

(2014) 09 MAD CK 0282

In the Madras High Court

Case No : Writ Appeal No. 439 of 2011 and M.P. No. 1 of 2011

V. Sankaranarayanan

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 11A, 12(3)

Citation : (2015) 144 FLR 398 : (2014) 4 LLJ 473 : (2015) 1 SCT 451

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

G. Chockalingam, J.—Being aggrieved by the allowing of the writ petition in W.P. No. 1264 of 2009, dated 24.11.2010, the appellant has preferred this appeal.

2. Brief facts, which are relevant for consideration of this appeal, are as follows:

The Appellant/workman was appointed as a Fitter on 7.7.1993 in the second respondent Management and was confirmed in the post of Operator on 30.6.1994. He was entrusted to do the jobs of turning, drilling and grinding. While so, as there was not much work in Plant III Unit, where the appellant was employed, the Management, instead of laying off all the employees, put the appellant and others on compulsory wait, paying them full salary for 7 = months and then employed them in the other division at Gummidipoondi. Thereafter, Tripartite Settlement vide Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act 1947, dated 9.8.2001 was arrived at for the period from 1.4.2001 to 31.3.2004. As per Clause 6 of the settlement, the Management is at liberty to refuse or extend the benefits to certain employees and the workmen agreed to co-operate with the Management in eliminating all restrictive and wasteful practices in any form, idle time and for fullest utilisation of the existing manpower and resources to reach maximum production subject to normal circumstances and facilities made available to the workmen. As the appellant deliberately refused to work resulting in reduction of the production target, the Management cut his wages and for certain misconduct committed by him,

disciplinary proceedings were initiated against him and charges were framed on 13.12.2002 and 17.02.2003, respectively. A separate domestic enquiry was conducted in respect of two charges and the Enquiry Officer submitted his report to the Disciplinary Authority holding the appellant guilty of the misconduct.

3. The appellant was issued with second show cause notice on 17.02.2003, to which, he submitted his explanation on 19.02.2003. As the explanation submitted by the appellant was not satisfactory and as the misconduct committed by him was serious in nature, he was removed from service. Challenging his removal from service, the appellant raised a dispute in I.D. No. 433 of 2004 before the first respondent/Labour Court. The first respondent herein, by an order dated 18.06.2008, held that the enquiry was conducted in a fair and proper manner, however, found the charges levelled against the appellant are superficial in nature and allowed I.D. No. 433 of 2004, by ordering reinstatement of the appellant with backwages and other monetary benefits. Challenging the said order passed by the first respondent/Labour Court, the Management filed a writ petition in W.P. No. 1264 of 2009 before this Court. After hearing both sides, the learned Single Judge allowed the writ petition on 24.11.2010 and set aside the award passed by the first respondent/Labour Court dated 18.06.2008 permitting the Management to withdraw the amount, if any, representing the arrears of salary deposited to the credit of I.D. No. 433 of 2004 on the file of the first respondent herein. Challenging the said order, the appellant is before this Court by way of the above writ appeal.

4. Learned counsel for the appellant/workman would strenuously contend that though the Management admitted that the appellant herein has tendered his reply to the show cause notices issued to him on 06.01.2003 and 19.02.2003, the learned Single Judge failed to consider the same. He would further contend that the learned Single Judge failed to appreciate the findings of the Labour Court that there was no previous proceedings initiated or pending against the appellant by the Management from his date of joining the service i.e., 08.07.1993 till 06.03.2002. It is the further contention of the learned counsel for the appellant/workman that the learned Single Judge ought to have held that the transfer order was pre-determined with mala fide intention to wreck vengeance on the appellant, thereby vitiating the order of transfer. He would also add that the learned Single Judge has over looked Exs. W.14 to W.47, which were marked before the Labour Court to show the appellant's involvement in the Socialist Trade Union activities and instead, gave a new finding that the appellant was never a member in the Socialist Trade Union and was a Member only in the Management approved INTUC. Also, he would contend that the learned Single Judge failed to appreciate the fact that the charges levelled against the appellant are vague and formal such as willful disobedience to the superiors, low production, slowness etc., and the same are without any basis and substance.

5. Per contra, learned counsel for the Management would submit that the learned Single Judge, after analysing the award of the Labour Court and the report of the

Enquiry Officer and after following the well settled principles of law laid down by the Hon'ble Apex Court, has rightly set aside the award of the first respondent dated 18.06.2008 and allowed the writ petition. Hence, there is no illegality or infirmity in the order passed by the learned Single Judge warranting interference of this Court. Hence, he prayed for the dismissal of the writ appeal.

6. Learned counsel for the second respondent/Management, in support of his stand, has relied on the following judgments:

[i] Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another,

"42. Reliance has also been placed on Tata Engg. and Locomotive Co. Ltd. where the question was as to whether on the basis of a relief granted to one of the workman a direction for reinstatement with half of the back wages could be issued. In the fact of the said case, it was held:

"10. We find that the Labour Court has found the inquiry to be fair and proper. The conduct highlighted by the management and established in inquiry was certainly of a very grave nature. The Labour Court and the High Court have not found that misconduct was of any minor nature. On the contrary, the finding on facts that the acts complained of were established has not been disturbed. That being so, the leniency shown by the Labour Court is clearly unwarranted and would in fact encourage indiscipline. Without indicating any reason as to why it was felt that the punishment was disproportionate, the Labour Court should not have passed the order in the manner done. The case of R.P. Singh was not on a similar footing. He was one of the persons instigating whereas the respondent was the person who committed the acts. Therefore, the orders of the Labour Court as affirmed by the High Court cannot be sustained and are set aside. The order of dismissal from service in the disciplinary proceedings stand restored."

[ii] Davalsab Husainsab Mulla Vs. North West Karnataka Road Transport Corporation,

15. Therefore, in the case on hand, the conduct of the employee towards the establishment as well as its fellow employees and higher authorities was highly condemnable and, therefore, there was absolutely no scope for exercising the discretionary power vested in the Labour Court under Section 11A of the Act.

The Labour Court, therefore, rightly declined to exercise the said jurisdiction vested in it in his favour. Unfortunately, the learned Single Judge by merely stating that the Labour Court had only considered the interest of the Corporation and not the interest of the employee set aside the said award which was correctly rectified by the Division Bench. The Division Bench was, therefore, well in order in having set aside the order of the learned Single Judge and restoring the order of dismissal passed against the appellant. We too, therefore, do not find any scope to interfere with the order impugned in this appeal."

[iii] U.B. Gadhe and Others Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd.,

"20. Though under S. 11-A, the Tribunal has the power to reduce the quantum of punishment, it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

22. Power and discretion conferred under the Section needless to say have to be exercised judicially and judiciously. The Court exercising such power and finding the misconduct to have been proved has to first advert to the question of necessity or desirability to interfere with the punishment imposed and if the employer does not justify the same on the circumstances, thereafter to consider the relief that can be granted. There must be compelling reason to vary the punishment and it should not be done in a casual manner.

23. We would have asked the High Court to consider that aspect. But considering the long passage of time, it would not be proper to do so since the employer seems to be a public utility service and the workmen continued utility to the employer is gravely doubtful in view of their conduct. After such a long period, it would not be in the interest of parties to direct the High Court to consider parameters of S. 11-A of the Act. Therefore, we have considered the matter, taking into account the background facts. The proved misconduct is definitely serious. The respondent has, as a matter of good gesture, offered to pay each of the appellant rupees one lakh, in view of the fact that they have received payment up to December, 2004."

[iv] 2009 (4) L.L.N. 599 [West Bokaro Colliery (Tisco, Ltd., Vs. Ram Pravesh Singh].

"21. Learned counsel for the respondent cited two cases - Workmen of Firestone Tyre and Rubber Company of India (Private), Ltd. V. Firestone Tyre and Rubber Company of India (Private) Ltd., [1973 (1) L.L.N. 278] and The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others, , to contend that the Labour Court in exercise of its jurisdiction under S. 11A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal.

22. The Labour Court fell into the factual as well as legal error in setting aside the findings recorded by the domestic tribunal. Learned Single Judge as well as the Division Bench have simply affirmed the findings recorded by the Tribunal.

23. For the reasons stated above, we accept this appeal, set aside the order passed by the High Court as well as the Labour Court. Accordingly, the order passed by the domestic tribunal and the punishing authority is restored. There should be no order as to costs."

7. Heard the rival submissions made on either side and we have also gone through the documents available on record including the award passed by the Labour Court on 18.06.2008 in I.D. No. 433 of 2004 and the order dated 24.11.2010 of the learned Single Judge of this Court in W.P. No. 1264 of 2009.

8. The admitted case of both parties is that the appellant/Workman was appointed as Fitter on 07.07.1993 and was confirmed in the post of Operator on 30.6.1994 and he was entrusted to do the jobs of turning, drilling and grinding. While so, as there was not much work in the Plant III Unit, where he was employed, the Management, instead of laying off all the employees, put the appellant and others on compulsory wait paying them full salary for 7 = months and then employed them in the other division at Gummidipoondi. While so, the appellant/Workman was transferred to Gummidipoondi Division and posted as Grinder. While working in Gummidipoondi, the Workman was issued with charge memos dated 13.12.2002 and 17.02.2003. Due to the misconduct committed by the appellant, he was removed from service. The order of removal from service was challenged before the first respondent herein and the II Additional Labour Court cancelled the order of dismissal on 18.06.2008 and ordered reinstatement of the appellant with all attendant benefits. As against the said order of the first respondent herein, the Management preferred a writ petition in W.P. No. 1264 of 2009 before this Court and the learned Single Judge, after hearing both the parties, passed the following order:

"14. As rightly observed in the judgments cited on the side of the petitioner, it is for the employee to show valid reasons for his absence, refusal to work for full shift, low production etc. and the second respondent has not satisfactorily discharged his burden. The petitioner management has not only furnished the relevant particulars but also adduced sufficient evidence to probalise its stand as to how the finding of the Enquiry Officer holding the charges as proved against the second respondent is based on materials, whereas the same is reversed by the first respondent/Labour Court without any legally sustainable reason. Under such circumstances, the finding of the first respondent in the observation of the Supreme Court is perverse in nature warranting interference of this Court. The petitioner is hence entitled to the relief as sought for herein and the award passed by the first respondent Labour Court dated 18.6.2008 is hereby set aside.

15. In the result, the writ petition is allowed as prayed for. The petitioner is permitted to withdraw the amount if any representing the arrears of salary lying in Court deposit in I.D. No. 433 of 2004 on the file of the first respondent/Labour Court."

As against the said order passed by the learned Single Judge, this writ appeal has been filed.

9. It is not in dispute that the appellant/Workman was served with two show cause notices on different dates viz., 13.12.2002 and 17.02.2003, respectively. The first show cause notice contained six charges and the second show cause

notice contained three charges. The charges mentioned in the two show cause notices are more or less identical. Two separate enquiries were conducted and two separate enquiry reports were filed. The Management, after considering the two enquiry reports, imposed a punishment of removal from service. The main charges levelled against the appellant herein are [1] willful insubordination or disobedience, whether alone or in combination with another or others, of any lawful and reasonable order of a superior [2] riotous or disorderly behaviour during working hours in the premises of the industrial establishment or any act subversive of discipline [3] negligence or neglect of work [4] willful damages or damages due to negligence or carelessness to work in process or to any other property of the company [5] willful slowing down in performance of work, or abetment or instigation thereof, [6] loitering, idling or wasting time during working hours.

10. From the arguments advanced by the learned counsel on either side, what has to be considered is the legal position as to the nature and existence of interference of the Labour Court into the findings of the Enquiry Officer.

11. In view of the settled principles of law laid down by the Hon'ble Apex Court in the decisions cited supra, the Labour Court cannot go into the findings of the Enquiry Officer without any basis or without any other valid reason. In the case on hand, it is admitted on the side of the appellant/Workman and the Management that the Enquiry Officer independently conducted enquiry for the charges levelled against the appellant. Further, in both the enquiries, the present appellant was not examined as a witness. But, a reading of the report of the Enquiry Officer would go to show that the Enquiry Officer has given sufficient time to examine the employee viz., the appellant as a witness. Even then, the appellant/Workman has not chosen to give evidence to deny the charges levelled against him or to give contra evidence against the evidence adduced on the side of the Management. For non-examination of the appellant/Workman before the Enquiry Officer, there is no valid ground or suggestion or reason put forth on the side of the appellant/Workman before the learned Single Judge or before this Court. Without recording any evidence from the appellant/Workman, the Enquiry Officer, on the basis of the evidence and materials available on record, came to a conclusion. Further, it is admitted by both sides that for compulsory wait period of 7 = months, the appellant/Workman has paid full wages etc., and since there was some administrative problem, he was transferred to Gummidipoondi and posted as a Grinder.

12. It is also admitted by the learned counsel for the appellant/Workman that induction programme was given to the appellant for three days for the new job assigned to him, but he failed to attend the same. It is further revealed from the records that according to charge No. 1, even though he was assigned some quantity of work, he refused to do so it and also refused to sign in the log book. That was clearly mentioned in the charge memo and the said charge was proved by the evidence of the Management. But the appellant/Workman has not denied

the same by giving contra evidence.

13. Moreover, the report of the Enquiry Officer is based on the material records placed before him. But, the second respondent herein, without analysing the report of the Enquiry Officer, has passed an order, dismissing the appellant/ Workman from service.

14. Further, the charges of willful insubordination or disobedience levelled against the Workman are proved. Hence, the argument of the learned counsel for the appellant/Workman that the removal from service is disproportionate to the charges levelled against the appellant is not at all acceptable, as the charges are serious in nature.

15. That apart, learned counsel for the Management argued that the explanation offered by the appellant reveals that the appellant did not deny the particulars contained in the charges. The only reason assigned by the appellant is that he is unable to participate in the induction programme and no valid reason was stated for not participating in the induction programme. Even though a new job was assigned to the appellant herein, his refusal to work and sign in the log book clearly indicates the attitude of the appellant/workman in not willing to work with an intention to disobey the orders of his superior, thereby wasting working hours. In such circumstances, we find that the reasons assigned by the first respondent/ Labour Court to reverse the Enquiry Officer's report are not sufficient and valid.

16. In our view, the learned Single Judge, after analysing the principles of law laid down by the Hon"ble Apex Court, came to a right conclusion and set aside the award dated 18.06.2008 passed by the first respondent herein in I.D. No. 433 of 2004. Therefore, we do not find any illegality or infirmity in the order dated 24.11.2010, passed by the learned Single Judge in W.P. No. 1264 of 2009 and the same does not warrant any interference by this Court.

In the result, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.