



W.P.No.29062 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.29062 of 2010

The Management of
Chemplast Sanmar Ltd.,
Plant III, Raman Nagar
Mettur Dam – 636 403
Salem District.

... Petitioner

Vs.

1.P.Subramaniam

2.The Presiding Officer
Labour Court
Salem.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records connected with the award dated 08.04.2010 made in I.D.No.38 of 2007 on the file of the second respondent, Labour Court, Salem and quash the same.



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For Petitioner : Mr.Sai Prasad
for M/s.Sai Raaj Associates

For Respondents : Mr. K.V.Shanmuganathan for R1
Labour Court- R2

ORDER

This Writ Petition is filed challenging the award of the Labour Court dated 08.04.2010 made in ID.No.38 of 2007.

2. The brief factual background in which the Writ Petition arises is that the Workman is said to have been engaged and working in the petitioner management from the year 1971. While so on 14.12.2005 he was issued with the charge memorandum. The charge against him is that on 08.12.2005 he came to the gate in an inebriated condition and when the security refused to allow him inside to meet the Assistant General Manager, he has verbally abused and threatened him. The further charge is that on the next day that is on 09.12.2005 again he came to the gate and enquired about the officer in disrespectful language. The security upon seeing that he was



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again in inebriated condition refused to let him inside. Again he abused the security as well as the officials in a filthy language and went away. The

Workman denied the charge in his explanation and submitted that he only enquired in a polite language and upon refusal he came back. His explanation was not accepted and Enquiry Officer was appointed and when the enquiry was to be proceeded, once again a second charge memorandum was issued against the workman on 13.01.2006 levelling another charge that, on 05.01.2006 at about 10:20 PM he went near the residence of the General Manager and abused him in filthy language. Thereafter, domestic enquiry was conducted with reference to both the charge memoranda together and the Enquiry Officer found the charge as proved. A second show cause notice was issued on 25.03.2006 enclosing the enquiry report dated 15.03.2006. The Workman submitted his explanation. Thereafter, by an order dated 29.07.2006 the Workman was dismissed from service. Aggrieved thereby, he raised a dispute. Conciliation failed. Thereafter, the claim statement was taken on file as ID.No.38 of 2007.



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3. It is the claim of the Workman that both the charges were false and the action has been taken vindictively against him. Though certain averments were made with reference to the fairness of the procedure, it seems that before the Tribunal on behalf of the Workman the question as to the fairness of the procedure in the domestic enquiry was given up and therefore the Labour Court took up the issue on merits. In the enquiry before the Labour Court both sides did not let in any oral evidence and the documents were marked. On behalf of the Workman *Ex.W.1* and *Ex.W.2* were marked. On behalf of the management *Ex.M.1* to *Ex.M.33* were marked. The Labour Court, therefore considered the statements of the witnesses and the other documentary evidence that were marked in the course of the domestic enquiry and held that when no breath analysis test or any other medical test was made to confirm that the petitioner was an inebriated condition, the same cannot be believed.

4. The Labour Court also disbelieved the evidence of one *Mr.M.S.Joseph*, the Assistant General Manager on the ground that the other witnesses did not say that he was present and witnessed the delinquent



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shouting or abusing. But however, the Labour Court found that all the witnesses corroborated with each other with reference to the behaviour of the Workman in shouting and hurling abuses in front of the gate. Eventhough to that extent it agreed with the management, but held that the said action does not amount to misconduct within the meaning of the various entries under Clause 20 of the Standing Orders. Therefore, it held that the non-employment was unjustified. However, while dealing with the backwages and the other benefits that should be granted to the Workman the Labour Court again held that it is agreeing with the management with reference to hurling of the abuses and the behaviour on the particular day and therefore denied the Workman the entire backwages and the continuity of service was also restricted only with reference to pension and pensionary benefits and not with reference to increments and promotion. Aggrieved thereby the present Writ Petition is filed. The award of the Labour Court was on 08.04.2010 and it is now represented before this Court that the Workman also attained superannuation with effect from 25.01.2011.



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5. *Mr.Sai Prasad*, the learned counsel for the management would

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submit that in this case, the finding of the Labour Court with reference to the fact that the workman was in an inebriated condition is perverse. The degree of proof in a domestic enquiry is only preponderance of probability and not proof beyond doubt. When the witnesses have deposed that they have seen him in inebriated condition on account of his body language and also the smell and the manner in which he abused, like the criminal cases the Court need not have expected the degree of proof by proving the intake of alcohol beyond reasonable doubt by medical evidence. Therefore, the said finding of the Labour Court is incorrect in law. The Labour Court once agreed with the other part of the behaviour of the Workman, on a plain reading of the various entries in Clause 20 and it can be clear that those actions of the Workman amounted to misconduct.

6. As a matter of fact in the last paragraph while dealing with the backwages, the Labour Court itself admits it, but however holds that the same would not amount to misconduct while answering the plea as to the



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justifiability of non employment. Therefore, the finding of the Labour Court in this regard is perverse.

7. The learned counsel would submit that the award of the Labour Court is liable to be set aside.

8. Per contra, the learned counsel for the workman would submit that the entire issue can be approached by this Court from the fact that the workman had put in long number of years of service that is from the year 1971 onwards and he was non employed in the year 2006 and his date of superannuation in the year 2011. Therefore, the other benefits such as the gratuity can be paid. In any event, when the Labour Court has found the evidence as unreliable, the workman can be granted at least the minimum benefit.

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



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10. As rightly pointed out by the learned counsel appearing on behalf of the Management, firstly when the fairness of the enquiry was not disputed and both sides relied upon only the statements made during the domestic enquiry, when the eye witnesses who have seen the occurrences have deposed before the domestic enquiry and when there is no contra evidence or circumstances to disbelieve the same, the finding of the Labour Court as if the charge is not proved cannot be sustained. The Labour Court cannot go into the adequacy of the evidence and the enquiry before the Labour Court under Section 11A is not that of an Appellate forum but only to see whether there is evidence for proof of charge or not. In that regard the finding of the Labour Court is erroneous.

11. Secondly, even perusing Clause 20 of the Standing Orders, it can be seen that the action of the Workman in hurling abuses in front of the gate and also at the residence of General Manager would definitely be misconduct and the finding of the Labour Court in this regard is erroneous in law. Therefore, I find that the finding of the Labour Court that the non employment is unjustified cannot be sustained and it is a perverse finding.



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The Labour Court itself gives a contra finding when it comes to denial of backwages and other benefits. Therefore, the award of the Labour Court is unsustainable. The management has conducted an enquiry and has imposed the punishment.

12. However, it can be seen that the proof of charges of an unruly behaviour by the Workman especially it has to be considered from the fact that he has put in long number of years of service. Therefore, considering the nature of the background of the Workman and the nature of the charges proved and the punishment imposed, it cannot be held that the same would disentitle the Workman from the payment of gratuity. It is neither of any moral turpitude nor any loss has been caused to the management. In that view of the matter, I am of the view that in spite of the order of punishment dated 29.07.2006 being upheld, the management will be liable to pay the gratuity amount. If the amount of gratuity is not paid the same shall be paid now.



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13. In view thereof, this Writ Petition is allowed on the

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(i) the award of the Labour Court dated 08.04.2010 made in ID.No.38 of 2007 shall stand set aside;

(ii) However, the workman will be entitled for the gratuity for his entire period of service up to the date of punishment that is on 29.07.2006 and the same shall be duly calculated and paid to the Workman if not already paid within a period of 8 weeks from the date of receipt/production of the website uploaded copy of the order without waiting for the certified copy of the order.

(iii) No costs.

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Neutral Citation : Yes/No
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To

The Presiding Officer

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D.BHARATHA CHAKRAVARTHY, J.

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