Venugopal V. and anr. Vs. Management of Reed Relays and Electronics Ltd. and anr.

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Court : Chennai

Decided On : Apr-02-1997

Reported in : (1999)IIILLJ1455Mad

Judge : Raju and ;Ar. Lakshmanan, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 11A and 12(3)

Appeal No. : W.A. No. 814/1992

Appellant : Venugopal V. and anr.

Respondent : Management of Reed Relays and Electronics Ltd. and anr.

Advocate for Def. : Meenakshisundaram and ;Dwarkanathan, Advs.

Advocate for Pet/Ap. : A.V. Bharathy, Adv. for ;R. Viduthalai, Adv.

Disposition : Appeal dismissed

Judgement :

Ar. Lakshmanan, J.

1. The above writ appeal is directed against the order dated February 20, 1991 in W.P. No. 3206 of 1986, confirming the order of dismissal passed by the Labour

Court, upholding such dismissal by the Management/first respondent herein.

2. The short facts leading to the filing of the writ appeal are as follows :

The appellants were employed by the first respondent Managment as workers from 1977. The appellants having found that the service conditions of the employees needed improvement, organised a Union called Reed Relays and Electronics Limited Employees Union in September, 1980. The first appellant is the Executive Committee Member and the second appellant is the Vice President of the Union. Aggrieved by the activities of the Union in placing demand, the first respondent retrenched four workmen as a retaliatory measure. The Union protested against the action of the first respondent Management. Subsequently there was a lay-off of the workmen and the workmen also went on strike. Thereupon the Management and the Union entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 on January 24, 1981. Clause (3) of the said settlement, which is relevant for the purpose of this case, reads as follows:'It is agreed that the Management will rescind the order of suspension imposed on ten workmen vide their notice dated January 12, 1981. It is, however, agreed that the Management will reserve the right td initiate disciplinary action against three or four workmen. However, while finalising the disciplinary proceedings, the Management will consult the Commissioner of Labour II, Madras, for his opinion.'

The Management initiated disciplinary action against four workmen including the appellants herein on the charges of using abusive language and preventing the workers from going to work during strike. They were dismissed after enquiry by the first respondent. Aggrieved by the order of the first respondent, the appellants along w.ith two others, raised anjndustrial dispute, challenging the validity of their non-employment, which culminated in a reference, to the adjudication of the Labour Court, Madras, which took up the case on its file as I.D. No. 243 of 1982. The Labour Court adjudicated upon the issue on the non-employment of both the appellants as well as that of the other two persons, who are not parties to the writ proceedings. The Labour Court, after holding that the domestic enquiry conducted by the first respondent was not fair and proper, itself conducted an enquiry,

permitting the parties to lead evidence and ultimately held that the dismissal of the appellants is justified and passed the award dated May 31, 1985. Aggrieved by the award passed by the Labour Court, the appellants have filed W.P. No. 3206 of 1986, to quash the order, dated May 31, 1985 passed in I.D. No. 243 of 1982, insofar as it upholds the order of dismissal passed by the first respondent against the appellants and direct the Management to reinstate the appellants with full back-wages, continuity of service and other attendant benefits.

3. The writ petition was resisted by the Management contending that the orders passed by the Labour Court ordering dismissal of the appellants is justified in that the Labour Court itself conducted the enquiry after permitting the parties to lead evidence and ultimately held that the dismissal of the appellants is justified, and therefore, it is contended on behalf of the Management that the order of the Labour Court does not call for any interference.

4. Before the learned single Judge, six contentions were raised. They are :

(1) Subsistence allowances were not paid as interim relief by the Labour Court during the pendency of the proceedings before the said Court, and such non-payment of the subsistence allowance was not fair and proper and would vitiate the award passed by the Labour Court.

(2) The first respondent/Management has no certified Standing Orders and in the absence of Certified Standing Orders, the Model Standing Orders will apply to the Management by virtue of Section 12 of the Industrial Employment (Standing Orders)Act, 1946.

(3) The impugned order passed by the Labour Court upholding the dismissal of the appellants from service is bad in law inasmuch as the said order of dismissal had been passed in violation of Clause (3) of the settlement reached under Section 12(3) of the Act, because the Deputy Commissioner of Labour II, Madras, was not consulted by the Management while finalising the disciplinary proceedings against the appellants.

(4) Awarding disproportionate punishment even for proved misconduct would amount to victimisation and the Labour Court has not considered the appellants' case of victimisation especial ly when both the appellants are officebearers of the Union.

(5) Extreme penalty of dismissal of the appellants is not called for in this case and the Labour Court failed to consider the quantum of punishment under Section 11-A of the Act.

(6) Termination from the date of supension is illegal, since such a retrospective order of dismissal is invalid at least with regard to the retrospective portion of the order of dimissal.

5. The learned single Judge, in his well considered order, has rejected the first five contentions and allowed the sixth contention, which relates to the retrospective order of dismissal from the date of suspension. The learned single Judge has made it clear that the order of dismissal passed against the appellants will be operative only from December 20, 1981, viz., the date of order of dismissal passed by the Management and it will not have retrospective effect from the date of order of suspension passed against the appellants, viz., June 1, 1981 in the case of the first appellant and May 29, 1981 in the case of the second appellant and that the first appellant would be entitled to the arrears of wages from June 1, 1981 to December 20, 1981 and the second appellant would be entitled to the arrears of wages from May 29, 1981 to December 20, 1981. Subject to the above relief given to the appellants, the writ petition was dismissed.

6. The very same contentions were reiterated before us by the learned counsel for the appellants at the time of hearing this writ appeal. So far as the first contention is concerned, we are of the view that admittedly the appellants have not filed any application before the Labour Court seeking interim relief of subsistence allowance during the pendency of the proceedings before the Labour Court and when the appellants have not even made any claim for interim relief, as rightly pointed out by the learned counsel for the first respondent, there is no merit in the contention of the learned counsel for the appellants that the non-payment of subsistence allowance as interim relief by the Labour Court during the pendency of the

proceedings would vitiate the award passed by the Labour Court. We see therefore no substance in this contention and the said contention is, therefore, rejected.

7. As regards the second contention, we are of the view that this contention also has no merit. It is true that the first respondent Management has no Certified Standing Orders, and therefore the Model Standing Orders will apply to the first respondent. According to the Standing Order 16(1) of the Model Standing Orders framed under the Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947, the following acts shall be treated as misconduct:

'.....threatening, abusing, intimidating or assaulting any workman outside the premises of the establishment, if such threat, abuse, intimidation or assault is in connection with the employment in the establishment.

Against the appellants, a charge was framed on April 3, 1981 that at about 5.30 a.m., they along with others, trespassed into the house of one Ethiraj, abused him in filthy language, threatened him not to go to work, obtained a leave letter from him on false ground and obtained signatures of the said Ethiraj in three blank papers to be utilised by them in future. The second charge against the first appellant Venugopal was that on December 23, 1980 at about 8.45 a.m., he along with others, way laid the vehicle TNH 5221 while the same was entering into the factory premises and prevented the car from getting inside, dragged Mr. Devarajan out of the car and assaulted him. Against the second appellant Ganapathi also a second charge was framed on December 24, 1980 to the effect that he along with other workers, prevented the car TNH 5221 from going out of the factory. A cursory perusal of the above charges framed against the appellants will go to show that those charges will squarely fall under the Standing Order 16(t) of the Model Standing orders. Ethiraj, M.W. 7, has also stated in his evidence that the appellants along with others, came to his house, abused him in filthy language and also obtained his signatures on three blank papers and threatened him not to go to the factory and not to attend the duty on that date. The Labour Court, in our view, has rightly accepted the evidence of M. W.7 and held that the Management has proved the charges against both the appellants. The Labour Court has clearly held

that the appellants have abused M. W. 7 with filthy language, threatened him with dire consequences, if he attended the duty, Likewise M.W. 6 in his evidence has also deposed that he was threatened and obstructed by the appellants. He further stated that on the fateful day when TNH 5221 in which he (M.W. 6) was also coming to the factory, was entering the company gate, several workers obstructed it from entering the premises, opened the door and pulled Devarajan outside and attempted to beat Devarajan. It is clear from this evidence that the persons, who obstructed and prevented M.W. 6 included the two appellants herein and also others. Likewise the Labour Court has also accepted the evidence of M.W. 4 in arriving at the conclusion. In our opinion, the Labour Court has rightly come to the conclusion that the Management has proved the charges framed against the appellant. There is no infirmity in the finding of the Labour Court, since it is based on evidence of M.Ws. 4, 6 and 7. Therefore this contention also fails.

8. The third contention of the learned counsel for the appellants is that the impugned order passed is bad in law, since the same has been passed in violation of Clause (3) of the settlement reached under Section 12(3) of the Act, because the Deputy Commissioner Labour II, Madras, was not consulted by the Management while finalising the disciplinary proceedings against the appellants. It is also contended that the said requirement is a mandatory one as per the terms of Section 12(3) settlement and failure on the part of the Management would vitiate the order of dismissal. We are unable to appreciate this contention as well. It is true that the Management has neither consulted the Deputy Commissioner Labour II, Madras, nor obtained his opinion before finalising the disciplinary proceedings. Such violation of Clause (3) of Section 12(3) settlement, in our opinion, would render the domestic enquiry conducted by the Management unfair and improper, but will not vitiate the award of the Labour Court. As already stated, the Labour Court after holding that the domestic enquiry conducted by the first respondent was not fair and proper, itself conducted the enquiry by permitting the parties to lead evidence and ultimately reached the conclusion that the dismissal of the appellants is justified and passed the award, dated May 31, 1985. In these circumstances, we are unable to accept this contention of the learned counsel for the appellants.

9. The fourth contention relates to the awarding of disproportionate punishment even for a proved misconduct, would amount to victimisation when both the appellants are office bearers of the Union. We have already held that the Labour Court on the basis of the evidence available on record, has rightly held that the charges framed against the appellants were proved. The gravity of the offence proved against the appellants in this case is such, that it cannot be considered that punishment inflicted on the appellants is grossly disproportionate and such imposition of punishment, amounts to victimisation.

10. The last contention of the learned counsel for the appellants relates to the award of extreme penalty of dismissal on the appellants, which according to the learned counsel for the appellants, was not called for in this case. We are unable to accept the above contention. The evidence let in by the Management discloses that the appellants have not only used indecent and threatening language against the other co-workers, but have also prevented the other workers from entering the factory premises and discharging their lawful duties. In fact, the evidence of M.W.6 would disclose that the first appellant Venugopal, along with others, waylaid the vehicle TNH 5221 while the same was entering the factory premises and dragged Devarajan outside the car and assaulted him. Such an indecent action cannot at all be tolerated in the facts and circumstances of the case. The Labour Court, therefore, rightly has come to the conclusion that such an act on the part of the appellants warrants only the extreme punishment of dismissal. In our opinion, Courts should not encourage the use of indecorous or indecent and violent behaviour, exhibiting thereby indiscipline. Such acts on the part of the workmen should be discouraged at any cost. Since the appellants were terminated from service for serious misconduct proved and established before the Labour Court. no interference is called for in the finding of the Labour Court, which is based on the evidence let in, in this case.

11. The learned single Judge himself in his concluding part of his order has granted relief to the appellants to the effect that the order of dismissal passed against the appellants will be operative only from December 20, 1981, i.e., the date of order passed by the Management and it will not have the retrospective effect from the date of order of suspension passed against the appellants, viz..

from June 1, 1981 in the case of the first appellant and May 29, 1981 in the case of the second appellant and that the first appellant would be entitled to the arrears of wages from June 1, 1981 to December 20, 1981 and the second appellant would be entitled to the arrears of wages from May 29, 1981 to December 20, 1981. We are not interfering with that portion of the order passed by the learned single Judge.

12. The appellants have miserably failed to prove the allegation of victimisation and violation of Section 12(3) settlement. The order of the learned single Judge is perfectly in order and therefore no interference is called for. The writ appeal, therefore, fails and accordingly the same is dismissed. However, there will be no order as to costs.