

Paily Vs. Muthiah

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Court : Kerala

Decided On : Sep-06-1991

Reported in : (1992)IILLJ166Ker

Judge : Paripoornan and; K.A. Nayar, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.A. No. 332/91

Appellant : Paily

Respondent : Muthiah

Advocate for Def. : Jagan, Adv.

Advocate for Pet/Ap. : M. Ramachandran, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Nayar, J.

1. The writ appeal is against the judgment in O.P.No. 1956 of 1990 by the workman, viz. Assistant Conductor of the second respondent who was charge sheeted and after domestic enquiry dismissed from service by the management which became subject matter of an Industrial Dispute No. 126/1986 adjudicated by

the 2nd respondent, Labour Court, Ernakulam. The second respondent directed to reinstate the workman without benefit of back wages. Both the management and the workman filed writ petitions, viz. O.P.No. 1956/90 and O.P. 5762 of 1990 challenging the award - the management against the direction to reinstate the workman and, the workman against the order denying the backages. The learned Single Judge disposed of both the original petitions with the direction to reemploy the workman as Supervisor and not as Assistant Conductor. That means the dismissal of the original petition filed by the workman and modification of the award, in the original petition filed by the management. The workman has not filed an appeal against the order passed in his original petition, but he filed writ appeal against the judgment in O.P. filed by the management, viz, O.P. No 1956/90. The contention in the writ appeal is that the modification of the award directing reinstatement of a workman to a lower cadre cannot be done by writ proceedings.

2. The Labour Court found that the charges were clearly established and that the enquiry was not vitiated from any of the grounds alleged and the learned single Judge found that those findings are based on legal evidence and they are not liable to be interfered with. The workman was holding a position of trust. Indisputably, there was forgery and the Labour Court found that the workman was responsible for the same and, therefore, the learned Single Judge found that the interference at the hands of the Labour Court in the punishment imposed by the management was not wanted. He would have thus allowed the original petition filed by the management. Normally, this Court has no jurisdiction to modify the award but it does not mean this Court has no jurisdiction to modify the award and grant appropriate relief. In *Sri Rajagopal Transports v. Labour Court*, (1980-II-LLJ-351,) the Single Judge of the Madras High Court held as follows (p.357):

'It is also now beyond doubt, in view of the decision of the Supreme Court reported in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazadoor Sabha*, (1980-I-LLJ-137), that whatever relief the Labour Court could have ordered in the circumstances of the case, the same relief could be ordered by this Court exercising writ jurisdiction under Article 226 of the [Constitution of India](#)'.

Further in Gujarat Steel Tubes Ltd. v. G.S.T. Mazadoor Sabha, (1980-I-LLJ-137) the Supreme Court observed (pp.172-173):

'...Article 226, however restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice; and, more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand. What the Tribunal may, in its discretion, do, the High Court too, under Article 226, can, if facts compel, do'.

If the facts are not in dispute, this Court can also pass the order which the Labour Court could have passed. After holding that no interference was called for against the action taken by the management, the learned Single Judge ascertained, in the special circumstances of the case, especially in view of the arguments advanced, that the employee in question who was holding a post of confidence had forfeited confidence, whether the management will be prepared to re-employ the workman in a post other than a post of trust. The management submitted that it is prepared to reemploy the workman as a Supervisor and not as an Assistant Conductor. It is in that context the learned Judge upheld the order of reinstatement, but modified the direction to reinstate him as Assistant Conductor without backwages. This direction is not prejudicial to the workman in question. We find no good ground to admit this writ appeal.

The writ appeal is dismissed.

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