



W.P.No.8308 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.8308 of 2011

1.S.E.Baskaran (deceased)
2.S.B.Banu
3.S.B.Sri Varshini
4.S.B.Sri Varuni ... Petitioners
[P2 to P4 are substituted as LR's of P1 vide order dt. 06.11.2023
made in W.M.P.No.21737 of 2021 in W.P.No.8308 of 2011]

Vs.

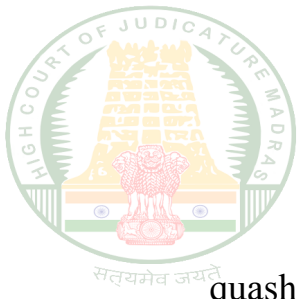
1.Tamil Nadu Leather Development Corporation Ltd., (Talco),
No.52, Krishna Doss Road,
Perambur, Chennai – 600 012.

2.The Managing Director,
Tamil Nadu Khadi and Village Industries Board,
Chennai – 600 108.

3.The Presiding Officer,
II Addl. Labour Court,
Chennai – 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari/Mandamus, calling for the records of the III Respondent, passed in I.D.No.421/1999, dated 28.09.2010,



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quash the same and consequently direct the I & II Respondent to re-instate the petitioner with full backwages, attendant and all other benefits from 04.01.1995 to till date.

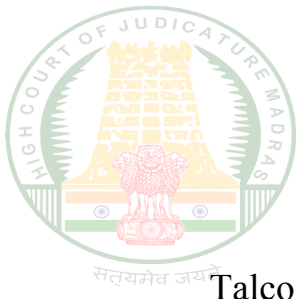
For Petitioner : M/s.Thamizharasi
for M/s.Thamizharasi Associates

For Respondents : Mr.S.Raghupathi [R1]
Mr.C.Raja Kumar [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent, passed in I.D.No.421/1999, dated 28.09.2010, quash the same and consequently direct the respondents 1 and 2 to re-instate the petitioner with full backwages, attendant and all other benefits from 04.01.1995 to till date.

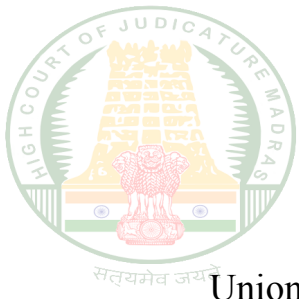
2. The case of the petitioners is that, the deceased 1st petitioner/workman was working as Assistant in the respondent/management from 22.01.1986 and prior to appointment, the deceased workman took part in an interview for the post of Storekeeper-cum-Accountant at Thindukal



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Talco Material Bank, under the respondent and he was selected at third rank and the first two persons were appointed at Thindukal and Erode and the petitioner was appointed at Talco Vaniyambadi, Enviro Control Systems Pvt. Ltd., vide Letter No.206/PSA/86 dated 22.01.1986. Thereafter, he was posted as Junior Assistant acting as Storekeeper cum Junior Accountant vide Letter No.5428/PSA/2/87 dated 02.09.1987, under one year probation. From 07.09.1987 to 31.12.1994, in various production centres are Andipatti, Sivagangai, Oddanchathiram, Madurai under the control of Regional Officer, Madurai. Then, he worked at Madras Office from 02.02.1994 to 06.01.1995. In the year 1987, the Government of Tamil Nadu introduced a scheme for free supply of footwear to children under the noon meal scheme, and working women in rural areas and Talco was nominated as model agency for monitoring the scheme. Hence, 'Talco' recruited 124 persons, exclusively for the scheme on temporary basis, wherein, the deceased workman was also absorbed. No orders were received from the Government, for continuance of the scheme for the year 1988-89, nor there were any funds released. Hence, 'Talco' decided to retrench the 124 employees, which included the deceased workman also. The 'Talco' Employees progressive



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Union filed a writ petition before this Court in W.P.No.10785 of 1989 and an order of interim injunction was granted in W.M.P.No.15408 of 1989, restraining TALCO from terminating the services of the said employees. In the said writ miscellaneous petition, this Court passed order for vacating the interim injunction dated 10.08.1989, against which, the Union filed an appeal in W.A.No.791 of 1989 and the Division Bench of this Court allowed the appeal and set aside the order vacating the order of interim injunction, thereby, the deceased workman is in continuous employment. Whiles, the deceased workman was on leave from 06.01.1995 to 21.05.1997 and leave letters were sent then and there and then leave was availed. However, the respondent/management did not sanction leave and hence had framed five charges against him. After conducting enquiry, he was terminated from service on 07.05.1997. Court on 31.03.2016. Challenging the same, he raised an industrial dispute u/s 2(A)(2) of the Industrial Disputes Act, 1947 (in short 'the I.D. Act') in I.D.No.421 of 1999 on the file of the 3rd respondent/Labour Court and the Labour Court, dismissed the I.D. Aggrieved by the same, the deceased workman has filed the above writ petition before this Court.

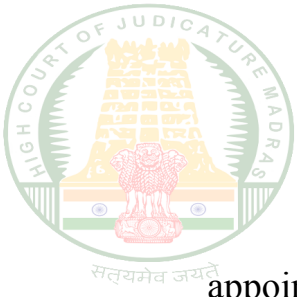


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3. Learned counsel for the petitioners submitted that, even assuming that the 1st petitioner/deceased workman had unauthorisedly absented himself from duty for a period of three months and had deliberately not appear before the Medical Board, ordering for termination is highly disproportionate and too harsh. If the deceased workman deliberately not attended the duty without any intimation, ordering for termination may be justified. However, in the present case, the deceased workman repeatedly sent leave letters to the management and the same was received by the management and due to his ill-health, he was unable to appear before the Medical Board, for which, the management passed an order of termination. Without considering the same, the Labour Court had dismissed the dispute raised by the deceased workman, which is *per se* unsustainable. Accordingly, he prays for appropriate orders.

4. Per contra, learned counsel appearing for the 2nd respondent submitted that, the deceased workman not attended the duty from 06.01.1995 to 21.05.1997, for which, he sent leave letters, for that, the



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appointing authority directed the deceased workman to appear before the Medical Board, however, the deceased workman refused to appear before the Medical Board, thereby, disciplinary proceedings was initiated against him, which was well appreciated by the Labour Court and refused to interfere with the order of termination passed by the management, which is *per se* sustainable and the same does not require any interference. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the petitioners, the learned counsel appearing for the first respondent and the learned counsel appearing for the second respondent and also perused the materials available on record.

6. Admittedly, the deceased workman worked in the management from the year 22.01.1986. For the alleged misconduct, he was issued with a charge memo and after conducting enquiry, he was terminated from service on 07.05.1997. However, the issue arises for consideration in this writ petition is whether for unauthorised absence, the punishment imposed by the management is proportionate or not ?



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7. Normally, this Court would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and further the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali Vs. High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.

8. It has been the consistent view of the Courts that, it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved



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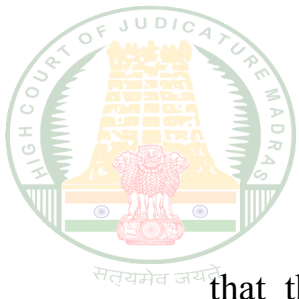
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then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

(Emphasis Supplied)

9. In the present case, the allegation made against the petitioner is not corruption or insubordination or any other major allegation, but the allegation levelled only relates to unauthorized absence. Even assuming



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that the allegations made against the deceased workman is a proved misconduct, dismissing the deceased workman from service is highly disproportionate, which is liable to be interfered with.

10. Though this Court would not normally interfere with the punishment imposed on the delinquent, unless it shocks the conscience of this Court, but this Court, already having held that the punishment is disproportionate and also the fact that the deceased workman attained the age of superannuation, is inclined to pass the following orders :-

(i) the 1st petitioner/deceased workman is entitle to continuity of service till the date of retirement, but, not entitle to any backwages ;

(ii) the management is directed to treat the 1st petitioner/deceased workman is continuously in service from the date of termination till the date of retirement and settle the entire terminal benefits to the petitioners 2 to 4, who are the legal heirs of the 1st petitioner/deceased workman, within a period of eight (8) weeks from the date of receipt of a copy of this order.



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M.DHANDAPANI, J.

sp

11. The Writ Petition is allowed with the aforesaid observations and directions. There shall be no order as to costs.

05.02.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The Presiding Officer,
II Additional Labour Court,
Chennai – 104.

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