

(2008) 09 MAD CK 0048
In the Madras High Court
Case No : Writ Petition No. 14708 of 2002

R. Palanisamy

APPELLANT

Vs

The Management of Cambodia Mills

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 MAD CK 0048

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; R. Parthiban, for the Respondent

Final Decision : Allowed

Judgement

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

2. It has been stated that the petitioner had been recruited as an apprentice in the respondent Mills, on 27.8.91. After the completion of one year

as an apprentice he was appointed as a helper in the cone winding department, on a permanent basis. Later, he was promoted as a Cone Packer

in the year, 1984. On 10.8.2000, the respondent Mills had issued a show cause notice to the petitioner alleging that he had attempted to smuggle

out a leather apron which amounted to a misconduct. After an enquiry, the petitioner had been demoted as a badli, with effect from 18.12.2000.

The petitioner had challenged the said order before this Court by way of a writ petition, in W.P. No. 2353 of 2001. After receiving the order,

dated 18.12.2000, passed by the respondent Mills, the petitioner had made a representation to the respondent, on 7.1.2001, seeking

reconsideration of the said order, as it has been passed without jurisdiction. In the said representation, the petitioner had demanded that he should

be provided employment in a specific designation, commensurate with the status of a permanent workman. The respondent did not choose to give any reply, nor did the respondent consider the demand of the petitioner for reinstatement. After remaining silent for about six months thereafter, a show cause notice, dated 12.6.2001, had been issued to the petitioner, alleging that he had absented himself from duty, without any intimation, with effect from 2.6.2000. In fact, during the relevant period, the petitioner had been placed under suspension, from 10.8.2000 till 18.12.2000. Thus, it is clearly seen that the show cause notice had been issued without sufficient application of mind.

3. After receiving the show cause notice, dated 12.6.2001, the petitioner had submitted a detailed explanation, on 19.6.2001. In the said explanation, the petitioner had pointed out that the respondent had no jurisdiction to proceed with the disciplinary enquiry. The respondent, without properly considering the explanations submitted by the petitioner, had proposed to hold a domestic enquiry into the charges. By a letter, dated 2.7.2001, the respondent had directed the petitioner to attend the domestic enquiry to be held on 11.7.2001. On 10.7.2001, the petitioner had made a detailed representation. In the said representation, dated 10.7.2001, the petitioner had expressed his willingness to report for duty, provided the respondent offers the petitioner employment on regular basis, by rescinding the order, dated 18.12.2000. An enquiry had been held, on 29.9.2001, without giving an opportunity to the petitioner and without ascertaining as to whether a notice had been served on the petitioner, regarding the date of the enquiry. The Enquiry Officer had conducted an exparte enquiry and had passed an order finding the petitioner guilty of the charges, on 1.10.2001.

4. The respondent had issued a second show cause notice, on 8.10.2001, proposing to inflict the punishment of dismissal from service. Thereafter, the petitioner had submitted a detailed explanation, on 31.10.2001, stating that the exparte enquiry conducted by the Enquiry Officer was not justified since no notice had been served on the petitioner showing the date of the enquiry, as 29.9.2001. However, the first respondent, without applying his mind to the explanation submitted by the petitioner, had imposed the punishment of demotion, declaring the petitioner as an apprentice.

After receiving the impugned order, dated 2.11.2001, the petitioner had made a representation, on 16.11.2001, seeking for reconsideration of the decision. No reply has been given by the respondent. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

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

6. The learned Counsel appearing for the petitioner had submitted that the impugned order passed by the respondent is neither sustainable in law nor on the facts and circumstances of the case. The enquiry initiated against the petitioner by the respondent mills on the charge that the petitioner had absented from duty, as a Badli, is erroneous, illegal and void. It is a settled position of law that an employee can be demoted from a higher post to a lower post. However, in the guise of an order of demotion, a permanent employee cannot be made as a Badli. A badli has no lien on employment to any post. The status of a Badli is like a casual workman. Whenever a vacancy arises, on account of the absence of a permanent employee, a badli will be substituted in the place of the permanent workman. A Badli, like a casual workman, has no obligation to report for duty, daily. By the order passed by the respondent, on 18.12.2000, the petitioner had been reverted as a Badli. As a Badli has no lien on any post nor a right to demand employment as a regular workman, there is no provision, either in the Standing Orders applicable to the respondent mills or in the service rules, to demote a permanent employee to the status of a Badli. Since the petitioner did not present himself before the respondent as a Badli, a charge had been framed, alleging that the petitioner had been, unauthorisedly, absent from his duty. Based on the findings during the enquiry, the petitioner had been punished by the impugned order, dated 2.11.2001, demoting him as an Apprentice.

7. In view of the submissions made by the learned counsels appearing for the petitioner, as well as for the respondents and on a perusal of the records available before this Court, 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 posted as a permanent workman, he 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.

Further, a badli, cannot be accepted to report for work, daily, like a permanent workman.

9. In such circumstances, it cannot be said that the absence of the petitioner from duty as a Badli, is irregular or illegal. In spite of several

representations sent by the petitioner, the respondent Mills had not given him employment, as a permanent workman. However, in view of the

order passed by this Court in W.P. No. 2353 of 2001 and W.P. No. 35382 of 2007, on 18.9.2008, this Court is of the considered view that the

impugned order passed by the respondent cannot be sustained in the eye of law. As the petitioner has shown sufficient cause and valid reasons for

this Court to interfere with the impugned order, dated 2.11.2001, the writ petition is allowed, setting aside the order of the respondent. No costs.