



W.P.No.8068 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos.8068 of 2007 & 16536 of 2011

W.P.No.8068 of 2007 :-

The Management of Audco India Ltd.,
Now known as Flowserve India Controls Pvt. Ltd.,
Maraimalai Nagar,
Chinglepet,
Kanchipuram District.
(Petitioner cause title amended as per
order dated 12.12.2024 in
W.M.P.No.29465 of 2024
in W.P.No.8068 of 2007)

... Petitioner

-Vs-

1. The Presiding Officer,
Second Additional Labour Court,
City Civil Court Buildings,
High Court Compound,
Chennai – 600 104.

2. N.Muthukumaran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, to call for the records and quash the award
dated 26.10.2006 passed by the first respondent in I.D.No.24 of 1998.



W.P.No.8068 of 2007

WEB COPY

For Petitioner : Ms.D.Veda
For Mr.Meenakshi Sundaram
For Respondents
R1 : Labour Court
For R2 : Mr.K.V.Dhanapalan
For T.Fennsalter Associates

W.P.No.16536 of 2011 :-

N.Muthukumaran

... Petitioner

-Vs-

1. The Management of M/s.Audco India Ltd.,
Maraimalai Nagar,
Chengleput, Chennai – 603 209.

2. The Presiding Officer,
II Additional Labour Court,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to I.D.No.24 of 1998 and to set aside the part of the award of the Labour Court dated 26.10.2006, by which the Labour Court denied payment of back wages and concurred with the findings of the enquiry officer in relation to the alleged charge of misbehaviour with the supervisor and to direct the first respondent company management to pay the full backwages to the petitioner for the period of his non-payment viz., from the date of his termination to till the award of the Labour Court dated 26.10.2006.

For Petitioner : Mr.K.V.Dhanapalan
For T.Fennsalter Associates



W.P.No.8068 of 2007

For Respondents

For R1 : Ms.D.Veda
for Mr. Meenakshi Sundaram
R2 : Labour Court

COMMON ORDER

Both these writ petitions are challenging the same award of the II Additional Labour Court, Chennai, made in I.D.No.24 of 1998 dated 26.10.2006 and as such, they are taken up and disposed of by this common order.

2. The factual background in which these writ petitions arise is, that the workman was employed as an operator in the management. He was the vice president of the trade union. A charge memorandum was issued to the workman on 05.02.1996 alleging that, on 11.01.1996, when he was absent, he attempted to make a false claim as if he was working, by making a proxy punching in the system that is maintained by the management. The said charge was denied by the workman by his explanation dated 08.02.1996.

3. While so, on 25.03.1996, the supervisor of the management had made a complaint about an occurrence on 23.03.1996, as if when the workman attempted to have a meeting with many of other workmen in a section, where he



W.P.No.8068 of 2007

came unauthorised and when the supervisor advised them not to have such meeting in the working hours, the workman abuses the supervisor by using filthy language even as they disbursed and thereafter also the workman once again made a phone call in which, he has again used the filthy language. Based on the said complaint, a second charge memorandum was issued on 25.03.1996. By a reply dated 10.04.1996, the workman denied the said charge. Domestic enquiry was conducted and in respect of the first charge, by a report dated 09.01.1997, the enquiry officer found that the charge has been proved. Similarly in respect of the second charge sheet, by a report dated 21.11.1996, the charge was found proven. Further, the reports are forwarded to the petitioner and the petitioner submitted his further explanation and thereafter the petitioner was imposed with the punishment of dismissal from service by an order dated 31.03.1997.

4. Aggrieved thereby, the petitioner raised a dispute. Conciliation failed. Thereafter the claim petition filed by the petitioner was taken on file as I.D.No.24 of 1998. It is the case of the petitioner that he was granted leave for part of 10.01.1996 and from 11.01.1996. He was on leave from 10.01.1996 up to 17.01.1996. The punching card of the petitioner will not be in the hands of



W.P.No.8068 of 2007

the petitioner as per the practice of the management. No purpose will be served for the petitioner by making a false punching. The mischief has been done in the absence of the petitioner only to victimise him. Similarly, there was no such incident of gathering the workmen or abusing the superior. It is the case of the petitioner that the charges are false and the entire action was only to victimise him since he is the vice president of the trade union.

5. The claim statement is resisted by the filing of a detailed counter. The particulars of both the charge sheet and how the enquiry was conducted and the findings that were rendered are mentioned in detail. It is contended on behalf of the management that it is not a case of victimisation, but the punishment was imposed on the proven charges against the workman.

6. On the strength of the pleadings, when the matter was taken up for enquiry, the workman examined himself as W.W.1 and Ex.W.1 to Ex.W.21 were marked. On behalf of the management, there was no oral evidence. However, Ex.M.1 to Ex.M.12 were marked.



W.P.No.8068 of 2007

7. The Labour Court thereafter considered the case of the parties. It

found that even in the first month of the year, to allege that the workman would be making a false punching cannot be correct and held that there was no justifiability for punishing regarding the first charge. As far as the second charge is concerned, the Labour Court considered the same and held that even assuming that the charge is proved, it would be grossly disproportionate to impose the punishment of dismissal in respect of the same and therefore held that the back wages cut by itself would serve as an appropriate punishment and granted the relief as aforesaid to the workman. Aggrieved thereby, the management has filed W.P.No.8068 of 2007, and the workman has filed W.P.No.16536 of 2011.

8. Heard Ms.D.Veda, the learned counsel appearing on behalf of the management. By taking this Court through the charge memorandum and thereafter the finding of the domestic Enquiry Officer in respect of the first charge, the learned counsel would submit that it can be seen that there are different processes by which the attendance of the workman is marked by the management. Though there is a timesheet which is maintained in the concerned department, the punching system is also maintained which is an automated



W.P.No.8068 of 2007

system. Therefore, only to take undue advantage, the workman being the office bearer of the trade union, thought that he would make an entry by punching his card through proxy and thereby create confusion to get undue advantage. The domestic Enquiry Officer has discussed the charge in detail and has applied his mind to the various entries that are made and also considered the fact that the leave card has also been returned afresh and therefore the domestic enquiry officer held the charge has proved.

8.1. Similarly, the management has enquired the complainant officer, who has deposed that the workman used filthy words and abused him and therefore when the charge is proved in the domestic enquiry that is conducted as per procedure by providing due opportunity to the workman. If the charges are held to be proved and the punishment is imposed, then the scope of the Labour Court to interfere in the same is very limited. The Labour Court has not even adverted to the findings of the domestic Enquiry Officer. The Labour Court acted as if it were an appellate Court and substituted its views in respect of the proven charges. The learned counsel would also rely upon the judgement of the Supreme Court of India in *Mahindra and Mahindra Lts., Vs N.B.Narawade*, (Civil Appeal No.1508 of 2003 dated 22.02.2005), in support



W.P.No.8068 of 2007

of her submission. Therefore, she would pray that this Court should allow the writ petition filed by the management to uphold the punishment imposed on the workman.

9. Per contra, Mr. K.V.Dhanabalan, the learned counsel appearing for the workman taking this Court through the written submissions made by the workman in the domestic enquiry as well as before the Labour Court, would firstly submit that this is a case where the workman let in evidence even before the Labour Court. Concerning the second charge, the Labour Court ought to have seen that while no evidence whatsoever has been let in by the management, the workman has got into the box and deposed. When his evidence remained uncontroverted, the Labour Court ought not to have held that the second charge was not proved. It is the case that the workman had abused the superior. If such is the case, the superior would not have taken two days to report the matter. Even the second limb of the charge, as if the workman had telephoned to the superior, had turned out to be false, and it has been recorded even in the domestic enquiry that it is only the superior who had called the workman through the floor supervisor, who is in control of the telephone. Further, in the cross-examination of the complainant himself, he has



W.P.No.8068 of 2007

admitted that no such thing happened. Therefore, the finding of the domestic Enquiry Officer concerning the second charge is perverse.

9.1. As far as the first charge is concerned, it is not a case that by making a proxy punching the workman can mark himself to be present. The management was following three systems. One is the punching system, the second one is the leave card and the third is marking in the daily production chart. Therefore, unless the workman is going to be shown in the production chart and contributed to the production, he is not going to be seen as if he attended duty. Over and above the same, it is not the case of the management that the workman never got permission for leave for the said dates i.e., from 10.01.1996 to 17.01.1996. Therefore, when the petitioner is the vice president of the trade union and everybody knows that he is on leave with the due permission of the authorities, nothing can be gained by making the punching.

9.2. He would submit that the most important aspect in this case is the practice followed by the management, concerning the punching system. The workmen were not permitted to carry their swiping cards with them. On the contrary, they are supposed to keep it in a particular place only. Therefore, when the swiping card was not in the custody of the workman, it cannot be



W.P.No.8068 of 2007

alleged that he only set up some third person to swipe on his behalf. On the contrary, this would only prove the plea of the workman that he has been victimised. The course of events should also be taken into account by this Court. When the workman has given a plausible explanation that already leave has been granted to him and only with the permission he was absent on the said date, then immediately the second charge memorandum was issued as if he abused the superior.

9.3. Further, when all the workmen who were allegedly assembled were given a memorandum, their explanation was accepted, and further proceedings were dropped. Therefore, the very fact that all these workmen gathered at a particular place itself is proved to be false. Therefore, it can be seen that the entire exercise is done by the management only to victimise the workman. He contends that subsequently, there is a settlement between the trade union and the workmen by which the retirement age is increased to 60 from 58. If that is the case, the workman will retire only in January 2026. Therefore, the workman should be reinstated with all the back wages and attended benefits with continuity of service. The Labour Court erred in denying the said benefits to the workman.



W.P.No.8068 of 2007

10. I have considered the rival submissions made on either side and perused the material records of the case.

11. At the outside, no exception whatsoever can be taken to be legal position as argued by the learned counsel appearing on behalf of the management that the Labour Court while exercising its power under Section 11A, has to see whether or not there is any evidence in proof of the charge during the domestic enquiry and whether the punishment is grossly disproportionate or is unduly harsh on the workman. Considered from that angle, firstly, it can be seen from the gravamen of the first charge, is that the workman attempted to create a false entry. Admittedly, it is not a case where the workman succeeded in marking his presence. Further, it is the case of the management also that only based on the punching alone, the attendance of the workman will be marked. The same has to be kept in mind.

12. As far as the second charge is concerned, it can be seen even from the charge itself that when all these workmen assembled at a particular place and the workmen were ordered to be disbursed by the supervisor, the workmen started disbursing but even while all of them were disbursing, the workman in



W.P.No.8068 of 2007

the present case, the trade union office bearer, is said to have uttered the words mentioned in the charge memorandum. Therefore, in a given situation, abusing the superior with filthy language can be taken as a serious charge and there can be no second opinion about it. But at the same time, the nature of the abuse, the background of the workman and the fact that it is reported to have been uttered even when they were obeying the orders of the superior and disbursing from the place should also be taken into account.

13. Industrial adjudication cannot be divorced from cultural settings and the background of the workman, his action while being alleged to have used the swear word etc. The fact remains that he did not disobey the orders of the superior and they all started disbursing and even while doing so, it is alleged that he has used the particular language. The Labour Court has taken a closer look at the charge and has effectively smiled at the incident.

14. The Labour Court considered the overall facts and circumstances of the case, the nature of the charge that is levelled against the workman and the nature of the evidence, however, ordered that the loss of back wages shall be the appropriate punishment for the same. The same does not call for any interference.



W.P.No.8068 of 2007

WEB COPY

15. As far as the date of superannuation is concerned, the original date of superannuation as per the terms entered into with the petitioner at the relevant time was only 58 years as per which, he was supposed to have superannuated on 25.01.2024. The subsequent settlement which is entered into by the management with the present union, would only fall within the other attendant benefits, which have been specifically denied by the Labour Court. Only reinstatement with continuity of service alone is ordered by the Labour Court. Moreover, considering the nature of jurisdiction exercised by the Labour Court, keeping in mind the industrial peace and also the interest of the workman, I am of the view that the benefit of the subsequent settlement extending the age of superannuation cannot be extended to the workman.

16. In view thereof, these writ petitions are disposed of on the following terms:

(i) The award of the Labour Court dated 26.10.2006 in I.D.No.24 of 1998, is upheld inasmuch as it finds the non-employment of the workman as unjustified and orders reinstatement;



W.P.No.8068 of 2007

(ii) It is further clarified that the reinstatement shall mean that reinstatement with continuity of service and the workman would be deemed to have been in service till January 2024;

(iii) the award of the Labour Court in denying back wages and other attendant benefits shall stand confirmed.

(iv) The management shall treat the workman having been on duty till the date of superannuation, and pay him the dues that are payable;

(v) It is stated that pending the writ petition, only the last drawn wages are alone be paid. Needless to mention from the date of the award till the date of superannuation, the management is entitled to set off the 17B wages already paid and pay the balance amount to the workman;

(vi) The management shall comply with the aforesaid directions and pay all the arrears due to the workman within eight weeks from the date of receipt of the website uploaded copy of this order without waiting for the certified copy.

(vii) No Costs. Consequently, connected miscellaneous petition, if any, is closed.

09.01.2025

Neutral Citation : Yes/No
rts



W.P.No.8068 of 2007

WEB COPY

To

1. The Presiding Officer,
Second Additional Labour Court,
City Civil Court Buildings,
High Court Compound,
Chennai – 600 104.



WEB COPY



W.P.No.8068 of 2007

D.BHARATHA CHAKRAVARTHY. J.

rts

W.P.Nos.8068 of 2007
& 16536 of 2011

09.01.2025