

(2024) 06 KL CK 0154

In the High Court Of Kerala

Case No : Writ Petition (C) No.28507 Of 2020

Adecco India Private Limited

APPELLANT

Vs

Labour Court, Ernakulam

RESPONDENT

Date of Decision : 12-06-2024

Acts Referred:

Industrial Disputes Act 1947 — Section 2A(2)

Citation : (2024) 06 KL CK 0154

Hon'ble Judges : Dinesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K.Preetha, B.Ashok Shenoy, Preethi Ramakrishnan, P.S.Gireesh, T.C.Krishna, C.Anil Kumar, Riyal Devassy, Medayiltanya Marie Victo, Pratap Abraham Varghese, Asha K.Shenoy, Justin Jacob

Judgement

Dinesh Kumar Singh, J

1. The petitioner, an employer, has filed the present writ petition impugning the Award passed in Ext.P7 by the Labour Court, Ernakulam, on 25.02.2020 in Industrial Dispute No.21 of 2017. The Labour Court, vide the impugned Award, has directed the petitioner-management to reinstate the second respondent, the workman, with full back wages, continuity of service, and all other attendant benefits.

2. The petitioner is a licensed contractor having a license issued under the Contract Labour (Regulation and Abolition) Act 1970. The petitioner had entered into a contract with M/s Cipla Limited, the 3rd respondent, for the supply of depot workers for carrying various items of work such as packing, loading etc. The petitioner had deployed 38 workmen, including the 2nd respondent, in the Cochin Depot of the 3rd respondent Company. The 2nd respondent/workman, while employed on the premises of the 3rd respondent, was involved in serious misconduct of sexual harassment.

2.1 The Internal Complaints Committee (for short, 'the ICC') enquired about the

complaint from the victim under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (for short, 'the Act'). The ICC, after collecting the evidence and considering the stand of the 2nd respondent, who was given the full opportunity to defend himself, found the 2nd respondent guilty of the misconduct of sexually harassing the complainant at the workplace. Section 13(4) of the Act mandates the employer to act upon the recommendation of the ICC within sixty days from the date of receipt of the recommendation. A report of the ICC was provided to the 2nd respondent along with a show cause notice requiring his explanation on the report of the ICC. The report of the ICC has been placed on record as Ext.P1.

2.2 The explanation furnished by the 2nd respondent/workman was not found to be satisfactory and considering the grave misconduct proved against the 2nd respondent by the ICC, he was dismissed from service with effect from 08.04.2016. Against the order of punishment of dismissal, the 2nd respondent raised an industrial dispute before the District Labour Officer, Ernakulam. The petitioner filed a detailed objection before the District Labour Officer, contending that action had been initiated against the 2nd respondent under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and that industrial dispute would not be maintainable in the facts of the case.

2.3 Thereafter, the 2nd respondent raised an industrial dispute under Section 2A(2) of the Industrial Disputes Act 1947 before the Labour Court. The following dispute was referred to the Labour Court for decision:

"1. Whether the termination of service of Sri Sarasan J S by the management is justifiable or not?

2. If not, what are the reliefs he is entitled to?"

The petitioner produced the files pertaining to the enquiry conducted by the ICC, which was constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The Labour Court was of the opinion that the management failed to produce the enquiry report of the domestic enquiry. What was produced was the ICC report consisting of three members, however, none of them came to the witness box to prove the report of the ICC.

2.4 Relying on the judgment of this Court in *Sibu L S v. Air India Ltd*, New Delhi 2016 (2) KHC 569 the Labour Court held that the ICC was required to conduct an enquiry in the same manner to prove the misconduct as in disciplinary proceedings referable to Service Rules. No such enquiry was conducted and based on the report of the ICC, the petitioner was dismissed from service. No disciplinary proceedings were instituted against the 2nd respondent and dismissing the 2nd respondent from service was against the law. Therefore, the 2nd respondent was entitled to reinstatement with full back wages, continuity of service and all other attendant benefits.

3. The learned Counsel for the petitioner has submitted that the 2nd respondent/workman was given full opportunity before the ICC who participated in the enquiry conducted by the ICC. The ICC report was provided to the workman with a show-cause notice. The workman filed his reply to the show cause notice, and after considering the reply, a decision was taken to inflict the punishment of dismissal from service as the misconduct was of grave and serious nature. The workman has never challenged the ICC enquiry report. The Management was obliged to take action within sixty days of the date of the report of the ICC. All due procedure was followed, and therefore, the finding of the learned Labour Court that there was a violation of the principles of natural justice is not correct, and the impugned Award is against the law and liable to be set aside.

4. On the other hand, the learned Counsel for the workman has submitted the ICC did not enquiry into the matter under the relevant Service Rules and therefore, the said enquiry committee report could be a piece of evidence but that cannot be the sole basis, for inflicting the punishment on the workman. It is further submitted that the petitioner did not produce any evidence before the Labour Court to support the charge of misconduct against him. As the enquiry was not conducted under the relevant Service Rules for taking disciplinary action, the dismissal of the workman from the service only on the grounds of the report of the ICC was totally unjust and improper, and the same has been held so by the Labour Court. Therefore, this Court may not interfere with the said finding of the Labour Court.

5. I have considered the submissions advanced on behalf of both parties and have gone through the report of the ICC, which has been placed on record as Ext.P1.

5.1 The respondent/workman was given an opportunity to file his objection to the show cause notice. He was also provided with the report of the ICC. The respondent/workman was given the full opportunity to defend himself by the ICC. This report of the ICC was produced before the Labour Court. The workman never disputed the report of the ICC. Therefore, it was not required to be proved as held by the Labour Court. When the report was not in dispute, there was no requirement to prove the report as the admitted facts are not required to be proved. If the Labour Court was of the opinion that the domestic enquiry was required to be instituted, the Labour Court could have given the opportunity to the employer to conduct the domestic enquiry or should have directed the employer and employee to produce the evidence regarding the misconduct before the Labour Court itself. The workman himself did not produce any evidence in his support.

5.2 When the ICC report was not in dispute, the finding of the Labour Court that the report was not proved is wholly incorrect. In view thereof, this Court finds that the Labour Court has misled itself in allowing the claim of the respondent/workman and granting the relief for reinstatement with full back wages and continuity of service. When the misconduct of the workman is grave and serious

regarding the sexual harassment of a female employee and that allegation was found proved in the ICC report in which the workman participated and was given a copy of the enquiry report along with the show cause notice, this Court is of the view that there was no violation of the principles of natural justice.

5.3 So far as the question of domestic enquiry is concerned, the Labour Court ought to have given the opportunity to the employer and employee to lead their evidence in support of and against the charge of misconduct. Therefore, the impugned Award is set aside. The same is remitted back to the Labour Court to decide afresh after giving the opportunity to the petitioner/employer and the workman to lead their respective evidence in support of and against the charge of misconduct of sexual harassment at the workplace by the workman. On remand, the Labour Court shall conclude the proceedings expeditiously, preferably within a period of four months, and pass fresh orders in accordance with the law.

With the aforesaid observations and directions, the writ petition stands finally disposed of.