has appreciated the evidence adduced on behalf of the petitioner Management and got convinced that there were some corrections made in the Bill. However, the Labour Court did not accept that the corrections in the bills could have been done by the respondent. It is learnt that after the bills were submitted and sanctioned they were in the



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custody of the Management. The Labour Court has arrived at a conclusion that the correction could have been done by anyone else and hence the respondent cannot be tied with the guilt of correcting the same. However, if someone else corrected the bills, there cannot be any gain for him to do the same.

7. From the materials produced before the Labour Court it is seen that only bills have been produced and no accounts have been produced to correlate that the expenditure incurred by the respondent during the relevant period towards meeting out boarding, lodging and travel is less than the amount found in the bills. There is no corresponding accounts also produced to show that the figures stated in the bills have been sanctioned and paid to the respondent and hence the respondent has got the advantage of correction. For instance, if a claim has been made for Rs.1,000/- and accounts have been produced for Rs.1,000/-, but if it is found that some tampering is done by inflating it to Rs.10,000/-, then it should be correlated with the fact that the claim of Rs.10,000/- has been admitted and sanctioned and it had gone to the advantage of the respondent. In order to prove the serious allegations that the petitioner had enjoyed unlawful



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enrichment out of tampering the bills, the Management ought to have proved unlawful enrichment and that has been enjoyed by the respondent in the manner illustrated above.

8. No doubt in the domestic enquiry, the statement of proof in respect of the charges against the employee, is only preponderance of probabilities and not beyond reasonable doubt. The judgment of the Labour Court should be read in a holistic manner without giving a undue significance to certain phrases used by the Court in the course of its discussion. The petitioner cannot pick and choose certain words or phrases in the judgment and try to mismatch it to the entire reasoning given in the judgment and claim that the appreciation of the Labour Court is perverse or erratic.

9. So far as the award of 50% of back wages is concerned, the learned counsel for the petitioner submitted that the respondent did not file any affidavit stating that he has not been placed in any gainful employment during the period when he was out of employment. Even the Labour Court has made an observation that the respondent did not state in his petition



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that from the date of his dismissal i.e. from 17.08.2009 till the date of filing the Industrial Dispute on 01.02.2011 he was not in any gainful employment. It would be the usual contention of the workman that the workman cannot adduce any negative evidence to show that he did not engage in any gainful employment. In the instant case the respondent / workman did not even say the above fact and it was the Labour court which ventured to make a discussion with regard to the entitlement of back wages and made an observation that the respondent is gainfully employed.

10. In this regard the learned counsel for the petitioner had attracted the attention of this Court to the judgment of the Hon'ble Supreme Court held in *National Gandhi Museum Vs. Sudhir Sharma reported in (2021) 12 SCC 439* wherein reference was made to the earlier judgment of the Hon'ble Supreme Court held in *Talwar Coop. Credit & Service Society Ltd., and Sushil Kumar reported in (2008) 9 SCC 486* and discussed that if the employee has been out of employment and is not gainfully employed subsequent to his dismissal, the burden would be on the employee to come out with the case that he was not gainfully employed during the relevant



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period. Unless such a burden on the part of the respondent / workman is discharged, the petitioner cannot be called upon to give the proof that the respondent has been in any gainful engagement.

11. It appears that the Labour Court has not gone into the technicalities of the burden of proof on this aspect and had arrived at a conclusion that the respondent is entitled to 50% back wages. In fact the Labour Court has accepted the contention of the petitioner that the respondent is not entitled to the full back wages. Having accepted such contention the Labour Court ought to have denied the back wages but it had proceeded to award 50% back wages without any basis for assessment.

12. In view of the above limited point, I feel that the writ petition need to be partly allowed by modifying the award of the Labour Court to the extent of granting reinstatement to the respondent without back wages.



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13. In the result, the Writ Petition is partly allowed and the award passed by the learned Presiding Officer, Labour Court, Kancheepuram, dated 29.08.2022 in I.D.No.163/2019, is modified to the extent that the respondent has been reinstated into service without any back wages, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

22.10.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:
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The Presiding Officer,
Labour Court,
Kancheepuram.



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R.N.MANJULA ,J.

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