
(2014) 06 MAD CK 0147
In the Madras High Court
Case No : W.P. No. 7842 of 2010

K. Sivaprakasham

APPELLANT

Vs

The Management of M/s. Turbo Energy Ltd.

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 38, 39(a), 43, 43-A

Citation : (2014) 3 LLJ 10

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Raja, J.—The present writ petition is directed against the impugned award passed by the Principal Labour Court, Vellore in I.D. No. 165 of 2004 dated 25.8.2009, in and by which it was held that the order of dismissal passed against the petitioner/workman by the management on the basis of charges of misconduct is well founded, accordingly, further held that the petitioner is not entitled for any relief.

2. Mr. R. Shanmugham, learned counsel for the petitioner, assailing the approach adopted by the second respondent-Labour Court, argued that the impugned award is illegal and against the principles of natural justice, for the reason that the Labour Court has utterly failed to give sufficient opportunities to the writ petitioner and moreover the finding given by this Court in W.P. No. 10349 of 2008 dated 21.11.2008 that the punishment of dismissal from service imposed against the petitioner is an extreme penalty, was also conveniently overlooked, thereby causing grave injustice to the petitioner, who was admittedly not given any reasonable opportunity as per the finding of this Court to cross examine the departmental witnesses. Going into the charges levelled against the petitioner by the first respondent-Management, the learned counsel submitted that the petitioner, having worked as NMR for six years, was made permanent as Production Operator on 1.8.92 and was drawing a monthly salary of Rs. 4,884/-

at the time of retirement. While so, on the allegations that the petitioner was absenting from duty without permission, committing nuisance within the establishment premises, entering another department and restricted areas in the course of his duties without permission of his superiors and without wearing specified type of uniforms as required, loitering, idling or wasting time while on duty, wilful insubordination and causing wilful damage or loss due to negligence and carelessness to any work, was called upon to submit his explanation. After receiving the show cause notice, the petitioner gave his explanation-Ex. W5 on 6.6.2000 making it clear that only due to his ill-health and taking treatment, he was unable to reach the targeted output. After giving his written explanation, the petitioner also prayed for pardoning his lapse. But the first respondent-Management, without accepting his explanation, ordered for domestic enquiry and finally the domestic enquiry was conducted in which the petitioner, having participated, properly explained that he could not produce the targeted quantity from 10.4.2000 to 30.5.2000 only due to his ill-health. But the enquiry officer, without giving a reasonable opportunity, closed the enquiry and submitted a report on 1.8.2000 finding that the charges levelled against the petitioner are proved. After receiving the copy of the enquiry officer's report along with the second show cause notice dated 17.10.2000, again the petitioner sent his written representation. But the management, accepting the findings of the enquiry officer, terminated him from service from 27.11.2000.

3. When the charges framed against the petitioner related to unauthorised absence, go-slow, neglect of work, disorderly behaviour, interfering with other's work, leaving the work spot without intimation from superior officials, habitually absenting, loitering and wasting time without performing work and disobedience of lawful orders, he should have been furnished with all the documents relating to the above charges. As there was no supportive documents, the second respondent-Labour Court, by its interim award dated 4.2.2008, clearly held against the Management that the first respondent did not furnish the copies of Exs. M11 to M14 and the non-furnishing of the copies of the said documents to the petitioner amounted to denial of sufficient opportunity, resulting in conduct of unfair and improper domestic enquiry. As against the interim award passed by the Labour Court, the first respondent came to this Court by filing W.P. No. 10349 of 2008 on the ground that the writ petitioner, having admitted the charge during the domestic enquiry, cannot contend that the copies of the documents were not furnished and no opportunity was furnished to him. But this Court, rejecting the said contention made by the Management, came to the conclusion that Exs. M11 to M14, the complaints leading to framing of charges of absenteeism, go-slow, late reporting for work and interfering in the work of others, were not furnished to the writ petitioner during the domestic enquiry and the non-furnishing of the said copies which were the basis for framing of the charges and the finding given by the enquiry officer would definitely amount to denial of reasonable opportunity to defend his case in the domestic enquiry in its order dated 21.11.2008.

4. Adding further, the learned counsel submitted that when this Court had given a clear finding that the Labour Court was justified in giving a finding that the enquiry conducted by the enquiry officer was not fair and proper and that the punishment of dismissal from service imposed on the petitioner is also an extreme penalty, the first respondent is all the more required to prove the charges to sustain the order of dismissal. In the light of the above finding given by this Court that the punishment of dismissal from service imposed against the petitioner is an extreme penalty, the Labour Court has not even modified the said penalty, as a result, committed grave mistake in not even properly adhering to the observations made by this Court and in any event, when the order of dismissal passed by the first respondent has been confirmed by the Labour Court, the approach and the reasoning assigned by the Labour Court in the impugned award are absolutely invalid and unjustified. Focusing heavily on the improper and unfair approach adopted by the Labour Court in not examining the persons who had given complaints viz., Exs. M11 to M13, the learned counsel heavily contended that when the authors of the said complaints were not examined, while so, it is peculiar on the part of the Labour Court to reach a conclusion about the misconduct of the employee. Therefore, as held by the Labour Court in its interim award dated 4.2.2008 that the domestic enquiry held on 24.6.2000 against the petitioner on the alleged charges of unauthorised absence, go-slow, neglect of work, disobedience of lawful orders and directions of the superior officials of the respondent company etc., were unfair and improper, should not have been disturbed.

5. With regard to the allegation of absenteeism from duty without prior permission, the learned counsel stated that the petitioner had filed the medical certificate along with the leave application. But the enquiry officer, without applying his mind, has given a finding that the petitioner has not given any application seeking leave. This reasoning given by the enquiry officer has also been wrongly accepted by the Labour Court and the same reflects the non-application of mind to the facts pleaded by the writ petitioner before the Labour Court. On this basis, he prayed for setting aside the impugned award. In support of his submissions, reliance was also placed on the judgment of the Supreme Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, for the proposition that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India in matters like the present one, is bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. On the basis of the above ratio, he has further pleaded that the petitioner may be

allowed to continue in employment, since the meagre wage earned by him is the only source of his livelihood.

6. Opposing the above submissions, Mr. S. Ravindran, learned counsel for the first respondent-Management heavily contended that the writ petitioner, who joined as NMR, became permanent as Production Operator from 1.8.92. But he used to absent himself from duty without permission and adequate reason frequently, as a result, his actual output got reduced, more particularly, for the period from 10.4.2000 to 30.5.2000, he has failed to achieve the target. As against the actual output of 400 loads for 8 hours, the petitioner has given only 180 loads. The remarks given by the Supervisor has shown that he was always roaming in shop floor and on some occasions, he did not even report for work. The performance report had shown that the petitioner's output was only 24 loads on 11.4.2000 while running 630 T Curing machine for eight hours. Again another report also indicated that his output was only 21 loads as against 45 loads for eight hours on 12.4.2000. In view of his go-slow tactics and also frequently entering another department in the course of duty hours without permission of his superiors and that too without wearing the specific type of uniforms as required, the first respondent suffered huge loss due to his negligence and carelessness to any work. That apart, several other co-employees, namely, Mr. R. Narasiman, Mr. B.N. Anantharaman and Mr. S. Pandiyarajan had given complaints dated 20.4.2000, 8.5.2000 and 9.5.2000 respectively stating that the petitioner without any reason, during the working hours, frequently came to their working spot and interfered with their work. Besides, committing nuisance and entering another department, he has also indulged in habitual absenteeism without leave for a long period. In view of the above, the petitioner was issued with the show cause notice dated 31.5.2000. Sadly he refused to receive the same from one Mr. N. Kanagaraj again showing his wilful insubordination and disobedience to the management. However, when the same was also served upon him, subsequently, he gave his explanation dated 6.6.2000, admitting the charges that he had not produced the targeted output as required. However, he stated that since he was not well, he did not achieve the target. In the end of the explanation, he has also requested for pardoning of his misconduct as mentioned in the show cause notice. As the explanation given by the petitioner clearly brought the controversy to an end for admitting the charges that he failed to reach the targeted output and he had not obtained prior permission before going on leave, the domestic enquiry was conducted, in which the petitioner admitted the charges that he was unable to reach the targeted output due to his ill-health. But he failed to produce any document to show that he was not well during the said period. In this context, Mr. S. Ravindran, bringing to the notice of this Court the leave letter dated 1.7.2000 said to have been filed by the petitioner, argued that the said medical certificate, trickily obtained later on to support his story that he was unwell, has nothing to do with his wilful absence without leave for the period from 13.4.2000 to 15.4.2000 and again for another spell on 17.4.2000 and 18.4.2000 and once again on 21.4.2000 and

22.4.2000. In view of the fact that he was a habitual absentee without leave, leaving the place during duty hours, loitering, idling, wasting time while on duty without sufficient cause, wilful insubordination and disobedience, committing nuisance within the establishment premises and adopting go-slow tactics, the enquiry officer found him guilty of all the charges.

7. Thereafter, the Management served him the second show cause notice along with the report of the enquiry officer to submit his explanation and finally, finding no merit in his further written representation, passed the order of dismissal from service. When the petitioner raised an industrial dispute challenging the said order, the Labour Court, by passing the interim award dated 4.2.2008, gave a finding that the Management did not furnish the copies of Exs. M11 to M14 and the non-furnishing of the copies of the said documents amounted to denial of sufficient opportunity. Aggrieved by the said interim award, W.P. No. 10349 of 2008 was filed before this Court and this Court, by order dated 21.11.2008, for the reason that Exs. M11 to M14, the complaints for the charges of absenteeism, go-slow, late reporting for work and interfering in the work of others, were not furnished to the petitioner during the domestic enquiry, held that the denial of the above documents amounted to denial of reasonable opportunity to defend his case in the domestic enquiry, however, a direction was given to the Management to lead evidence to prove the charges levelled against the petitioner. As against that, the Management unsuccessfully filed W.A. No. 373 of 2009 which came to be dismissed on 13.4.2009. Thereafter, evidences were let in by the Management before the Labour Court and M.W.2 to M.W.7 were examined to prove the misconduct committed by the petitioner in terms of the charge sheet dated 31.5.2000. In addition thereto, Exs. M22 to M25 were also marked to support the case of the Management. Accepting the case of the Management, the Labour Court passed the impugned award dated 25.8.2009 clearly holding that Exs. M15 to M21 prove the low production given by the petitioner, which is nothing but go-slow tactics, that he absented from work on various dates, that the complaints given by the co-employees against the petitioner under Exs. M11 to M14 had been proved through M.W.2, he pleaded. That apart, the Labour Court, by taking into account Ex. M20 as proof of his disrespectful behaviour, has finally come to the conclusion that he no longer deserves to serve in the first respondent company, on this basis, accepted the quantum of punishment viz., dismissal from service. Therefore, no interference can be called for. In support of his submissions, he has also placed reliance on the judgment of the Apex Court in State of Haryana and Others Vs. Devi Dutt and Others, , for the proposition that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, should not interfere with the findings of fact. He has also placed on record one another judgment of the Apex Court in Municipal Committee Tauru Vs. Harpal Singh and Another, for the proposition that the inconsistent stand taken by the employee in the claim statement cannot be ignored by the Court while rendering substantial justice to the parties. On this basis, he prayed for dismissal of the writ petition.

8. Heard the learned counsel for parties.

9. The writ petitioner, who joined the first respondent company as NMR, was made permanent, after six years of his service, as Production Operator from 1.8.92. However, after eight years from the date of his permanency, a show cause notice dated 31.5.2000, based on the complaint of Mr. M. Kanagaraj, Section Officer, was issued to the petitioner containing the following charges for violation of the Certified Standing Orders of the company:-

Clause 19.3. Absence without permission or adequate reason.

19.4. Adopting, participating, instigating, encouraging or abetting go-slow tactics.

19.11. Commission of any act subversive of good behaviour or the discipline of the company.

19.18. Committing nuisance within the establishment's premises.

19.26. Entering another department, shop or restricted areas otherwise than in the course of his duty without the permission of his superiors and/or without wearing the specified type of uniforms as required.

19.43. Habitual absence without leave or absence without leave for less than 8 consecutive days or overstaying the sanctioned leave for less than 8 days.

19.55. Leaving work place before due time or absence from place of work without due permission.

19.56. Loitering, idling or wasting time while on duty or absence without sufficient cause or permission from appointed place or place of work and remaining in the latrine for a long time.

19.93. Wilful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable order of a superior.

19.94. Wilful damage or loss or damage or loss due to negligence or carelessness to any work, process or to any property of the company or co-worker's property.

10. It appears that the petitioner refused to receive the same from the said Mr. Kanagaraj after reading the same. However, subsequently, when he was served with the same, the petitioner submitted his explanation dated 6.6.2000. In the written explanation, the petitioner also repented for his refusal to receive the show cause notice on the justification that only out of fear, he has not received it. However, he had no intention to refuse to receive the said notice. Finally he tendered his apology for the incident. But the show cause notice made several charges against the petitioner. One of the charges shows that he had not achieved the targeted production for the period from 10.4.2000 to 30.5.2000. Rightly the petitioner also admitted that he has not achieved the target for the reason that he was unwell. That clearly shows that the petitioner has made a clear admission of the charges. The Labour Court, while dealing with this specific charge, placing reliance on Ex. M20 dated 15.4.2000, the performance report

given by Mr. S. Senthilkumar, Supervisor for the period from 10.4.2000 to 15.4.2000 in day shift, found that the petitioner-Mr. K. Sivaprakasham, while working in 40 T preforming machine, has achieved the actual output of 180 loads for eight hours, as against the norms of 400 loads, on 10.4.2000. The remarks further show that he was roaming in shop floor on the said date. When he was working in 630 T Curing machine on 11.4.2000, he has achieved the actual output of 24 loads for eight hours, as against 45 loads. Further, the remarks show that he was late by one hour. Similarly, on 12.4.2000, when he was working in 300 T curing machine, he has achieved the actual output of 21 loads for eight hours, as against 45 loads. Again the said performance report also indicated that he had not reported for duty from 13.4.2000 to 15.4.2000. Likewise, the performance report, Ex. M21 submitted by Mr. P. Ramasamy, Supervisor dated 22.4.2000 for the period from 17.4.2000 to 22.4.2000 in night shift, clearly shows that the petitioner did not report for duty on 17.4.2000, 18.4.2000, 21.4.2000 and 22.4.2000. Further, the petitioner has achieved the actual output of 90 loads for eight hours, as against 195 loads when he was working in 160 T Preforming machine on 19.4.2000. Even on 20.4.2000, when he was working in 100 T curing machine, he has achieved the actual output of 24 loads for eight hours, as against 45 loads. The said report also shows that even after allotment of work in time on the said date, the petitioner reported for work in the machine around 4.15 p.m., only and on account of this, the co-worker Mr. R. Narasimhan, CL No. 3144 who was to work in the same machine along with the petitioner could not commence the work in time. Without starting the work in time, he was found outside the shop floor near brake unit talking to the workmen of that unit and only after calling him, he reported for work. One another performance report, Ex. M15 submitted by Mr. P. Ramasamy, Supervisor dated 6.5.2000 for the period from 2.5.2000 to 6.5.2000, shows that he did not report for duty on 2.5.2000. On 3.5.2000, when he was working in 630 T and 300 T curing machines, he has achieved only 15 loads and 14 loads, as against 30 loads and 30 loads respectively. On 4.5.2000, when he was working in 630 T and 300 T curing machines, he has achieved only 23 loads and 14 loads, as against 40 loads and 40 loads respectively. Similarly, on 5.5.2000, when he was working in 630 T and 300 T curing machines, he has achieved only 30 loads and 14 loads, as against 40 loads and 40 loads respectively. Though on 6.5.2000, when he was working in 630 T and 300 T curing machines for four hours each, he has achieved 15 loads and 15 loads, as against 20 loads and 20 loads respectively, he worked only for half-a-day and went on leave during second half without giving any leave letter.

11. Besides, as contended by the learned counsel for the petitioner that the authors of the complaints, Exs. M11 to M13 have not been examined before the Labour Court, the finding shows that M.W.2-Mr. M. Kanagaraj had spoken about these complaints and he has also stated that M.W.3-Mr. S. John Christopher has also given complaints about the misconduct of the petitioner. Moreover, M.W.3 has also deposed that the petitioner used to sing songs and not work on several

occasions. Only when M.W.3 warned him, the petitioner used to move away, however, he used to disturb other operators, as a result, he did not achieve the targeted output fixed for him. Moreover, the other operators also had given complaints about the activities of the petitioner to M.W.3. But, unfortunately, the petitioner, who was all along participating the enquiry, has not even cross-examined these witnesses by denying the acts of misconduct alleged by these witnesses against the petitioner. The Labour Court, while specifically dealing with this part of the evidence, has come to the conclusion that M.W.4-Mr. S. Senthilkumar has clearly deposed that during six days when the petitioner worked under him, he did not report for duty for three days. One another management witness M.W.5-Mr. P. Ramasamy has also clearly deposed that the petitioner did not achieve the target fixed for him and his deposition proved the case of the management that on 20.4.2000, he found the petitioner outside the shop floor near the brake unit talking with some other person and that he counseled the petitioner to mend his ways, he was unable to improve his conduct. When the management was able to lead evidence through M.W.5-Mr. P. Ramasamy, M.W.6-Mr. S. Pandiyarajan and M.W.7-Mr. R. Narasimhan to prove the charges levelled against the petitioner that he was always loitering, idling or wasting the time while on duty and entering another department and restricted areas during duty hours without permission of his superiors, the learned Labour Court, in my considered opinion, has rightly reached the conclusion holding that the charges had been proved against the petitioner. Therefore, the untenable contention made by the learned counsel for the petitioner that no opportunity was given to the petitioner to cross examine the witnesses, is far from acceptance. In view of the same, the findings recorded by the Labour Court cannot be interfered with by this Court under Article 226 of the Constitution of India, as has been held by the Hon'ble Apex Court in the case of State of Haryana and Others Vs. Devi Dutt and Others, holding that interference by the High Court under Article 226 with the findings of facts should not be made on any irrelevant considerations. In this context, it is more relevant to extract the observation made by the Apex Court in paragraph-8 of the said judgment as follows:-

8. The High Court ordinarily should not have interfered with the said finding of fact. We, although, do not mean to suggest that the findings of fact cannot be interfered with by the superior Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, but the same should be done upon application of the well known legal principles such as; (1) when it is perverse; (2) when wrong legal principles have been applied; (3) when wrong questions were posed; (4) when relevant facts have not been taken into consideration; or (5) the findings have been arrived at on the basis of the irrelevant facts or on extraneous consideration.

12. One another contention made by the learned counsel for the petitioner that the Labour Court has seriously overlooked the finding given by this Court on the quantum of punishment in the order in W.P. No. 10349 of 2008 dated 21.11.2008

that the punishment imposed is an extreme penalty, is also liable to be rejected, for the reason that a careful reading of the order dated 21.11.2008 passed by this Court in W.P. No. 10349 of 2008 filed against the interim award dated 4.2.2008 does not show that this Court has given a finding on the quantum of punishment imposed against the petitioner by holding that the punishment of dismissal from service is an extreme penalty. In this context, it is useful to extract paragraph-11 of the order in the writ petition as follows:-

11. Since there is allegation of obtaining signature in blank papers by the Enquiry Officer and admittedly the copies of the documents Exs. M.11 and M.14 were not furnished, the Labour Court is justified in giving a finding that the enquiry conducted by the Enquiry Officer is not fair and proper. There is no perversity in the above finding and it is for the petitioner management to prove the charges before the first respondent and in effect, it is an opportunity given to the petitioner to prove the charges levelled against the second respondent. The punishment imposed is also dismissal from service, which is an extreme penalty. Therefore the petitioner management is all the more required to prove the charges to sustain the order of dismissal.

13. A close reading of the observation made by this Court clearly shows that the Labour Court was right in giving a finding that the enquiry conducted by the enquiry officer was not fair and proper. Since the punishment imposed against the petitioner was an extreme penalty, a direction was given to the first respondent management to prove the charges to sustain the order of dismissal. Therefore, only to support the quantum of punishment of dismissal which is an extreme penalty, an observation was made to the respondent Management to produce all the evidence to prove the charges in respect of the said punishment. Therefore, it is not open to the learned counsel for the petitioner to contend as if a finding has been given that the order of dismissal from service, being an extreme one, should be modified or altered. Above all, the explanation dated 6.6.2000 given by the petitioner to the show cause notice dated 31.5.2000 also clearly shows that he had clearly admitted the charge that he did not produce the targeted output and requested the management that since he was not well, he did not achieve the target. That itself clearly shows that the petitioner himself has admitted the charge. Finally, coming to the medical certificate dated 1.7.2000 said to have been given by the petitioner belatedly, as rightly contended by the learned counsel for the first respondent, it has no bearing at all to this case, since he was absent for duty without leave for the period from 13.4.2000 to 15.4.2000 and again for another spell on 17.4.2000 and 18.4.2000 and once again on 21.4.2000 and 22.4.2000, but gave his leave letter after 3 months. Therefore, looking at the case from any angle, this Court is unable to find any merits or substance whatsoever to interfere with the well reasoned award passed by the second respondent-Labour Court. Accordingly, the writ petition fails and it is dismissed. No costs.