

(2002) 12 MAD CK 0183
In the Madras High Court
Case No : Writ Petition No. 15233 of 1995

Bavani V.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2003) 2 LLJ 189

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for Row and Reddy, for the Appellant; Sanjay Mohan, for Ramasubramanian Associates, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—The petitioner was working as an assistant in the office of the second respondent. According to her she had put in more than 16 years of unblemished service. She was issued with the chargesheet on December 1, 1990 and was also suspended on that date. The main charge against the petitioner is that on November 30, 1990 at about 10.00 A.M., Sri Ramasamy, her superior is stated to have asked her about some of the pending work and the petitioner was alleged to have used abusive language and also others by using the following words which are according to the respondents abusive and unparliamentary words amounting to serious misconduct:

"Vernacular matter omitted."

2. After the explanation submitted by the petitioner and due enquiry, the enquiry officer found her guilty and on April 1, 1991, a second show-cause notice was issued to which the petitioner replied on April 8, 1991. She was dismissed from service on April 16, 1991. Being aggrieved by the said order, the petitioner raised a dispute before the Labour Court, Pondicherry and the Labour Court after considering the pleadings and evidence by both the sides, held that the enquiry had been properly conducted and there was evidence to show that the petitioner had abused her superior and the staff of the management by using

unparliamentary and abusive words and hence the charge against her was clearly established. On the quantum of punishment also, the Labour Court held that the management had taken into consideration the past records and therefore it cannot be said that the punishment was severe. With the result, the industrial dispute was rejected and hence the above writ petition.

3. Sri N.G.R. Prasad, learned counsel for the petitioner contends that the entire sequence of facts clearly establish that the management was pursuing unfair attitude against the petitioner to penalize her for some reason or other. The petitioner was a sincere worker as admitted by the management itself in their evidence and on that particular date of incident relating to the charge, there was evidence of the petitioner having been subjected to extreme pressure of work. Apart from the fact that she denied using any abusive expression, learned counsel contends that even assuming that the charge had been made out, the punishment of dismissal from service was not called for having regard to the series of judgments dealing with similar conduct by the workers. It is further submitted that the reference to the alleged past record and the conduct of the petitioner, a perusal of the same would show that there was absolutely no warrant to support the dismissal of the petitioner from service. Moreover the Labour Court did not independently consider the past conduct of the petitioner and therefore there was no proper consideration of the requirements u/s 11-A of the Industrial Disputes Act. On the charges during the enquiry, M.W.1 Ramasamy had admitted in the cross-examination that the petitioner was normally discharging her duties and whatever work which was entrusted by him was carried out by her and that the Chief Accountant was the superior of the petitioner. He has also admitted that previous to the incident, there was no such complaint against the petitioner. As regards the past conduct, the five incidents of the past conduct were minor and trivial incidents rising out of leave or late-coming and in most of the incidents, her explanations had been accepted and she has not been awarded any punishment.

4. In *Rama Kant Misra Vs. The State of Uttar Pradesh and Others*, , the Supreme Court held that while dealing with the charge of using abusive language, the management has to consider whether the language contains any threatening posture, the abusive language may show lack of culture but the mere use of such language cannot permit awarding extreme penalty of dismissal of a person who had put in more than 14 years of service and without any complaint.

5. In *Virudhachalam Co-op. Urban Bank Ltd. Vs. Labour Court and Another*, , D. RAJU, J as he then was held that mere use of indecorous language per se cannot be the basis for the dismissal. Learned Judge held that the charge has to be viewed in the light of surrounding circumstances, also keeping in mind the action of the management which had driven the worker to resort to such language. Though the Courts do not encourage use of indecorous language exhibiting thereby indiscipline, yet the indiscreet use of language per se cannot be the basis of an order of dismissal.

6. Per contra Sri Sanjay Mohan, appearing for the second respondents, contends that what is relevant to be considered is the overall attitude of the employee which has to be viewed while considering the charges of using abusive and unparliamentary words against the superior. If subordinate is allowed to use abusive words against the superior, resulting in demeaning the position of the superior by using expressions which are bound to put the superior official to shame and ridicule, that cannot be ignored and treated as a mere momentary expression of anger which may be excusable or viewed with lenience. A perusal of the expressions used by the delinquent discloses that it is not a normal outburst but one which exposes utmost disrespect to her superior. Such conduct coupled with consideration of a past conduct has rightly been viewed against the employee by the Labour Court. Therefore, no interference was called for. He would further contend that to allow such an individual who had shown scant respect for her superiors to join duty would result in total indiscipline and the management feels that the co-existence with the employee would be an impossible situation. In the event of this Court coming to the conclusion that the punishment was disproportionate then the management would rather be inclined to agree to compensate the petitioner for termination of service. This was permissible and the learned counsel referred to some of the rulings of the Court in the said context. He would further submit that in quantifying the compensation, due regard may be had to the fact that the petitioner was gainfully employed elsewhere in some other company.

7. Reacting to the suggestion of the learned counsel for the second respondent that the employer was prepared to pay compensation, learned counsel for the petitioner submits that she is prepared to accept the offer, provided the quantum is just and proper. The petitioner was not gainfully employed at present and in her reply affidavit, she has stated that she was employed in Rider Electronics Ltd., only for a short period from February 1, 1998 to August 8, 1998. She was not employed as of now. It is further stated by her that as on date, she would have been receiving at least Rs. 10,000 (Rupees ten thousand only) per month and she had 16 more years of service (during the year 1998).

8. I have considered the submissions of both the sides in the context of the award of the Labour Court, The fact that the delinquent had uttered the words attributed to her is not much in dispute and I find no reason to disbelieve the evidence adduced by the management nor the findings of fact arrived at by the enquiry officer and later by the Labour Court on an analysis of the evidence. But whether the usage of such expression should result in dismissal from service is the issue to be considered. Undoubtedly, the expressions used by the delinquent though may reflect the uncultured background from which she may hail and may not by itself result in being viewed seriously, yet insubordination is writ large by the expressions used by her, accompanied by a threat that she will beat everyone with chapals. Certainly, a person who utters such threat cannot be continued in the employment of the company. But at the same time, the question as to whether she should be visited with the extreme penalty of dismissal as a

result of this single incident has to be considered in the background of her antecedents. The witnesses for the management themselves had stated that she is generally a good worker and that there has been no similar incident in the past. Her work was also found to be satisfactory. Therefore having regard to the rulings as aforesaid, I am inclined to feel that the order of dismissal is severe and disproportionate.

9. Further, it is also seen that the past conduct enlisted against the petitioner also discloses that they do not relate to any serious misconduct. They relate to minor delinquencies like late-coming and remaining on leave when no leave has been sanctioned, over staying of leave etc. Memos issued in the said context have also been considered by the managements and out of five incidents, no serious punishments had been imposed except for warnings for late-coming in the year 1981, 1982, 1983 and 1988. It is also seen that the Labour Court had not separately taken into account the past conduct of the delinquent in detail except for stating that the management has rightly taken into account the past conduct. It is needless to point out that the Labour Court is expected to consider the same independently in order to assess as to whether the punishment was appropriate. This is a serious defect in the order of the Labour Court.

10. Therefore on an overall consideration, I am inclined to feel that the penalty of dismissal was not warranted. At the same time, I am also inclined to accept the contention of the learned counsel for the management that delinquent is sure to cause embarrassment to her superiors to retain her in service and also may result in the other workers resorting to such misconduct. Hence the request of the management to award compensation instead of ordering reinstatement is justified. It is not disputed by either side that it is open to the Court to grant compensation in cases if the Court comes to the conclusion that grant of relief of reinstatement is likely to result in industrial hostilities. In the following judgment, the Supreme Court as well as our Court have accepted the said principle though they have pointed out that such discretion should be exercise only in exceptional circumstances:

- (1) Tulsidas Paul Vs. The Second Labour Court, W.B. and Others, .
- (2) O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, .
- (3) Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, .
- (4) Engine Valves Ltd. Vs. Labour Court, Madras and another, .
- (5) Eswaran and Sons Engineers (Private) Ltd. v. Third Additional Labour Court, Madras, and Anr. 1997 (4) LLN 307.
- (6) Tractors and Farm Equipment Ltd., Sembiam, Madras v. I. Charles and Anr. 1997 (4) LLN 312.

11. Considering the aforesaid rulings as well as the peculiar facts and circumstances relating to this case as stated above, I am inclined to feel that this

would be a proper case in which a direction to reinstate the petitioner has to be avoided and instead it would be sufficient to award compensation.

12. In the matter of quantifying the compensation, both sides have been making extreme claims. According to the petitioner, she would have been drawing a salary of Rs. 10,000 (Rupees ten thousand only) as on date. But on a calculation of the actual salary due, learned counsel for the petitioner states that the salary as on date would be Rs. 6,400 (Rupees Six thousand and four hundred only). However according to the management she would be entitled to Rs 4,000 (Rupees four thousand only) per month. While the petitioner would quantify the compensation at Rs. 7 lakhs, according to the learned counsel for the respondent, petitioner will not be entitled to more than Rs. 2,20,000 (Rupees Two lakhs and twenty thousand only).

13. I have considered the rival contentions in the context of fixing the compensation. It is seen that as from this date, the petitioner has 12 more years of service. Proper regard has to be given to uncertainties of life, lump sum amount being paid and the fact that she has not been rendering any work to the respondent ever since the order of dismissal. These facts have to be considered in fixing the quantum. Moreover, on the nature of delinquency also I have already held that the conduct of the petitioner and the words uttered by her certainly disentitle the petitioner to be taken back for employment. Therefore, the amount due cannot be calculated merely on the basis of the quantum of salary which she would be receiving as on date. Making deductions for the aforesaid reasons, it would be just and proper to fix the monthly salary at Rs. 3,000 per month and on that basis, the amount due for 12 years have to be calculated. I am inclined to feel that the past period has to be discounted for the reason that she has not been rendering any work to the respondent for all these years. Calculated on the basis of Rs. 3,000 per month and for a period of 12 years, the petitioner would be entitled to Rs. 4,32,000 [Rupees Four lakhs Thirty-two thousand only].

14. With the result, I am inclined to hold that ends of justice would be met by directing the respondent to pay a sum of Rs. 4,32,000 as just compensation in lieu of the petitioner being directed to be reinstated in service. However, the choice is left to the management either to reinstate her with 50 per cent back-wages or in the alternative to pay her a compensation of Rs. 4,32,000 in lieu of reinstating her in service. The writ petition is ordered accordingly. No costs. Consequently, connected W.P.M.P No. 24238 of 1995 is closed.