
(2003) 08 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 13725 of 1995 and W.M.P. No's. 22021, 24043 and 24044 of 1995

Management of Blue Star Ltd.

APPELLANT

Vs

Presiding Officer, First Additional Labour Court and Another

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 LLJ 156

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : S. Ravindran, for T.S. Gopalan and Co, for the Appellant; N.G.R. Prasad, for Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner is the management of Blue Star Ltd., Chennai. The second respondent was dismissed from service for

certain alleged misconducts and at his instance, a dispute was raised which was adjudicated in Industrial Dispute No. 979 of 1991 by the First

Additional Labour Court, Chennai. By award, dated July 24, 1995, the order of dismissal was set aside with a direction to the writ-petitioner to

reinstate the second respondent in service with full back wages, continuity of service and other attendant benefits. Questioning the said award, the

management has filed this writ petition.

2. Though the High Court while exercising its jurisdiction under Article 226 of the Constitution of India, does not constitute itself as appellate

authority over the award of the Tribunal to reappreciate the evidence and come to a different conclusion, considering the nature of lengthy

arguments advanced by the learned counsel for the petitioner, by drawing attention of this Court to the evidence, the following facts are necessarily

to be stated only to find out as to whether the findings of the Labour Court is perverse.

3. The second respondent was employed as A.C. & R Mechanic in the writ petitioner's factory at Chennai. A charter of demands was submitted

by the union during December, 1989 in which the second respondent was an active member. The writ petitioner management did not agree for the

demands and started issuing charge-sheets and memos to the executive committee members. In fact, an enquiry was conducted into some charges

against one Haribabu, one of the co-employees on March 28, 1989 in the material department of the writ-petitioner factory. It was alleged that the

second respondent along with 40 other employees unauthorisedly entered the material department at 10 A.M. on March 28, 1989, neglecting the

work and started shouting slogans against the management. In that way, the second respondent caused nuisance and disturbance to the normal

work of the material department. In view of the above, the domestic enquiry conducted against the co-employee Haribabu could not be

proceeded with and the enquiry officer, Presiding Officer and witnesses had to move out of the room. It was also alleged that the second

respondent assaulted Presiding Officer, who happened, to be the Assistant Manager of the company by pushing him with hands. A charge-sheet,

dated April 4, 1989, was issued to the second respondent. Not satisfied with the explanation offered by the employee/second respondent, an

enquiry was ordered. The report of the enquiry, dated January 27, 1990, was filed wherein the misconduct alleged against the second respondent

was found proved. A second show-cause notice, dated March 20, 1990, was also issued proposing the punishment of dismissal. The explanation

to the said second show-cause notice was not acceptable to the management and hence the order of dismissal was passed on May 16, 1990.

4. On the above factual background Sri S. Ravindran, learned counsel appearing for the writ-petitioner management submitted that though in the

enquiry strict rule of evidence is not applicable, when the findings of the Labour Court is not supported by evidence, such findings should be

construed as perverse and it should be interfered with by this Court under Article 226 of the Constitution of India.

5. In order to sustain the above submission, the learned counsel extensively relied upon the enquiry proceedings. According to the learned counsel, the evidence of one Krishnamoorthy M. W. 1, who gave the complaint coupled with the evidence of one Bhat M.W.2 and one Menon M.W.3 amply prove that the second respondent along with 40 other employees ""entered into the material department of the petitioner's factory and have not only shouted slogans against the management, but, also caused nuisance and disturbance to the normal work, in addition to disturbance to the enquiry which was being conducted in the premises against another employee. He would also submit that there is ample evidence to establish the charge that the second respondent assaulted the presenting officer, viz., Assistant Manager of the company with hands. Only on the basis of the above findings, the misconduct alleged against the employee was found to be proved.

6. The Labour Court without due consideration to the evidence of M.W. 1 M.W.2 and M.W.3 disbelieved the same. The findings of the enquiry officer were only on assumptions, presumptions and inference. According to the learned counsel, M.W. 1 Krishnamoorthy, who gave the complaint, has categorically spoken to about the incident. The said evidence has been discarded on the ground that he was not an eye witness to the incident as he was inside the cabin when the occurrence took place outside and he could not have witnessed what had happened outside. Such flimsy reasons to discard the statement of witness adduced on behalf of the management is opposed to the law as strict rule of evidence is not applicable and even if some material to sustain the misconduct is available, that would be sufficient for holding the employee for the alleged misconduct. In support of the above submission, the learned counsel relied upon number of decisions. Since law on this aspect is well settled, it is not necessary for me to refer to all those judgments, as the proposition of law as contended by the learned counsel for the petitioner is not disputed by the learned counsel for the respondent.

7. Sri N.G.R. Prasad, learned counsel for the second respondent, would submit that when the Labour Court on the basis of the evidence and materials available gave a finding and held that charges have not been proved, it would not be open for this Court to go into the evidentiary value

and reappreciate the same. He would also submit that the Labour Court has properly appreciated the evidence let in by the management coupled with the evidence let in] on the side of employee and has come to the conclusion that charges have not been proved and the penalty imposed was discriminatory inasmuch as except the second respondent, who happened to be the active member of the union, others were imposed the punishment of censure only.

8. In the judgment reported in Sadhu Ram Vs. Delhi Transport Corporation, while considering the scope of jurisdiction of this Court under Article 226 of the Constitution of India to interfere in the award, the Apex Court has held that it is not for the High Court, to constitute itself into an appellate Court over the orders of Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and readjudicate upon questions of fact decided by those Tribunals.

9. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, the Supreme Court has held as follows, at page 1628 of LLJ:

17. the findings of the fact recorded by the Tribunal could not be disturbed for the mere reason that the findings were based on material or evidence not sufficient or credible in the opinion of the Writ Court to warrant those findings ... as long as they were based upon some material which were relevant for the purpose or even on the ground that there was another view which could be reasonably and possibly taken.. .

10. Interference by this Court in the award of the Tribunal on technical ground is also not proper. Courts have uniformly held that the High Court's power to interfere with the award is very limited only to an extent that the findings are so perverse and such findings are not supported by any material. Let me now consider as to whether the findings of the Labour Court are perverse.

11. Sri Ravindran, learned counsel for the petitioner submitted that inasmuch as the Lab our Court has not exercised its power in a judicial manner, the findings are perverse and interference by this Court is warranted and is necessary. It is his contention that when the evidence of M.Ws. 1,2 and 3 are cogent as to the incident that took place on March 28, 1989 at 10 AM in the material department and for such incident, the enquiry that was being conducted against one Haribabu was disturbed and the presenting officer

was also assaulted, the Labour Court ought to have accepted the evidence. However, the incident was disbelieved on the ground that M.W. 1 was not present at the scene of occurrence. The assault on the presenting officer was also disbelieved on the ground that there were other employees, who were standing along with the second respondent behind the presenting officer when the presenting officer was assaulted by the second respondent, especially when the presenting officer specifically stated that when he was assaulted, he found the second respondent standing behind him.

12. How far the findings of the Labour Court in appreciating the evidence of witnesses could be justified is a matter to be considered now. I am conscious of the fact the limited scope for this Court in interfering with the findings of the Labour Court in appreciating evidence. But certain references are to be necessarily made to come to the conclusion also whether the findings of the Labour Court are supported by materials or not and the same are perverse.

13. According to M.W. 1 he was inside the cabin when the occurrence took place and he did not witness the occurrence. The presenting officer and the Presiding Officer before whom the incident said to have taken place did not give complaint. The co- employee who was assisting him in the enquiry was also not examined. But, the co-employee, who was assisting him in the said enquiry did not depose anything about the incident,

Though as contended by the learned counsel for the petitioner that there were materials as to the incident, taking the overall circumstances into consideration, when the very nature of complaint itself was disbelieved, the question of mere lodging a complaint cannot be treated as material, nevertheless, some material is available to sustain the findings of the enquiry. In so far as the assault on the presenting officer, the evidence of the presenting officer is to the effect that somebody assaulted him and when he turned back he saw the second respondent was standing behind him.

He also deposed that he saw others standing behind him. Such statement cannot be considered even prima facie conclusion for arriving that the second respondent only assaulted the presenting: officer. While appreciating the evidence of the witnesses for the management, the Labour Court did not believe their version and consequently, found that the charges levelled

against the second respondent were not proved. Therefore, it cannot be contended that on the facts of the case that the materials available before the Labour Court were sufficient to arrive at the conclusion that the charges levelled against the second respondent were proved. When once such findings were arrived by the Labour Court by appreciating the evidence, this Court cannot go into the evidentiary value of those witnesses and reappreciate the same to come to a contrary conclusion. When once the evidence of the management witnesses were disbelieved, the question of perversity over the findings does not arise. Hence I find no perversity in the findings of Labour Court as contended by the learned counsel for the petitioner.

14. However, the learned counsel for the petitioner would contend that the second respondent alone led the other 40 employees and the role of others was only a mere participation whereas the second respondent had not only led the other employee but also in fact, assaulted the presenting officer as could be seen from the evidence of M.W. 1.

15. Here again, it must be noted that the evidence of M.W.1 was not believed by the Labour Court on the ground that he did not see the occurrence as he was inside the cabin and when he heard the slogans shouting, etc., he came out of the cabin and by that time, the presenting officer and other employees came out of the cabin and he was pushed by the second respondent, who was standing behind the presenting officer along with others. This evidence was not accepted by the Labour Court to hold that the second respondent alone was responsible for the assault on the presenting officer. Such finding cannot be interfered with by reappreciating the evidence. Hence, the grievance of the second respondent that the management imposed punishment of dismissal from service only on him and he was only discriminated merits acceptance.

16. Hence for all these reasons, I find no reason to interfere with the award of the Labour Court. Accordingly, the writ petition is dismissed. No costs. Consequently, connected W.M.Ps are closed.