

(1996) 07 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 2715 of 1987

P.J. Gangadaran

APPELLANT

Vs

The Presiding Officer, II Additional Labour Court

RESPONDENT

Date of Decision : 23-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 LLJ 1234

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; Krishnamoorthy and T.S. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Abdul Wahab, J.—This writ petition has been filed by an employee of the second respondent herein challenging the award of the

respondent No. I in I.D. No. 224 of 1984, dated June 10, 1985 in so far as it has declined to grant the relief to the petitioner herein.

2. The main allegation in the affidavit filed in support of the main petition in I.D. No. 224 of 1984 is that there was no wilful slowing down of the

production during the months of June, July, August, September and October, 1982. After the enquiry was conducted, the petitioner was found to

be guilty of the charges. Hence, he was dismissed from service. It is also alleged that the production of the petitioner in October, 1982 was not far

below the average production of the previous six months. It is also contended that there was no wilful go-slow.

3. In the counter-affidavit filed by the management it is stated that the disciplinary action against the workman was taken after giving notice about

the slowing down. On September 21, 1982 notice was put up stating that the workmen were deliberately slowing down the production. On

September 24, 1982 another notice was put up to the same effect. While the majority of the workmen responded, the petitioner continued to go

slow. In paragraph 2 it is stated that he was expected to maintain a minimum efficiency of 90% in the output. The production from April 1982, to

October 1982, got reduced and in October, 1982 it came down to 69.85%. On November 8, 1982 charge sheet was issued; explanation was

received on December 2, 1982. On May 16, 1983 enquiry officer gave his report holding that the charges against the petitioner were established.

Thereupon, on June 18, 1983, petitioner was removed from service. Counter affidavit further states that when the efficiency figure was 90% during

the months of April, May, June, July, August and September 1982, it was far below that. Hence wilful go slow has to be inferred from the

surrounding circumstances. The Award of the Enquiry Officer is right and it does not suffer from any error of law or jurisdiction and hence need

not be interfered with under Article 226 of the Constitution of India. The grounds set out in the affidavit filed in support of the writ petition are

denied as untenable.

4. Learned counsel for the petitioner contended that the Labour Court has failed to notice the discrepancy in the suspension order dated

September 6, 1985 and the charge memo. In the suspension order, the production of the petitioner for the month of October 1982, was given as

37.18%", but in the charge memo it has been corrected as "69.85%", therefore there is non-application of mind by the first respondent/Labour

Court.

5. Another contention raised by the learned counsel for the petitioner that after the notice was issued under M-19 and M-20, the petitioner has

shown improvement in the production. Another contention is that in awarding the punishment, past records of the petitioner were taken into

consideration. Therefore, learned counsel emphasises that the order deserves to be set aside.

6. On the other hand, Learned Advocate-General appearing for the second respondent/management contended that the mistake contained in the

suspension order was rectified on perusal of the records. After rectification the

production of the petitioner during October 1982 was found to be as ""69.85%"". But, even after the correction, the petitioner did not restore his original production. As regards the second contention that there was improvement after the notice Exhibits M-19 and M-20, Learned Advocate General, reiterates the aforesaid point viz., that even after the notice the petitioner has not chosen to restore the original production. As regards the third contention of the petitioner Learned Advocate General states that the past records were not considered before imposing the punishment. It was only to find out any extenuating circumstance to award a lesser punishment.

7. In para 6 of its award, the Labour Court has considered the discrepancy between the suspension order and the charge memo. M.W.I explained the discrepancy between Exhibits M-1 and M-2 i.e., the charge memo and the suspension order. It states that it was due to a clerical error. In the charge memo itself it is mentioned that the figure was given as "corrected". Simply because, a clerical error has been committed at the time of issuing the order of suspension it will not vitiate the charge memo. It has accepted the explanation of M.W.1. Therefore, the discrepancy cannot vitiate the proceedings of the award.

8. Another contention raised by the counsel for the petitioner is that there are no materials to show that the production of the petitioner was very low. The normal production efficiency being fixed at 90% two notices have been issued under Exhibits M-19 and M-20. Even after the aforesaid notices, the petitioner has not shown any improvement. Learned counsel for the petitioner cited a decision in Mr. Ziakh Vs. Firestone Tyre and Rubber Company Ltd. and Another, . In the said decision, the Bench of the Bombay High Court has taken the view that ""Wilful"" conveys deliberation and calculation, it even conveys an intention to prejudice the interest of the employer. ""Wilful"" rules out any possibility of the slowing down being accidental or unintentional. After defining the "Wilful" the learned Judges have also held as follows at P. 283:

Even though a minimum may not be prescribed the conditions of service must require that during the time that the employee is in the service of his employer he must at least give to the employer what he is entitled to viz., the minimum of his ability and of his skill and of his time. If he deliberately

refuses to give that minimum he is as much guilty of misconduct...

9. In this case the minimum has been prescribed as "90%" but the figures mentioned for the period from April to October, 1982 show the rate of

production was far below the said "90%". From the circumstances alone, wilfulness has to be inferred, what is in the mind of a person cannot be

seen, but it has got to be observed or presumed from the conduct of a person with reference to a particular act or incident.

10. Learned counsel contended that for the low production during the relevant period, the petitioner has given reasons. The suspension order was

issued to the petitioner on November 2, 1982. For the suspension order dated November 2, 1982 and the charge memo dated November 8,

1982 the petitioner has sent a reply on December 2, 1982. He has not chosen to give reasons for the low production. Only after enquiry

commenced, he developed his defence stating that there was a delay in setting the machines, since the setters were on leave. But the said facts are

denied by the management. Further in the report of the Enquiry Officer, it is seen that in calculating the standard production in kgs per hour

allowance of 33% has been made for several purposes, including setting. Therefore that contention also cannot be accepted. Another serious

contention raised by the learned counsel for the petitioner is that the past records have been taken into account in awarding the punishment, but a

reading of the award shows that the said circumstances were taken into account to find out whether there was any extenuating circumstances in his

favour, for taking a lenient view. Therefore, I am not in a position to accept any of the contentions raised by the learned counsel for the petitioner. I

do not find any infirmity in the award of the Labour Court, Madras. Hence, the writ petition deserves to be dismissed. Accordingly, the writ

petition is dismissed. However, there will be no order as to costs.