

W.P. No. 3818 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2025

PRONOUNCED ON : 05.03.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. No.3818 of 2020

M/s.Lotus Footwear Enterprises (P) Ltd.,
Rep., by its General Manager,
R. Sivalingam
Plot No.3-B, SIPCOT Industrial Park,
Mathur Post, Mangal Village,
Thiruvannamalai District – 631 701.

... Petitioner

Versus

P. Vardan,
No.380, Periya Street,
Thiruvadirayapuram Village,
Sithathur Post, Vembakkam Taluk,
Tiruvannamalai District.

... Respondent

PRAYER :

To issue a Writ or order or direction in the nature of writ,
particularly a Writ of Certiorari to call for the records connected with
I.D. No. 124 of 2016 on the file of the Presiding Officer, Principal



W.P. No. 3818 of 2020

Labour Court, Vellore and to quash the award dated 25.02.2019 made therein and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thereby render justice.

APPEARANCE OF PARTIES:

For Petitioner : Mr. C. Manohar Gupta, Advocate for
Mr. M. Kandasamy &
Mr. P. Krishnamoorthy, Advocates.

For Respondent : Mr. K. Sudalai Kannu, Advocate for
M/s. K. Sudalai Kannau, Ms.S. Latha,
Mr. P. Vellapandi, Mr. B. Aravinthraj,
Mr. C. Hari hara Subramanian, Advocates.

J U D G M E N T

Heard.

2. The writ petitioner, representing the management, has filed this petition challenging the award of the Labour Court, Vellore, in I.D. No. 124/2016, dated 25.02.2019. Through the impugned award, the Labour Court directed the reinstatement of the respondent workman with



W.P. No. 3818 of 2020

continuity of service and all attendant benefits. However, the relief of back wages was declined.

3. When the writ petition came up for admission on 18.02.2020, notice was ordered. Pending notice, in W.M.P. No. 4527 of 2020, an interim stay on the operation of the award was granted. Subsequently, the respondent workman entered appearance and filed three miscellaneous petitions: W.M.P. No. 20233 of 2021 seeking to vacate the stay, W.M.P. No. 20236 of 2021 seeking the deposit of back wages for the period from 25.02.2019 until the date of the application, amounting to Rs. 3,28,846/-, with permission to withdraw 50% of the amount, and W.M.P. No. 20239 of 2021 seeking payment under Section 17B of the I.D. Act at the rate of Rs. 18,000/- per month from the date of the writ petition.

4. The applications for deposit and withdrawal were disposed of by a common order dated 30.09.2021. In that order, the three W.M.Ps. were decided on the following terms:

“The learned counsel for the petitioner-Management would submit that they are willing to deposit the entire backwages before the Labour Court.



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W.P. No. 3818 of 2020

This apart, the petitioner-Management would also be liable to pay the last drawn wages under Section 17B of the Industrial Disputes Act, 1947.

In view of the submission made by the learned counsel for the petitioner-Management, there shall be a direction to the petitioner to deposit the entire backwages to the file of the I.D.No.124 of 2016 before the Principal Labour Court, Vellore within a period of four weeks from the date of receipt of a copy of this order. The petitioner – Management shall also pay the arrears of last drawn wages under Section 17B of the Act, from the date of Writ Petition (i.e.) 14.02.2020, within a period of two weeks from the date of receipt of a copy of this order and thereafter, continue to pay the same till the final disposal of the present Writ Petition. 5.In view of the aforesaid directions, the interim order of stay already granted on 18.02.2020 is made absolute.”

5. In W.M.P. No. 20233 of 2021, seeking to vacate the stay, the following order was passed on 30.09.2021:

“Today, this Court had passed an order in W.P.No.3818 of 2020 and W.M.P.4527 of 2020, 20236, & 20239 of 2021, making the interim stay absolute. Hence, the present application seeking to vacate the interim stay is dismissed.”

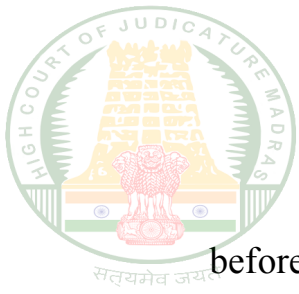
6. At this juncture, it is pertinent to note that in all the above-



W.P. No. 3818 of 2020

mentioned writ miscellaneous petitions filed by the respondent workman seeking to deposit back wages, and secure payment under Section 17B, the miscellaneous petitions were supported by a similar affidavit dated 25.08.2021. In paragraph 3 of the affidavit, the respondent stated that the impugned award did not grant him any back wages. In paragraph 4, he detailed the steps taken to seek employment according to the award, and in paragraph 5, he referred to his filing of a claim petition and an execution petition.

7. Although the affidavit was sworn on 25.08.2021 and the W.M.Ps. were filed on 06.09.2021, the respondent did not disclose that he had filed W.P. No. 18549 of 2020 challenging the portion of the award in I.D. No. 124 of 2016 that denied back wages. This Court had already dismissed that writ petition at the admission stage on 14.12.2020, providing detailed reasons for its decision not to interfere with the impugned award concerning back wages. The order was made ready as early as 07.01.2021, yet no explanation has been provided as to why the respondent's present counsel, who also represented him in the earlier writ petition, failed to mention this fact in the affidavit. Although the counsel for the respondent had received a copy of the order, he did not produce it



W.P. No. 3818 of 2020

before the Court and only referred to the writ petition number at the time of final arguments.

8. On a search through the Judgement information system of the order dated 14.12.2020 in W.P. No. 18549 of 2020, which dealt with the very same impugned award, the Order provided the following reasons for dismissal in paragraphs 11 and 12:

“11. Following the aforesaid judgments of the Honourable Supreme Court of India, I am of the considered view that the aforesaid principles laid down will squarely apply to the facts and circumstances of the case and the labour Court was justified in not awarding backwages to the petitioner. The argument that the fact of non-employment claimed by the petitioner was not disputed by the management is misplaced and cannot be accepted for the simple reason that it is the petitioner who has to prove that he was not gainfully employed elsewhere during the period of dismissal till the period of reinstatement and cannot take advantage of the nondenial of the respondent Management with respect to his non-employment stated in his own statement in the affidavit. Moreover, the petitioner has not submitted any documentary evidence to show that he was not gainfully employed in the interregnum.

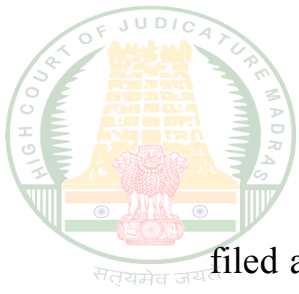
12. Accordingly, for the above reasons I do not find any infirmity in the impugned award passed by the Labour Court. The writ petition fails and the same is dismissed.”



W.P. No. 3818 of 2020

9. Normally, when both the management and the worker file writ petitions challenging the same award of the Labour Court, they should be clubbed together, heard simultaneously, and decided through a common order. However, in this case, a perusal of the earlier order passed by this Court does not indicate that the counsel for the respondent ever disclosed the pendency of the writ petition filed by the management against the same award. Not only was no assistance provided in bringing the relevant order to the Court's attention, but it also appears that no effort was made to ensure both writ petitions were heard together.

10. The sequence of events leading to the filing of the writ petition is as follows: The respondent was employed as an Assistant in the Training and Development Department of the petitioner company. Following a domestic inquiry, he was terminated by an order dated 23.06.2016. Subsequently, the workman raised an industrial dispute before the Government Labour Officer-II, Vellore, through a petition dated 02.07.2016. The petitioner management submitted its reply on 02.08.2016, to which the workman responded with a rejoinder on 16.08.2016. As the conciliation officer was unable to facilitate a settlement, he issued a failure report. Based on this report, the workman



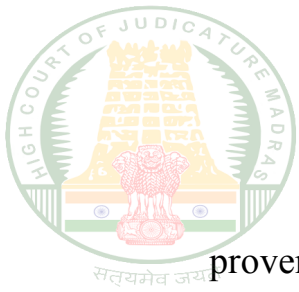
W.P. No. 3818 of 2020

filed a claim statement before the Labour Court, Vellore, on 28.09.2016.

The Labour Court took cognizance of the matter and registered it as I.D. No.124/2016 and issued notice to the petitioner management.

11. The petitioner-management entered an appearance and filed a counter statement dated 13.03.2017. Before the Labour Court, the workman submitted 24 documents, which were marked as Ex. W1 to Ex. W24. On the management's side, the domestic inquiry proceedings and other related documents were filed and marked as Ex.M1 to Ex.M28. Concerning the domestic inquiry, the Labour Court held that it was conducted fairly and properly, finding no grounds for interference. It further ruled that the mere non-furnishing of the certified standing orders at the commencement of the inquiry did not constitute a vitiating factor.

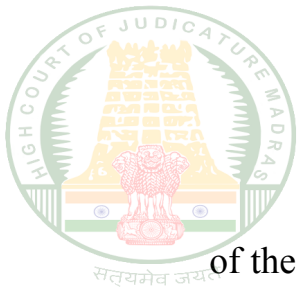
12. Once it is determined that the domestic inquiry conducted by the management was fair and proper, the Labour Court, under Section 11A of the I.D. Act is required to confine its examination to the materials on record and consider the evidence presented during the domestic inquiry. However, the Labour Court has the authority to reappraise the evidence and arrive at a different conclusion. Even if the charges are found to be



W.P. No. 3818 of 2020

proven, the Court can intervene in the imposition of the penalty if it deems the punishment disproportionate to the gravity of the charges.

13. In this case, the Labour Court examined the evidence and concluded that the allegations against the workman were not credible. It found that the complaints made by four individuals against the workman were inconsistent and lacked specific details regarding the time of occurrence. Additionally, there were contradictions in the testimonies of the witnesses. The Court also observed that it was improbable for the workman to have reacted aggressively when Ashok Kumar, the management witness, had not scolded him in the first place. The fact that four senior officers submitted reports on the same day regarding the alleged incident raised serious doubts about the credibility of the allegations. Although the management referred to the workman's past conduct, the Labour Court emphasized that past behaviour becomes relevant only when the present charge is proven. In light of these findings, the Labour Court held that the dismissal was unjustified and that the workman was entitled to reinstatement. While it denied back wages which was also upheld by this Court, it directed the reinstatement



W.P. No. 3818 of 2020

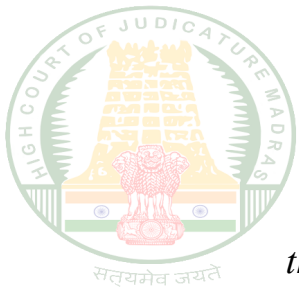
of the workman with continuity of service.

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14. Challenging this award, the learned counsel for the management contended that if there is some evidence reasonably supporting the conclusion of the inquiry authority, it is not the function of the Court to reassess the evidence and arrive at its independent finding. This contention is inconsistent with the provisions of Section 11A of the I.D. Act, as interpreted by the Supreme Court in *Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. Their Management & Ors.*, reported in 1973 (1) SCC 813. In that case, the Supreme Court explicitly held that even when a domestic inquiry conducted by the management is found to be fair and proper, the Labour Court retains the authority to reappraise the evidence and reach a different conclusion. In effect, the Labour Court exercises appellate jurisdiction in such matters.

15. The learned counsel relied on the judgment of the Supreme Court in *New Shorrock Mills v. Maheshbhai T. Rao*, reported in 1996 (6) SCC 590, and referred to the following passage:

“.....*The Labour Court, in the present case, having come to*



W.P. No. 3818 of 2020

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the conclusion that the finding of the departmental inquiry was legal, and proper, respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were atleast three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time."

16. The learned counsel further referred to the Supreme Court's decision in *Employers in relation to Management of West Bokaro Colliery of M/s. TISCO Ltd. v. Concerned Workman, Ram Pravesh Singh*, reported in 2008 (3) SCC 729, and relied on the following passage from paragraph 17:

"17. After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic Tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the

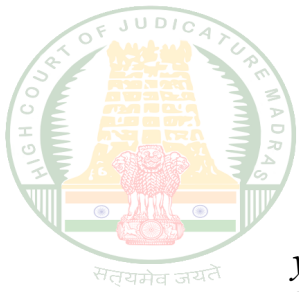


respondent towards his superiors. Their evidence has been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. Industrial Tribunal fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced.”

17. However, while the principles laid down in the cited passages are not disputed, in the present case, the Labour Court, upon examining the evidence presented before the domestic inquiry officer, found it to be unsatisfactory and unreliable. This factual determination, having been made by the Labour Court, cannot be interfered with by this Court.

18. The learned counsel for the workman contended that, at most, the worker was accused of using abusive language, which does not warrant dismissal from service. In support of this argument, he relied on the judgment of the Supreme Court in *Rama Kant Misra v. State of Uttar Pradesh & Ors.*, reported in 1982 (3) SCC 346, and referred to the following passage:

“What has happened here. The appellant was employed since 1957. The alleged misconduct consisting of use of indiscreet or abusive or threatening language occurred on November 18, 1971, meaning thereby that he had put in 14



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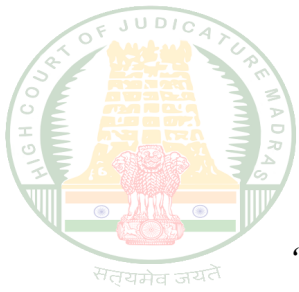


W.P. No. 3818 of 2020

years of service. Appellant was Secretary of the workmen's Union. The respondent management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years' service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere. Unfortunately, the Labour Court has completely misdirected itself by looking at the dates contrary to record and has landed itself in an unsustainable order. Therefore, we are required to interfere.

What ought to be the proper punishment in this case ? In our opinion, in such a situation withholding of two increments with future effect will be more than adequate punishment for such a low paid employee.”

19. The learned counsel for the workman further submitted that the scope of interference under Article 226 with findings of fact arrived at by the Labour Court is highly limited. In support of this contention, he relied on the judgment of the Supreme Court in *Management of Madurantakam Co-operative Sugar Mills Ltd. v. S. Viswanathan*, reported in 2005 (3) SCC 193, and referred to the following passages.

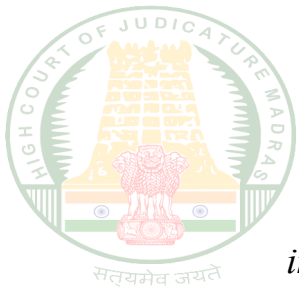


W.P. No. 3818 of 2020

WEB COPY

“Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under [Article 226](#) or under [Article 227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as by the learned Single Judge and disagreed with the finding of the learned Single Judge. It is in this context that we are called upon to decide the validity of the



W.P. No. 3818 of 2020

impugned order of the Division Bench of the High Court.”

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20. In light of the above, this case does not warrant interference with the impugned award passed by the Labour Court. The Labour Court has thoroughly considered all aspects of the case, adhered to the relevant legal principles, and granted appropriate relief while expressly denying back wages in full. Further, another crucial aspect must be noted. The very same impugned award, when challenged by the workman, was upheld by this Court in W.P. No. 18549 of 2020, dated 14.12.2020. Although the management was not heard in that matter, as it pertained to the denial of back wages, the learned judge, while dismissing the writ petition, effectively upheld the award. Consequently, the award has attained finality.

21. Under the above circumstances, W.P. No. 3818 of 2020 stands dismissed. However, there shall be no order as to costs. In light of this dismissal, if any amount has been deposited with the Labour Court, Vellore, under the order dated 30.09.2021, the workman is permitted to withdraw the same.

05.03.2025



W.P. No. 3818 of 2020

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

The Presiding Officer,
Principal Labour Court,
Vellore.



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W.P. No. 3818 of 2020

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P. No.3818 of 2020

05.03.2025