

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2025
PRONOUNCED ON : 28.03.2025

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PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.Nos. 5729, 5731, 6173, 6175 & 6177 of 2020
and
W.M.P.Nos. 6689, 6691, 6692, 6693, 7248, 7249,
7251, 7252, 7253 of 2020, 1003, 3443 of 2023

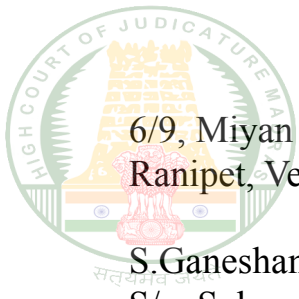
Flextronics Power India Pvt. Ltd
Now known as Flextronics Technology India Pvt. Ltd
Plot No.3/Phase 2, Industrial Park,
Sandevelue C Village,
Sreeperambadur Taluk – 602 106 ... Petitioner in all WPs

Vs.

L.Raji,
Son of Loganathan,
6/3, NSK First Street,
Nehru Nagar Check Post,
Velacherry – 600042. ...Respondent in W.P.No.5729 of 2020

B.Karthikeyan
S/o. Balasubramanian,
14, Station Road,
Annur -Thiruverkaadu,
Chennai – 600 077. ...Respondent in W.P.No.5731 of 2020

K.Sridhar,
S/o. GP Karunakaran,
8/107 – Salvanpalayam street,
Thottapalayam,
Vellore – 532 004. ...Respondent in W.P.No.6173 of 2020



6/9, Miyan Sahib Street,
Ranipet, Vellore – 632 401

...Respondent in W.P.No.6175 of 2020

S.Ganeshan
S/o. Subamatan,
Lakshmi Nagar, Porur,
Chennai – 632 401.

...Respondent in W.P.No.6177 of 2020

Prayer in WPs

To issue a writ, direction or order, in the nature of Writ of Certiorari, calling for the records of the Labour Court at Kanchipuram pertaining to the award dated 31.12.2019 made in I.D.No. 265 / 2018 (W.P.No.5729/2020), I.D.No.261/2018 (W.P.No.5731/2020), , I.D.No.264/2018 (W.P.No. 6173/2020), I.D.No. 262/2018 (W.P.No.6175/2020) and I.D.No.263/2018 (W.P.No.6177/2020) and quash the same.

Prayer in W.M.P.No. 6689 of 2020

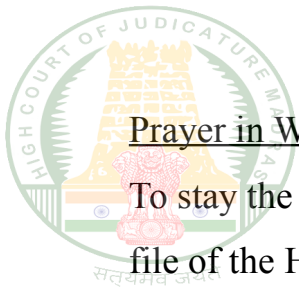
To dispense with the production of the original order dated 31.12.2019, made in I.D.No.265/2018 on the file of the Hon'ble Labour Court at Kanchipuram, pending the above W.P.

Prayer in W.M.P.No. 6691 of 2020

To stay the operation of the order dated 31.12.2019, made in I.D.No.265/2018 on the file of the Hon'ble Labour Court at Kanchipuram, pending the above W.P.

Prayer in W.M.P.No. 6692 of 2020

To dispense with the production of the original order dated 31.12.2019, made in I.D.No.261/2018 on the file of the Hon'ble Labour Court at Kanchipuram, pending the above W.P.



Prayer in W.M.P.No. 6693 of 2020

To stay the operation of the order dated 31.12.2019, made in I.D.No.261/2018 on the file of the Hon'ble labour Court at Kanchipuram, pending the above W.P.

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Prayer in W.M.P.No. 7248 of 2020

To dispense with the production of the original order dated 31.12.2019, made in I.D.No.264/2018 on the file of the Hon'ble Labour Court at Kanchipuram, pending the above W.P.

Prayer in W.M.P.No. 7249 of 2020

To stay the operation of the order dated 31.12.2019 made in I.D.No.264/2018 on the file of the Honourable Labour Court at Kanchipuram pending the above Writ Petition.

Prayer in W.M.P.No. 7251 of 2020

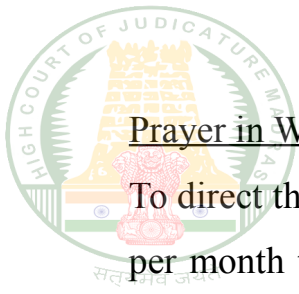
To stay the operation of the order dated 31.12.2019 made in I.D.No.262/2018 on the file of the Honourable Labour Court at Kanchipuram pending the above Writ Petition.

Prayer in W.M.P.No. 7252 of 2020

To dispense with the production of the original order dated 31.12.2019, made in I.D.No.263/2018 on the file of the Hon'ble Labour Court at Kanchipuram, pending the above W.P.

Prayer in W.M.P.No.7253 of 2020

To stay the operation of the order dated 31.12.2019, made in I.D.No.263/2018 on the file of the Hon'ble Labour Court at Kanchipuram, pending the above W.P.



Prayer in W.M.P.No.1003 of 2023

To direct the Respondent / Writ Petitioner to pay the last drawn salary of Rs.12,500/- per month to the Petitioner herein from the month of January, 2023 onwards every month pending disposal of the above Writ Petition and pass such other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.M.P.No.3443 of 2023

To direct the Respondent / Writ Petitioner to pay the last drawn salary of Rs.14,500/- per month to the Petitioner herein from the month of January, 2023 onwards every month pending disposal of the above Writ Petition and pass such other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Appearance of Parties:

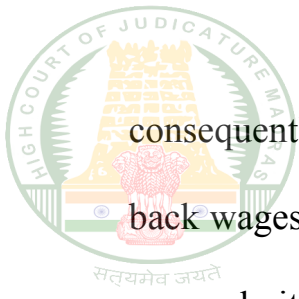
For Petitioner: M/s. Savitha Kesav and Jagadeesan, Advocates
In all WPs

For Respondents : Mr.S.T.Varadarajulu, Advocate
In all WPs

COMMON JUDGMENT

Heard.

2. All five writ petitions have been filed by the Management challenging a common award passed by the Labour Court, Kanchipuram, in I.D. Nos. 261 to 265 of 2018 dated 31.12.2019. By the said award, the Labour Court held that the dismissal orders passed against the five respondent workmen were unjustified and,



consequently, they are eligible to be reinstated with continuity of service and back wages. The first two writ petitions, namely W.P. Nos. 5729 and 5731 of 2020, were admitted on 09.03.2020, and interim stay orders were granted in W.M.P. Nos. 6691 and 6693 of 2020. Subsequently, W.P. Nos. 6173, 6175, and 6177 of 2020 were admitted on 10.03.2020, and interim stay orders were granted in W.M.P. Nos. 7249, 7251, and 7253 of 2020 for a period of four weeks.

3. Upon receipt of notice from this Court, each of the respondents in the respective writ petitions entered appearance and filed applications under Section 17B of the Industrial Disputes Act, seeking payment of last drawn wages. The applications were filed as follows: W.M.P. No. 12836 of 2020 in W.P. No. 5729 of 2020, W.M.P. No. 12837 of 2020 in W.P. No. 5731 of 2020, W.M.P. No. 12838 of 2020 in W.P. No. 6173 of 2020, W.M.P. No. 12841 of 2020 in W.P. No. 6175 of 2020, and W.M.P. No. 12844 of 2020 in W.P. No. 6177 of 2020.

4 In respect of W.M.P. No. 12837 of 2020 (B. Karthikeyan) and W.M.P. No. 12838 of 2020 (R. Sridhar), separate orders were passed directing the Petitioner Management to pay the last drawn wages under Section 17B of the Industrial Disputes Act from the date of filing of the writ petition, within a period of two weeks. Similarly, in W.M.P. Nos. 12836, 12841, and 12844 of 2020, pertaining to M/s. L. Raji, P. Jagadeesan, and S. Ganeshan respectively, a common order dated



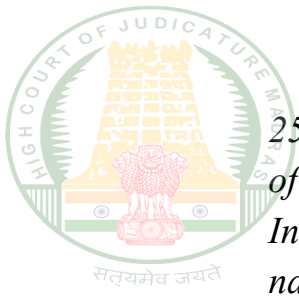
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“2. The learned counsel for the respondent management has submitted before this Court that petitioners/respondents employees were gainfully employed at Hero Honda Showroom at Adyar and M/s.Barga India Private Limited respectively. Therefore, they are not entitled for the back wages under Section 17 B of the Act.

3. Though averments are made in the counter affidavit that the petitioners are gainfully employed, but no records or documents placed have been before this Court to prove that the petitioners/respondents employees are gainfully employed in the Hero Honda showroom at Adyar and M/s.Barga India Private Limited respectively. In the absence of such material, there shall be a interim direction to the petitioner management to pay the arrears of last drawn salary, from the date of filing the writ petition, till this month, within a period of six weeks from the date of receipt of a copy of this order. The petitioner management shall also pay the last drawn salary to the petitioners, in future on or before 10th day of every succeeding English calendar months.”

5. The Petitioner Management filed W.M.P. No. 31534 of 2022 in W.P. No. 6177 of 2020, seeking modification of the order dated 25.08.2022 passed in W.M.P. No. 12844 of 2020 (S. Ganeshan), praying for the dismissal of the worker’s petition and for rendering the stay order obsolete. A similar petition was filed in W.M.P. No. 31530 of 2022 in W.P. No. 6175 of 2020 (P. Jagadeesan). Both petitions were taken up together and were disposed of by a common order dated 01.12.2022. The relevant portion of the order reads as follows:

“The learned for both the parties have agreed that due to inadvertence, in the earlier order passed by this Court dated



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25.08.2022, the petitioners in WMP.Nos.12836, 12841 & 12844 of 2020 are all entitled to backwages under Section 17-B of the Industrial Disputes Act, 1947, but the fact remains that L.Raji, namely, the petitioner in WMP.No.12836 of 2020 alone is entitled to backwages under Section 17- B of the ID Act and to that extent, seeks modification of the said order.

2. In the light of the above, this Court clarifies that L.Raji, namely the petitioner in WMP.No.12836 of 2020 alone is entitled for backwages under Section 17-B of the I.D. Act. Insofar as other petitioners in WMP.Nos.12841 & 12844 of 2020 are concerned, since they are gainfully employed at M/s.Barga India Private Limited, they are not entitled for 17-B wages.

3. The order dated 25.08.2022 in WMP.Nos.12836, 12841 & 12844 of 2020 in WP.Nos.5729, 6175 & 6177 of 2020 is clarified accordingly and the miscellaneous petitions in WMP.Nos.31530 & 31534 of 2022 in W.P.Nos.6175 & 6177 of 2020 stand closed.”

6.The respondents in all the writ petitions raised an industrial dispute under Section 2A(2) of the Industrial Disputes Act before the Assistant Commissioner of Labour through their representation dated 16.06.2014 (Ex.R18 & Ex.R19). In response, the Petitioner Management filed their counter statement dated 30.06.2014 (Ex.R20 & Ex.R21). As the Conciliation Officer was unable to facilitate a settlement between the parties, he submitted a failure report dated 18.08.2014 (Ex.R24 & Ex.R25). Subsequently, each of the respondents filed their respective claim statements before the Labour Court on 10.09.2014. The Labour Court, Kanchipuram, took up the five disputes as I.D. Nos. 261 to 265 of 2018 and issued notice to the Management. In

compliance, the Management filed their counter statement on 13.01.2015, and the

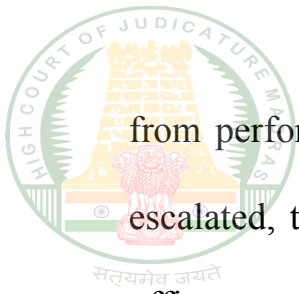


respective respondents filed their rejoinders dated 31.01.2015.

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7. Before the Labour Court, on behalf of the workmen, B. Karthikeyan (Petitioner in I.D. No. 262 of 2018) was examined as PW1. On their side, nine documents were filed and marked as Ex.P1 to Ex.P9. On the side of the Management, K. Ramesh was examined as MW1. The Labour Court, after clubbing all five disputes, passed a common award dated 31.12.2019, granting relief to the workmen. The Labour Court held that the dismissal of all five workmen was unjustified and accordingly they were entitled for reinstatement with continuity of service and full back wages and granted the same. Aggrieved by this award in respect of the five workmen, the Management has filed the present writ petitions.

8. The Management contended that during the year 2014, a portion of their manufacturing unit was earmarked and dedicated in favor of one of their customers, HUAWEI, and a board was put up to that effect. Taking advantage of this development, rumors began to circulate that a Chinese company had taken over the unit, creating panic among the workmen and inciting them to protest. On 30.01.2014, at the end of the second shift (2:00 p.m. to 10:00 p.m.), the five respondents herein, along with one Sakthivel, propagated these rumors. Despite the shift engineer clarifying that there was no change in the management and urging the workmen to call off the protest, they refused to comply. The respondents, along with other troublemakers, obstructed the third shift employees (2:00 a.m. to 6:00 a.m.)



from performing their duties and instigated them to go on strike. As the situation escalated, the respondents and their group prevented the officers from leaving the office premises, further aggravating the tension.

9. Since all these actions amounted to misconduct under the Model Standing Orders, the Management placed the workers under suspension on 31.01.2014. Subsequently, a charge memo dated 07.02.2014 was issued to them. An enquiry officer, Mr. G. Ravi, was appointed to conduct an enquiry. He conducted two separate sets of enquiries—one pertaining to M/s. Raji and Karthikeyan, and the other concerning the remaining three respondents along with P. Sakthivel. Upon completion of the enquiry, the enquiry officer, by his report dated 05.04.2014 (Ex.R11), found the workers guilty of the alleged misconduct. Based on the findings of the enquiry report, a second show cause notice was issued to the workers. After considering their replies, the workers were dismissed from service by an order dated 31.05.2014 (Ex.R15 and Ex.R16).

10. The Management contended that since the workers were dismissed for grave misconduct following a proper and fair enquiry, the Labour Court ought not to have interfered with the penalties imposed on them, particularly when it had itself held that the enquiry was fair and proper. In support of this contention, reliance was placed on the judgment of the Supreme Court in *B.C. Chaturvedi v. Union of India*,

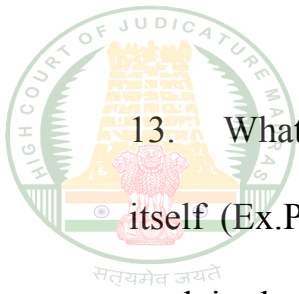
reported in 1995 (6) SCC 749, to contend that in the exercise of judicial review, the



court should not substitute its own conclusion on the penalty and impose an alternate penalty. The said decision arose out of a service matter and may not be strictly applicable to the adjudication by the Labour Court under Section 11A of the Industrial Disputes Act.

11. While considering the scope of Section 11A of the Industrial Disputes Act, the Supreme Court, in its judgment in *Workmen of Firestone Tyre & Rubber Company of India (Private) Limited v. The Management and Ors.*, reported in 1973 (1) SCC 813, held that after the introduction of Section 11A, Labour Courts possess the powers akin to that of an appellate court. This judicial empowerment allows Labour Courts to reappreciate the evidence on record and arrive at a different conclusion from that of the disciplinary authority. Furthermore, even if the charges against a workman are found to be proved, the Labour Court has the discretion to interfere with the punishment if it deems the penalty to be disproportionate to the charges and may suitably modify the same.

12. The Management also placed reliance on a judgment of the Supreme Court in *Management of Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh*, reported in 2004 (8) SCC 200 (erroneously cited the decision as 2005 (4) SCC 400 in paragraph 22(m) of the affidavit). It was contended that in cases of misconduct involving *gherao*, no sympathy can be extended.



13. What the Management failed to disclose in the affidavit is that, on 31.01.2014 itself (Ex.P10), they declared a lockout and shut down the factory. They did not explain that it was this action that provoked the workers to protest. Furthermore, the Management did not follow the provisions of the Industrial Disputes Act prior to declaring the lockout.

14. The Labour Court held that the enquiry conducted against the respondents was fair and proper and did not warrant any interference. However, regarding the three charges framed against the respondents, the Labour Court found that Charge No. 2 was not proved, while Charges 1 and 3 were established. The first charge pertained to spreading false propaganda about the alleged takeover of the company. The second charge involved preventing other workers from reporting to work. With respect to this charge, the Labour Court made the following observation:

On 30.1.2014 these workmen prevented third shift workers from attending their work after lunch time between 2.00 AM to 3.00 AM thereby instigated strike. To substantiate this charge the management had examined mw2 Mr.Velmurugan who is the senior engineer of production department. In his evidence in domestic enquiry mw2 has testified that third shift employees joined the agitating second shift employees during the break. The domestic enquiry officer relying on this piece of evidence held this charge to be proved against workmen. It is evident from evidence of mw2 that the third shift employees had joined the second shift employees during the break. It doesn't prove that these workmen had prevented the third shift employees from attending the work after their break thereby instigating strike. There is absolutely no evidence in domestic enquiry to show that these workmen prevented third shift employees from attending work and instigated strike. In the absence of evidence or in other words no evidence, the finding

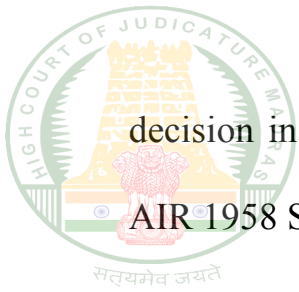


of the enquiry officer in respect of this charge has to be held as perverse and accordingly I record a finding that this charge against these workmen is “NOT PROVED”.

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15. With regard to the third charge, namely, *gheraoing* the officer, the Labour Court held that the charge was proved. However, the Labour Court, after considering the entire situation, observed that the provocation arose due to the installation of a new name board, which triggered not only the respondents but also the second shift employees to raise slogans in protest. The Labour Court noted that the Management selectively singled out these five workers for disciplinary action, rendering the action discriminatory.

16. The shutdown notice (Ex.W10) dated 31.01.2014 was clearly in violation of Rule 59 of the Tamil Nadu Industrial Disputes Rules, 1958, which prescribes the procedure to be followed by the Management while declaring a lockout. The Labour Court observed that the provocation which led the workers to prevent officials from leaving the premises arose only after the issuance of the shutdown notice. Therefore, it concluded that the charges framed against the respondents lacked good faith and amounted to a colorable exercise of the employer's right. Furthermore, the Labour Court noted that while similar acts of misconduct were committed by other workers, the Management selectively imposed the harsh punishment of dismissal only on the five respondents, that warranted interference.



decision in *Indian Iron & Steel Co. Ltd. & Another v. Their Workmen*, reported in

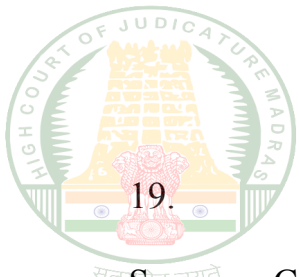
AIR 1958 SC 130, wherein it was observed as follows:

“It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse.”

However, much has changed since this decision. In fact, Section 11A was introduced specifically to address the limitations of the judgment and to grant broader powers to the Labour Courts, as reflected in the objects and reasons behind the enactment of that section.

18. The Labour Court also referred to the Supreme Court judgment in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.*, reported in 1979 (2) SCC 80, which outlines the discretion of the Labour Court in granting back wages. The relevant principles are stated as follows:

*“In the very nature of things there cannot to a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on of the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice? according to law and not humor. It is not to be arbitrary, vague and fanciful but legal and regular (See *Susannah Sharm v. Workfield*(4).”*



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Before this Court, the counsel for the Management relied on the

Supreme Court judgment in *H.M.T. Ltd. Workmen of Indian Telephone Industries v.*

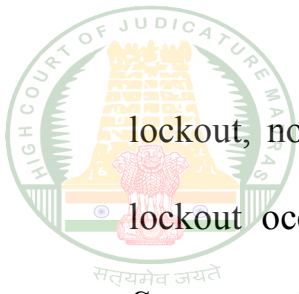
H.M.T. Head Office Employees' Association, reported in 1996 (11) SCC 319,

specifically referring to the passages which are as follows:

“As regards lock out is concerned, even if it is assumed that here was non-compliance with the provisions of Section 22 of the Act at the time when the lock out was declared, the conclusion of the Tribunal that the lock out, in the instant case, was legal is not incorrect. From the facts which have been stated hereinabove, and as found by the Tribunal, it is clear that the provisions of Section 24(3) of the Act are attracted to the present case. The workmen had gone on illegal strike and even when the strike was officially called off, they continued to disrupt the working of the factories while being within the factory premises.”

“....we conclude that the workmen would not be entitled to receive any wages during the period of illegal strike and lock out; the payment of Rs. 25/- as a result of settlement dated 9.6.1981 is not adjustable and the direction of the Tribunal not to allow demand of city compensatory allowance to the workmen of I.T.I. was not correct. The Award of the Tribunal directing payment of 35% of the wages during the period of illegal strike and lock out and the decision with regard to non- payment of city compensatory allowance to I.T.I. is accordingly, modified to that extent. The appeals are disposed of in the aforesaid terms. Parties to bear their own costs.”

20. However, the counsel for the Management failed to recognize that the decision he cited stemmed from a case involving a demand for wages during the



lockout, noting that in such cases, workmen may not be entitled to wages if the lockout occurred after a strike by the workers. In contrast, in its judgment in *Statesman Ltd. v. Their Workmen*, reported in 1976 (2) SCC 223, the Supreme Court held that even if the initial lockout was justified, if its prolongation was due to extraneous reasons, the theory of apportionment of blame should be applied. In such cases, the workmen may be entitled to wages for the lockout period, even if the initial declaration of the lockout was legal.

21. However, such a question did not arise in the present case. The Labour Court merely held that the declaration of the lockout without following the prescribed procedure was the reason the workers resorted to protest, and therefore, it was the Management's action that provoked the workers. In this case, since the workmen were dismissed and their dismissal was found to be illegal, the Court was only considering the issue of granting back wages for their illegal dismissal. It should not be construed that the Court granted back wages solely because the lockout was illegal.

22. The learned counsel for the Management also referred to another Supreme Court judgment in *Hombe Gowda Education Trust v. State of Karnataka*, reported in 2006 (1) SCC 430, and relied on the passages found which are as follows:

*“In V. Ramana v. A.P. SRTC and Others [(2005) 7 SCC 338],
relying upon a large number of decisions, this Court opined :*



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"The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

In M.P. Electricity Board v. Jagdish Chandra Sharma [(2005) 3 SCC 401], this Court held :

"In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organisation. Discipline at the workplace in an organisation like the employer herein, is the sine qua non for the efficient working of the organisation. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, "discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large"



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an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organisation as well as that of its employees.

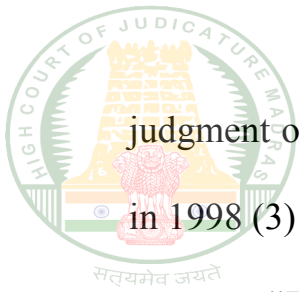
When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion."

This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

23. Although certain decisions under labour law were cited in that case, the

matter pertained to an educational institution. In that context, the decision cited by

the counsel for the workmen is more relevant. The learned counsel referred to the



judgment of the Supreme Court in *Color-Chem Limited v. A.L. Alaspurkar*, reported

in 1998 (3) SCC 192, and relied upon the following passage which is as follows:

"The term 'victimisation' is not defined by the present Act. Sub-section (18) of Section 3 of the Act which is the Definition Section lays down that, 'words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in any other case, shall have the meanings assigned to them by the Central Act'. Bombay Act is the Bombay Industrial Relations Act, 1946 and the Central Act is the Industrial Disputes Act, 1947 as laid down by Definition Section 3(1) and 3(2) of the Act. The term 'victimisation' is defined neither by the Central Act nor by the Bombay Act. Therefore, the term 'victimisation' has to be given general dictionary meaning. In Concise Oxford Dictionary, 7th Edn., the term 'victimisation' is defined at Page 1197 as follows :

"make a victim; cheat; make suffer by dismissal or other exceptional treatment"

Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term 'victimisation' is of comprehensive import. It may be victimisation in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reasons and for extraneous reasons. As for example a militant trade union leader who is a thorn in the side of the management may be discharged or dismissed for that very reason camouflaged by another ostensibly different reason. Such instances among to unfair labour practices n account of factual victimisation. Once that happens Clause (a) of Item 1 of Schedule IV of the Act would get attracted. even apart from the very same act being covered by unfair labour practices envisaged by Clauses (b), (c), (d) and (e) of the very same Item 1 of Schedule IV. But is cannot be said that Clause (a) of Item 1 which deals with victimisation covers only factual victimisation. There can be in addition legal victimisation and it is this type of victimisation which is contemplated by the



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decision of this Court in Hind Construction (supra). It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any. Such an unfair labour practice is covered by the present Act by enactment of Clause (a) of Item 1 of Schedule IV of the Act as it would be an act of victimisation in law as clearly ruled by this Court in the aforesaid decision. On the same lines is a latter decision of this Court in the case of Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors. [(1976) 2 SCR 280] wherein a Bench of three learned Judges speaking through Goswami. J. laid down the parameters of the term 'victimisation' as understood in labour laws and as contemplated by industrial jurisprudence. It has been observed that ordinarily a person is victimised if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own. If actual fault or guilt meriting punishment is established. Such action will be rid of the taint of victimisation. The aforesaid observations obviously refer to factual victimisation. But then follows further elucidation of the term 'victimisation' to the following effect :

"Victimisation may partake of various types, as for example, pressurising all employee to leave the union or union activities, treating an employee in a discriminatory manner or inflicting a grossly monstrous punishment which no national person would impose upon an employee and the like...."

The aforesaid observations in this decision fall in line with the observations in the earlier decision of this Court in Hind Construction (supra). Consequently it must be held that when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissed or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which no



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reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation. On the facts of the present case there is a clear finding reached by the Labour Court and as confirmed by the Industrial Court that the charges levelled against the respondent-delinquents which were held proved even though reflecting major misconducts, were not such in the light of their past service record as would merit imposition of punishment of dismissal. This factual finding would obviously attract the conclusion that by imposing such punishment the appellant-management had victimised the respondent-delinquent. Imposition of such shockingly disproportionate punishment by itself, therefore, has to be treated as legal victimisation apart from not being factual victimisation as on the latter aspect the Labour Court has held against the respondent-workmen and that finding has also remained well sustained on record. Thus it must be held that the management even though not guilty of factual victimisation was guilty of legal victimisation in the light of the proved facts which squarely attracted the ratio of the decisions of this Court in *Hind Construction (supra)* and *Bharat Iron, Works (supra)*. It is easy to visualise that no reasonable management could have punished a delinquent workman who in the late hours of the night shift by about 03.30 a.m. had gone to sleep keeping the machine in a working condition especially in the absence of any gross misconduct reflected by the past service record, with the extreme penalty of dismissal. It is also interesting to note that this was a peculiar case in which the Plant In-charge found during his surprise visit at 03.30 a.m. in the early hours of the dawn entire work force of 10 mazdoors and 2 operators like the respondents and the supervisor all asleep. It is pertinent to note that so far as 10 mazdoors were concerned they were let off for this very misconduct by mere warning while the respondents were dismissed from service. It is of course, true that the respondents were assigned more responsible duty as compared to mazdoors, but in the background of surrounding circumstances and especially in the light of their past service record there is no escape from the conclusion that the punishment of dismissal imposed on them for such misconduct was grossly and shockingly

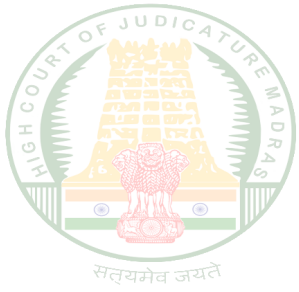


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disproportionate, as rightly held by the Labour Court and as confirmed by the revisional court and the High Court. By imposing such grossly disproportionate punishment on the respondents the appellant-management had tried to kill the fly with a sledge hammer. Consequently it must be held that the appellant was guilty of unfair labour practice. Such an act was squarely covered by Clause (a) of Item 1 of Schedule IV of the Act being legal victimisation, if not factual victimisation. The ultimate finding of the Labour Court about maintainability of the complaint can be supported on this ground. The second point is answered in the affirmative against the appellant and in favour of the respondent-workmen.”

24. Relying on the above passage, the learned counsel argued that the punishment imposed on the workmen clearly reflected an act of victimization. He contended that the Labour Court rightly found their dismissal unjustified, especially since, out of numerous workmen allegedly involved in similar misconduct, the Management had singled out only these five respondents for special treatment. He submitted that the impugned award does not warrant any interference.

25. Under the circumstances, this Court does not find any illegality or infirmity in the impugned award passed by the Labour Court. Therefore, it does not warrant any interference under the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution. Accordingly, all five writ petitions are dismissed. The remaining Miscellaneous Petitions are also dismissed. However, there shall be no order as to costs.



28.03.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

The Presiding Officer,
Labour Court
Kanchipuram

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.Nos. 5729, 5731, 6173, 6175 & 6177 of 2020
and W.M.P.Nos. 6689, 6691, 6692,
6693, 7248, 7249, 7251, 7252,
7253 of 2020, 1003, 3443 of
2023

28.03.2025