

(2008) 09 MAD CK 0050
In the Madras High Court
Case No : Writ Petition No. 2069 of 2001

M. Indirani

APPELLANT

Vs

The Management of Coimbatore Murugan Mills

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 29, 9A

Citation : (2008) 09 MAD CK 0050

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : K.V. Shanmuganathan, for the Appellant; R. Parthiaban, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsels appearing for the petitioner and the learned Counsel appearing for the respondent.

2. The petitioner has stated that she was appointed in the cone winding department of the respondent Mills, in the year, 1984. However, taking

into consideration the qualifications of the petitioner, she was given training in the quality control department. While so, she was terminated from

service on the ground that she had refused to work in the cone winding department. In the Industrial Dispute raised by the petitioner, the labour

Court had held that the termination of the petitioner from service was unjustified and a direction had been issued to the respondent Mills to

reinstate the petitioner in service, with 50% of the backwages. In the award passed by the labour Court, it was specifically stated that the petitioner

should be given the work for which she had been trained. As per the award, the petitioner ought to have been continued in the quality control

department of the respondent Mills. The writ petition filed by the Management of the respondent Mills, challenging the award passed by the labour

Court, had been dismissed. Even thereafter, the petitioner had been continued in the cone winding department. Having been made permanent, the

petitioner had requested the Management of the respondent Mills to transfer her to the quality control department. Since the request of the

petitioner was not acceded to by the Management of the respondent Mills, the petitioner had preferred a complaint before the Conciliation Officer,

Coimbatore, u/s 29 of the Industrial Disputes Act, 1947, stating that the Management of the respondent Mills had not complied with the award

passed in favour of the petitioner. The issue regarding the breach of the award was the subject matter of a writ petition before this Court, in W.P.

No. 1696 of 1995.

3. It has been further stated that all of a sudden, in the month of May, 1998, the petitioner had been asked to work as a cart puller. Therefore, the

petitioner had been constrained to file another writ petition before this Court, in W.P. No. 8697 of 1998, seeking for an order of injunction

restraining the Management from compelling the petitioner to work as a cart puller. While so, a show cause notice, dated 7.7.1998, had been

issued by the Management of the respondent Mills, alleging that the petitioner had absented herself from duty, from 23.5.1998. On receiving the

said show cause notice, the petitioner had submitted a detailed reply to the Management of the respondent Mills, on 21.7.1998. Thereafter, the

petitioner had made several representations requesting the Management of the respondent Mills to provide the petitioner with suitable work, based

on her qualifications. No reply was received by the petitioner from the Management of the respondent Mills. However, another show cause notice,

dated 7.1.1999, had been issued to the petitioner alleging that she was absent from duty, from 23.5.1999. The petitioner had submitted a suitable

reply, on 18.6.1999. Thereafter, a domestic enquiry had been conducted against the petitioner.

4. It has been further stated that the enquiry officer, without examining the materials on record, had erroneously come to the conclusion that the

petitioner was guilty of the misconduct by absenting herself from duty, unauthorisedly. Based on the enquiry report, an order had been passed by

the Management of the respondent Mills, reverting the petitioner as a "badli". The Management of the respondent Mills had passed the impugned order without jurisdiction. Imposing of the punishment of reversion, reverting the petitioner to the status of a badli, cannot be sustained in the eye of law, as it amounts to unfair labour practice. In fact, the action of the Management of the respondent Mills, directing the petitioner to work as a cart puller, while she was working as a cone winder, is violative of Section 9-A of the Industrial Disputes Act, 1947. The order passed by the Management of the respondent Mills, demoting the petitioner from the status of a workman to that of a badli, would amount to dismissal or removal from service. In such circumstances, the petitioner had preferred the present writ petition, under Article 226 of the Constitution of India.

5. No counter affidavit has been filed on behalf of the respondent.

6. However, the learned Counsel appearing for the respondent Mills had submitted that the impugned order, dated 16.3.2000, is valid in the eye of law, as it has been passed in accordance with law, after a domestic enquiry had been conducted based on the allegations made against the petitioner that she had absented herself from duty, unauthorisedly, which is a serious misconduct. The impugned order had been passed based on the report of the enquiry officer. The enquiry had been conducted against the petitioner following the principles of natural justice. Hence, the writ petition is liable to be dismissed, as being without merits.

7. In view of the submissions made by the learned Counsels appearing for the parties concerned and on a perusal of the records available, this Court is of the considered view that the order passed by the Management of the respondent Mills, reverting the petitioner from the post of a workman to that of a badli, cannot be sustained in the eye of law. It is seen that there is no provision, either in the standing orders applicable to the respondent Mills or in any other service rules stating that a permanent employee could be reverted, either as a Badli or as an apprentice. The respondent has not been in a position to show that the petitioner has been imposed with the punishment of reversion from Badli to an Apprentice, in accordance with the law applicable to the services under the respondent Mills.

8. Once a person has been recognised as a permanent workman, she cannot be reverted or demoted to any other post, which cannot be

categorised as a lower post. The respondent cannot impose the punishment of reducing the status of a permanent employee to that of a Badli or as an Apprentice. Therefore, the impugned order of the respondent, dated 16.3.2000, reverting the petitioner from the status of a permanent employee to that of a Badli is set aside. Thus, the writ petition stands allowed to the extent noted above. No costs.