



W.P.No.29691 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 06.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.29691 of 2018

and

WMP.No.34659 of 2018

K.I.Muthalif

...Petitioner

Vs.

The Assistant General Manager,
Carolyn Estate,
Parry Agro Industries Ltd.,
Mangorange Post,
Pandalur Post,
Nilgiris.

...Respondent

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the Additional Labour Court, Coimbatore, quash the Award passed by the Additional Labour Court, Coimbatore dated 03.11.2017 in I.D.No.253 of 2010 as illegal, arbitrary, contrary to law and consequently direct the Respondent to reinstate the petitioner with full back



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wages, continuity of service and all other attendant benefits.

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For Petitioner : Mr. Balan Haridas
For Respondents : Mr.P.Raghunathan
for M/s.T & S Gopalan & Co.

ORDER

Writ petition is filed challenging the Award dated 03.11.2017 passed in I.D.No.253 of 2010 to quash the same and consequently to direct the respondent to reinstate the petitioner into service with full backwages, continuity of service and all other attendant benefits.

2. The petitioner was employed in the respondent estate on 01.04.2001. While so, on the complaint of one Mr.Kannan, Supervisor, the respondent issued show cause notice to the petitioner on 01.09.2009 calling for his explanation on the alleged misconduct of assaulting and threatening the supervisor. The petitioner submitted his explanation on 04.09.2009 and thereafter the respondent management issued charge sheet dated 04.09.2009 charging the petitioner with misconduct of insubordination, in-



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disciplined behavior and causing of threat to life of the employees.

According to the petitioner, even without giving the petitioner an opportunity to submit his explanation to the show cause notice a domestic enquiry was conducted. The enquiry officer submitted his report on 29.10.2009 holding that the charges against the petitioner were proved. On 18.11.2009, a second show cause notice was issued to the petitioner enclosing the report to which the petitioner submitted his explanation on 25.11.2009. Thereafter, on 27.11.2009 the dismissal order was passed. Aggrieved by the dismissal order, the petitioner raised the dispute in I.D.No.253 of 2010. The Labour Court vide impugned Award dated 03.11.2017 dismissed the industrial dispute and therefore the above writ petition.

3. The learned counsel for the petitioner submitted that the charge of abusing and assaulting the supervisor was a concocted one which would be evident from the fact that FIR filed by the supervisor was closed. According



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to the learned counsel, the charges were falsely foisted against the petitioner for his active participation in the union and also because he was in the forefront in regard to the issue concerning the cultivation in the kitchen garden. According to the learned counsel, the petitioner was victimized for his union activities. The learned counsel further submitted that the respondent did not prove the allegation of assault. The learned counsel submitted that in any event the punishment imposed by the management was not commensurate with the alleged misconduct.

4. The learned counsel for the respondent on the other hand submitted that the Labour Court has appreciated the entire evidence on record in proper perspective and there was absolutely no perversity in the finding of the Labour Court. The learned counsel further submitted that this Court cannot interfere with the factual findings of the Labour Court in the absence of any error apparent or perversity being made out or being established. In so far as the punishment was concerned, the learned



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counsel submitted that the misconduct of assault and misbehavior with supervisor was a grave misconduct and therefore the Labour Court rightly confirmed the punishment imposed by the management.

5. I have heard both the learned counsels and I have perused the materials placed on record.

6. The learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court reported in 2024 (1) SCC 175 in support of his contention that once the FIR was closed, considering that the charges were similar, the orders of the disciplinary authority ought to have been set aside by the Labour Court. The learned counsel further relied on the Division Bench Judgment of this Court reported in 2023 SCC OnLine Mad 3790 in support of his submission that the punishment imposed by the management deserved to be modified.

7. The learned counsel for the respondent on the other hand relied on



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the Judgment of the Hon'ble Supreme Court in the case of *Mahindra and Mahindra Ltd. Versus N.B.Narawade* reported in 2005 (3) SCC 134 in support of his submission that the order of dismissal imposed for the proved misconduct of insubordination, misbehavior and assault cannot be said to be disproportionate. The learned counsel also relied on the Judgment of the Hon'ble Supreme Court in the case of *Hombe Gowda Educational Trust and Another Versus State of Karnataka and Others* reported in 2006 (1) SCC 430 and in the case of *Gurpreet Kaur Alias Rinky Versus Vipin Kumar Gupta* reported in 2008 (1) SCC 231 to fortify the submissions on interference with the punishment imposed by the respondent.

8. The undisputed facts are that the petitioner was an employee of the respondent. It is the respondents case that on 27.08.2009, while the petitioner was questioned on wasting time during working hours by not pouring water for mixing pesticides, the petitioner abused the supervisor in filthy language, assaulted and threatened him with dire consequences.



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On the complaint of the supervisor, a charge sheet was issued to the petitioner to which he replied and thereafter an enquiry was conducted and the enquiry officer in his report held that the misconduct was proved. In pursuance of the enquiry report, the petitioner was dismissed from service on 27.11.2009. Aggrieved by the dismissal order the petitioner raised the dispute which was registered in I.D.No.253 of 2010 and the Labour Court dismissed the I.D. and therefore the petitioner filed the above writ petition.

9. The Labour Court found that the enquiry proceedings were conducted in a fair and proper manner and that the petitioner was given opportunity to cross examine the respondents witnesses. The Labour Court further found that the petitioner's contention that he was victimized for supporting the workers with regard to the cultivation in the waste land for kitchen garden, was not proved by adducing evidence. The Labour Court on the basis of Ex.M17, letter of the Medical officer and Ex.M.18 Medical



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record of the Government Hospital, Gudalur and on the basis of the management witnesses in the domestic enquiry held that the respondent management had proved the charges. The Labour Court relying on the Judgment of the Hon'ble Supreme Court reported in *2006 (1) LLJ 1004*, *2017 LLR 917 and 2015 LLR 64* held that no sympathy could be shown to the petitioner and hence declined to interfere with the punishment imposed by the respondent.

10. The learned counsel for the petitioner has failed to establish any perversity in the findings of the Labour Court. It is further seen that before the Labour Court, the petitioner did not adduce any evidence either oral or documentary in support of the plea of victimisation. The petitioner did not lead any evidence before the Labour Court to controvert the respondents case. In the absence of contra evidence, the Labour Court was justified in rejecting the petitioner's case. It is trite that unless the petitioner establishes perversity or error apparent in the appreciation of the evidence, the writ



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Court will not overturn the findings of fact.

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11. The learned counsel for the petitioner then contended that as the charges framed against the petitioner were similar to the complaint given under the FIR and as the FIR was closed, the disciplinary proceedings which were based on the FIR could not be sustained. The learned counsel for the petitioner placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *Ram Lal Versus State of Rajasthan and others* reported in 2024 (1) SCC 175. The Hon'ble Supreme Court held as follows:

“12. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be



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entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. (See G.M. Tank v. State of Gujarat, State Bank of Hyderabad v. P. Kata Rao and S.Samuthiram.)”

12. A bare reading of the aforesaid paragraph shows that in the said case there was full trial before the criminal Court and the prosecution had failed to prove the charge. In the said case, the workman was charged with altering the date of birth in his 8th standard mark sheet and FIR was registered on 02.09.2002 and charge sheet in the disciplinary proceedings was issued on 02.04.2003. On one and same charge the criminal prosecution as well as the disciplinary proceedings were initiated and after full trial, the criminal Court acquitted the workman. In the context of the facts of the case, the Hon'ble Supreme Court held that as the criminal prosecution and the departmental proceedings proceeded on identical charges and the evidence and witnesses and circumstances were one and



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the same the workman was entitled to discretion in the grant of leave and allowing the findings of the disciplinary proceedings would be unjust, unfair and oppressive to the workman, as he had already undergone full trial in the criminal proceedings. In my view the said Judgment does not apply to the facts of the present case.

13. The reliance placed by the learned counsel for the petitioner on the Judgment of the Division Bench of this Court in the case of *S.Raja Versus Hindustan Unilever Ltd. and another* reported in 2023 SCC OnLine Mad 3790, in my view is totally misplaced. In my view the said Judgment has not considered, the Judgment of the Hon'ble Supreme Court reported in 2006 (1) SCC 430 and 2005 (3) SCC 134. The Hon'ble Supreme Court relying on the Judgment in 1996 (6) SCC 590 and 1960 (1) LLJ 518 (SC) held that punishment of dismissal for using abusive language could not be held to be disproportionate. It is to be noted that in the said Judgment inspite of 3 Courts below coming to the concurrent conclusion that punishment of dismissal was disproportionate to the misconduct, the Hon'ble Supreme



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Court rejected the same. I am therefore inclined to follow the Judgment of the Hon'ble Supreme Court reported in 2006 (1) SCC 430 and 2005 (3) SCC 134 and hold that assault on supervisor is a grave misconduct being subversive to discipline and hence refrain from interfering with the punishment imposed by the respondent. As already stated the findings of the Labour Court are based on material evidence placed before it and hence I find no reason to interfere with the findings of the Labour Court, moreso, when the Labour Court has given cogent and justifiable reasons for the same.

In view of the above, the present writ petition fails and is accordingly dismissed. No Costs. Consequently, connected WMP is closed.

06.03.2024

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

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To

The Presiding Officer,
Additional Labour Court,
Coimbatore.



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N.MALA,J

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