
(2014) 06 MAD CK 0179

In the Madras High Court

Case No : W.P. Nos. 3797, 5107, 8207 of 2004 and 15326 of 2013

M. Selvaraj

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11-A, 12(3)

Citation : (2014) 3 LLJ 184 : (2014) 3 LLN 186 : (2014) LLR 972

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Raja, J.—Since the issues involved in all the writ petitions are one and the same, they are disposed of by this common order.

2. Mr. K.M. Ramesh, learned counsel appearing for the petitioners in W.P. Nos. 5107 and 8207 of 2004 submitted that the impugned award passed by the learned Principal Labour Court, Chennai, holding that the domestic enquiry conducted by the second respondent management was fair and proper, cannot be held to be in order, since the petitioners were not issued with a copy of the enquiry report to enable them to submit their further representation indicating the infirmities in the report submitted by the Enquiry Officer. Although the punishment of dismissal said to have been imposed after taking into account the past records, but, without disclosing the past records and without giving any opportunity whatsoever, the second respondent management dismissed the petitioners from service, which is untenable and unlawful, therefore, from all fronts, the petitioners have been put in piquant situation.

3. It is further contended that the petitioners, while working as Mechanic Operator, have involved in forming the trade union viz. Rane (Madras) Employees Union. In view of that, the second respondent was inimically disposed towards the union and adopted unfair labour practice and victimisation in respect of all

such employees, who took part in the formation of the Union. Moreover, when the management has been seeking higher output and when the same was utterly impossible, the second respondent management has taken disciplinary action on the ground of go-slow. But, the real motive and intention of the management was to eliminate the forerunners of the union and instill fear among other employees, so that it can dictate the terms among the employees. But, the learned labour Court has completely lost sight of this ground reality, although it was brought to its notice. It is further submitted that from the enquiry report, it is evident that the Enquiry Officer has held the petitioners guilty of a charge, which was not even levelled against them and in fact, the issues so framed are not the subject matter of the charge. Finally, the petitioners have been found guilty of charges, which were not even levelled against them. The above said legal issues have been completely overlooked by the learned Labour Court while passing the impugned award, particularly, when the impugned punishment of dismissal from service was imposed by the second respondent, the learned Labour Court should have seen that whether the petitioner was deprived of his legitimate right.

4. In support of his submissions, by relying upon a judgment of the Hon''ble Apex Court in the case of Management of IT Diamond Chain Limited, Ambattur, v. L.N. Swaminathan and another (2002(2) LLN 295), he has contended that when there is not even an iota of evidence or material or allegation in the evidence of any of the witnesses to indicate that the delinquent wilfully and deliberately slowed down the work assigned to him, the learned Labour Court ought to have interfered with the impugned order of dismissal from service.

5. In his further submission, it is contended that the only allegation mentioned in the charge memo was that the petitioners have committed a charge of wilfully slowing down of normal work and subversive of discipline. The said alleged charges were framed without mentioning the time, date and other details, which show that the second respondent management inserted all these charges behind the back of the petitioners. Again, it is contended that the second respondent management had chosen the petitioners and other similarly placed workmen as a scapegoat, as they happened to be office bearers and activists of the Union, therefore, such approach of the second respondent management is nothing but victimisation and unfair labour practice. Moreover, the enquiry was improper and bogus, apart from the fact that invalid documents had been relied upon and fair opportunity had been denied to prove the innocence of the charges.

6. Again, emphasising the duty of the Labour Court to consider whether the punishment is disproportionate or shockingly severe to the charges held proved, the Labour Court has failed to record any finding therein, with a result, the power and discretion conferred u/s 11-A of the Industrial Disputes Act have been judicially overlooked. When it is settled law that even if it is a case where the findings to the misconduct have been proved, yet the Labour Court obliged to advert itself to the question of necessity or desirability to interfere with the

punishment imposed by the management and if the management could not justify the punishment imposed, thereafter, it must consider the question as to the relief that is to be granted to the employee. In doing so, the Court has to consider as to whether the punishment imposed is disproportionate or shockingly severe to the charges proved, but, these aspects have been completely given up by the Labour Court. Taking a support from the judgment of this Court in the case of Engine Valves Ltd. Vs. Labour Court, Madras and another, , he prayed for setting aside the impugned award.

7. Further, alleging discrimination and violation of equity in determining the punishment initiated against the petitioners for the acts of omission and commission, learned counsel submitted that the petitioners also deserve to be treated equally on par with other employees, since admittedly, out of 22 employees charge sheeted, only 8 employees were dismissed from service and during the pendency of the matter before the Labour Court, the claim of four employees were settled, but, without considering the petitioners' claim, therefore, such approach of the second respondent management is against the ratio laid down by the Hon''ble Apex Court in the case of Man Singh Vs. State of Haryana and Others, , wherein the Hon''ble Apex Court held that in the matter of departmental punishment initiated against several persons for their acts of omissions and commissions, all are required to be treated equally. With these submissions, he prayed for setting aside the impugned award passed by the Labour Court.

8. Learned counsel appearing for the petitioner in W.P. No. 15326/2010 and the party-in-person appearing for the petitioner in W.P. No. 3797/2004 have adopted the above said arguments.

9. Per contra, learned counsel appearing for the second respondent management submitted that the second respondent Company is a leading Auto Ancillary Unit, manufacturing Tie Rod Ends, Steering Gears, Clutch Discs and Steering Linkages for automobiles/tractors. After narrating the above said process of the second respondent company, learned counsel submitted that although the second respondent management's record of industrial relations have been reasonably satisfactory till 1979, it faced lot of problems during the period from 1980 to early 1984. Therefore, the second respondent management had signed a settlement in accordance with Section 12(3) of the Industrial Disputes Act, 1947, before the Deputy Commissioner of Labour on 29.12.1979, with the then Rane (Madras) Limited Employees' Union, and that agreement was in-force from 01.01.1979 to 31.03.1982. On the basis of settlement, production and productivity as set out in the agreement was achieved by all the workmen barring a few. During the currency of the said settlement, Mr. R. Kuchelar was elected as the leader of the Union and since then, the industrial relations started deteriorating drastically, coupled with significant productivity drops. Since TELCO, Ashok Leyland, Escorts and Defence Establishments were receiving the equipments supplied by the respondent management, in view of frequent strike

by the Union, it failed to yield the desired results. Although the above said facts were drawn to the Union attention with a further fact that certain operators, who were maintaining the agreement norms, started flouting them including the petitioners, they did not take proper view on such issues, instead, the Union let loose large scale disobedience in the factory. Finally, when symptoms in the form of go-slow and wilful reduction of agreed outputs on the part of the workmen were noticed, discussion took place with the Union and they also signed a minutes of agreement, wherein the Union assured to give output as per the agreement. However, instead of maintaining the production as per the agreement, the Union took the law in their own hands and started unleashing spate of violent incidents both within and outside the factory. Therefore, the respondent management initiated disciplinary proceedings and the erring workmen were charge sheeted for the misconducts committed by them as provided under the Company's Certified Standing Orders in force at that time. But, the Union went on one day strike on 17.05.1982 and that strike worsened the situation further. In the meanwhile, the domestic enquiry were held into the charges issued to the workmen and after completing the same, 12 workmen found guilty of the charges and they were dismissed from service between February, 1984 and September, 1984.

10. With narration of above said facts, it is further submitted that the first petitioner was also one among the dismissed employees and he was working as a viewer in the quality department of the respondent company. While he was working on 12.01.1982 in the night shift duty, he left his work spot and went to Heat treatment section and instructed another workman, who was not on regular roaster duty on that day, to work on the machine. Though the petitioner was advised by the night shift officer not to interfere in the company's administrative matter, he continued to obstruct the said officer, for which, he was served with a charge sheet on 04.02.1982. Finally, in order to maintain the discipline in the factory, the respondent management suspended him on 09.02.1992, pending enquiry. Thereafter, an enquiry was conducted into the charges levelled against him and he was provided with all opportunities to defend his case in line with the principles of natural justice. On conclusion of the enquiry proceedings, he was dismissed from service on 27.07.1982, taking into consideration the past records and the gravity of the misconduct committed by him.

Similarly, the second petitioner also acted against the respondent management and when his production level as per the said agreement was not upto the mark, he was advised on number of occasions to improve the output level, instead, he indulged in the acts of inciting the co-workmen to lower their production. Therefore, he was charge sheeted on 02.06.1981 for his repetitive nature of his conduct in question and thereafter, an enquiry was also held into the charges levelled against him and on conclusion of the enquiry, he was found guilty of all the charges. Finally, he was served with a letter suspending him from service on 04.02.1982.

Similarly, again, the third petitioner, who was working as a Machine Operator in the respondent company, has left his work spot often and also indulged in the acts of reducing his normal production given to him by the superior. Finally, he was suspended from service on 04.02.1982 for the act of misconduct of refusal to accept the advisory letter. Thereafter, an enquiry was conducted and finally, he was found guilty of all the charges. Subsequently, the respondent management dismissed the services of the third respondent by order dated 27.07.1982. The fourth petitioner also, who was working in the respondent factory, found in indulging in all unfair and militant tactics against the management, however, when his production level went to the bottom level, he was warned by the respondent management for the same in February, 1979, but, he did not show any more improvement. Finally, he was charge sheeted in July, 1979, for the low production level and also for insubordination. Thereafter, an Enquiry Officer was appointed and on completion of enquiry, the Enquiry Officer found him guilty of all the charges and ultimately, he was dismissed from service.

11. With the above said facts, he submitted that, questioning the dismissal order passed by the second respondents, the petitioners raised industrial dispute framing specific issue as to whether the non-employment of the petitioners is justified. The learned Labour Court, after considering the oral and documentary evidence adduced by the both sides, finding that the petitioners failed to give output as agreed upon in the 12(3) settlement and again taking note of the fact that the said settlement was not challenged in any court of law, upheld the punishment of dismissal order passed by the second respondent.

12. Further, learned counsel for the second respondent contended that out of 22 dismissed employees, during the pendency of the dispute before the Labour Court, claims of four employees were settled. Again reiterating his stand that when the respondent company is one of the reputed manufacturing units supplying various products to leading companies, such as TELCO, Ashok Leyland, Escorts, Defence Establishments, due to repeated go-slow tactic adopted by the petitioners, the respondent company failed to meet the supply to the above said companies, as a result, great prejudice has occurred to the respondent company, therefore, the disciplinary proceedings initiated against such erring workmen to restore the normalcy in the respondent company was absolutely in order.

13. Concluding his argument, it was emphatically urged that when the vital issue was raised as to whether the fair and proper opportunity was given and that the enquiry was conducted in a fair and proper manner, the learned Labour Court, after considering the oral and documentary evidence adduced by the both sides, upheld the order of dismissal passed against the petitioners, therefore, this Court sitting under Article 226 of the Constitution of India, cannot re-appreciate the evidence and re-write the findings of the enquiry officer, more particularly, when the workmen refused to obey the lawful order, hence, the order of dismissal from service against the petitioners cannot be found fault with. With these submissions, he prayed for dismissal of the writ petitions.

14. Heard the learned counsel appearing on either side and perused the materials available on record.

15. The respondent Company is one of the leading Auto Ancillary Units, manufacturing Tie Rod Ends, Steering Gears, Clutch Discs and Steering Linkages for automobiles/tractors, and their products supplied to Auto industries, like TELCO, Ashok Leyland, Escorts and Defence Establishments. Since leading companies as stated above have been purchasing all the products from the respondent company, the respondent management, in order to meet their demands, entered into a 12(3) settlement with the Union with an assurance from the workmen to give output as per the agreement. However, instead of maintaining the production as per the agreed norms, some of the workmen led by the Union took the law in their hands and started unleashing spate of violent incidents both within and outside the factory, therefore, the respondent management, after giving notice to the members of the Union to meet their production target in line with the settlement reached between them, finding no response therefor, decided to initiate disciplinary action against such of those workmen, who indulged in the acts as mentioned above including go-slow tactics. Thereafter, the Union went on one day strike on 17.05.1982 and that strike worsened the situation further. However, when the domestic enquiry was conducted against 22 workmen on the charges of go-slow and wilful reduction of production, the Enquiry Officer on completion of the enquiry, found them guilty.

16. The first petitioner was working as a Viewer in the quality department of the respondent company. But, the findings of the enquiry officer show that he used to leave the work spot very often and it further shows that when he was in night shift duty, he left his work spot and went to Heat treatment section and instructed another workman, who was not on regular roaster duty on that day, to work on the machine. Although he was advised not to interfere with the company's administrative matters, he continued to obstruct the said officer, as a result, he was also issued with a charge sheet for his misconduct of wilful insubordination and indulging himself in the act of subversive of discipline and efficiency. The Enquiry Report further says that he was found loitering in the Tie Rod End Division. However, when he returned to his work spot, he started questioning the other co-workmen as to why they were not wearing their union batches. Finally, the Enquiry Officer, after analysing all the oral and documentary evidences, found him guilty of all the charges.

Similarly, the second petitioner also suffered a similar punishment for deliberately indulging in the acts of go-slow tactics and also used to instigate co-workmen to reduce production, for which, he was found guilty on the basis of evidence produced on the side by the management. Similarly, the third petitioner and the fourth petitioner were also found guilty of wilful slow down of their normal work and indulging subversive act of discipline.

17. In these circumstances, it is pertinent to note that subsequent to 12(3) settlement, Six Member Committee was constituted and this was also admitted

by the third petitioner in his cross-examination and that the Six Member Committee have also admitted that all the petitioners have agreed to give increased production. One another fact needs to be seen that the third petitioner did not come forward to give his explanation and that shows that he was not willing to challenge the charge sheet containing the allegations of go-slow, insubordination and indiscipline. In view of these facts, the Labour Court came to the conclusion that since the petitioners have agreed upon 12(3) settlement, the respondent management was right in initiating disciplinary proceedings against the petitioners for violation of the terms of the settlement on production, therefore, the allegation of the petitioners that the management has victimised all the four petitioners is liable to be held baseless.

18. No doubt, Mr. K.M. Ramesh, learned counsel for petitioners attempted to demonstrate that the disciplinary proceedings initiated against these petitioners were only part of the victimisation, as there was no any specific charge levelled against the petitioners as to they have failed to reach a particular target. But, the said argument is far from acceptance, for the reason that when some of the workmen were charge sheeted with allegations of go-slow work, wilful reduction of agreed output and wilful insubordination, the respondent management having taken conscious effort to reach 12(3) settlement in order to ensure a minimum output to maintain uninterrupted supply to the industry, like TELCO, Ashok Leyland, Escorts and Defence Establishments, to supply their products, like Tie Rod Ends, Steering Gears, Clutch Discs and Steering Linkages for automobiles/tractors, cannot be afforded to ignore neither wilful insubordination nor go-slow tactics of the petitioners. Therefore, the Labour Court, having come to a conclusion that the findings of the enquiry officer was legal and proper and that the punishment of dismissal from service was not by way of victimisation, rightly dismissed the industrial dispute raised by the petitioners. In fact, when there was a settlement reached between the management and the Union to maintain and ensure certain production level, the petitioners have refused to obey and maintain the production level and also refused to obey the lawful orders and thereby they have rendered themselves unbecoming of faithful employees. Hence, it is very difficult to absorb the office bearers of the Union, inasmuch as if this Court upholds the argument of the petitioners that the officer bearers of the Union are entitled to enjoy certain privilege or concession beyond the common advantage of others in not attending the work, such argument would nullify the very concept of no work no pay.

19. It is also pertinent to note that, before the enquiry proceedings, the management, in support of the charges, examined (i) Personal Officer (ii) Deputy Manager (production) TRE (iii) Senior Foreman TRE, and on the side of workmen, three witnesses were examined and they are (i) A. Mahalingam (ii) K. Kolandaivelu (iii) S. Subramanian. The Personal Officer M.W. 1 deposed that there have been several complaints for his missing from the work spot and also for his failure to give the agreed levels of output. That apart, the Company's Managing Director appears to have had separate meeting and thereby advised

the representatives of the Union to follow the company's rules and regulations and set an example to other workmen. But, despite the above said advise, the workmen failed to improve their conduct and behaviour. Moreover, M.W. 3 has also stated in his cross-examination that it is accepted by all the workmen to produce the increased agreement and that the minimum accepted efficiency was 87.5% by the Union, but, none of the workmen has proved that they have reached minimum accepted target of 87.5%, except repeatedly saying that the disciplinary proceedings initiated against them were part of victimisation tactics.

20. Therefore, in my considered opinion, in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot act as an appellate forum to re-appreciate the evidence, of course, this Court can interfere in the findings of the Labour Court as well as the findings of the enquiry officer, if those findings on the face of it, shown to be perverse or based upon no evidence. However, in the case on hand, second respondent management has categorically established from their oral and documentary evidences that the petitioners were guilty of subversive of discipline, insubordination and go-slow tactics and by not adhering to the 12(3) settlement entered between the petitioner and the management, therefore, for the reasons stated above, I do not find any merit in the writ petitions filed by the petitioners seeking to quash the impugned award. Accordingly, all the writ petitions stand dismissed as devoid of any merit. No Costs.