

Fredirck Constantine Vs. the Presiding Officer Industrial Tribunal Chennai and Another

Fredirck Constantine Vs. the Presiding Officer Industrial Tribunal Chennai and Another

SooperKanoon Citation : sooperkanoon.com/954139

Court : Chennai

Decided On : Oct-15-2012

Judge : The Honourable Mr. Justice T. Raja

Appeal No. : W. P. No. 29376 of 2002 & W. P. M. P. No. 47764 of 2002

Appellant : Fredirck Constantine

Respondent : The Presiding Officer Industrial Tribunal Chennai and Another

Advocate for Pet/Ap. : For the Petitioner: V. Ajoykhose, Advocate. For the Respondents: R2, V. Karthick for M/s T.S. Gopalan & Co., Advocates.

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of Writ of Certiorarified Mandamus to call for the records pertaining to the award dated 30.11.2000 passed by the first respondent in I.D.No.77/95, quash that portion of award holding that charges 1 to 6 were proved and declining the relief of reinstatement, with continuity of service, backwages and other attendant benefits and consequently direct the second respondent to reinstate the petitioner in his original post, with continuity of service back wages and all other attendant benefits award costs.)

1. The present writ petition is directed against the impugned order passed by the first respondent, learned Industrial Tribunal, Chennai in I.D.No.77/95, dated 30.11.2000, in which the Industrial Tribunal, after accepting the findings of the domestic enquiry that the charges 1 to 6 were rightly proved, instead of giving reinstatement in the same post, has directed the petitioner to be reinstated in a post lower than that of the clerical post and such post was directed to be offered as and when, first vacancy arises in the lower post. It was also made clear that no continuity of service can be given to the petitioner. Challenging the same, the present writ petition is filed by the petitioner.

2. Mr.V.Ajoykhose, learned counsel appearing for the petitioner would submit that when the petitioner was appointed as Clerk-cum- Cashier in the second respondent, South Indian Bank Limited during the year 1979, he was posted at Madurai. Thereafter, he was transferred to various branches viz., at Chennai, Nagapattinam, Nochiam and Thanjavur. Finally, he was transferred to Trichy branch. He was working to the satisfaction of all his superiors in all the branches. When he was on duty, he suffered heart-attack and fell down unconsciously. Immediately, he was given treatment for heart attack. Thereafter, he was advised by the Doctors to take medicines regularly to arrest heart ailment. While so, he alone was sent on deputation to remote village viz., Kaniyalampatti branch on 02.04.1991. Immediately after receiving the deputation order, the petitioner informed the higher officer, who effected the deputation order that he was taking treatment for heart problem, therefore, he may not be deputed to remote village. This request was not properly considered.

3. Further, he pleaded that when the petitioner refused to receive the relieving order, he was issued with a charge memo. The charge memo contained the following charges:

(i) that on 2.4.1991, you refused to accept the order reliving you from Br:Trichy on deputation to Br.Kaniyalampatty and unauthorisedly absented from duty from 3.4.91 to 8.4.91.

(2) that you refused to do any work after joining duty on deputation at the P.Mettupalayam Branch of the Bank at 4. p.m. on 12.4.91 and left the branch on

the next day by submitting a leave application for your absence from 13.4.91 to 16.4.91.

(3) that on 22.4.1991 at 4 p.m. you entered the cabin of the Branch Manager of Trichy Branch along with a few other persons and abused him by using filthy words.

(4) that on 22.4.1991 at about 11.30 p.m. you went to the lodge where the Branch Manager is residing, accompanied by your friends and got the gate of the lodge opened by telling the watchman that the mother of Br. Manager expired and also that you want to convey the message to him in person and left the place when the Branch Manager did not allow you to enter the room suspecting some foul play.

(5) that on 23.4.1991 you abused the Branch Manager using filthy words during lunch recess in the presence of the staff members of the Branch.

(6) that on 23.4.91 at 3.30 p.m. you threatened the Branch Manager telling that he should not live in Trichy from the next day onwards.

(7) that while you were under suspension you came to the Branch at about 4.45 p.m. on 4.6.91 and when M/s K.Madhusoodanan, Accountant, V.Venkitaraman, Cashier and Henry Joseph, Peon went inside the safe room for keeping the cash, you closed the safe room door from outside and they could come out of the safe room only when Sri.G.Sampath Accountant opened the safe room door.

(8) that after the above incident you demanded money from Sri.G.Sampath, Accountant and a few other staff members and when they refused to do so, you became wild and plucked the telephone wire from the junction box.

4. Immediately, after receiving the charge memo dated 01.07.1991, it was stated that the petitioner submitted his explanation dated 24.10.91. Not satisfied with the explanation, enquiry was initiated against the petitioner. On completion of the enquiry, the enquiry officer submitted his report on 28.12.1991 holding that except charges 7 and 8, all the other charges have been found proved against the petitioner. Thereafter, the petitioner was issued with two show cause notices along with the copy of the report calling upon him to submit his explanation. Further, a

written representation was sent by him. On receipt of the written representation, the Disciplinary Authority disagreed with the second explanation and dismissed the petitioner from service by an order dated 25.01.1992. As against the same, the petitioner has preferred an appeal to the Chairman vide his letter dated 22.02.1992 and the same was rejected by the Chairman by order dated 29.05.1992.

5. Thereafter, the petitioner had raised an industrial dispute as against his dismissal order on 25.01.1992. Further, he pleaded that the Industrial Tribunal, without considering the case of the petitioner, while accepting the findings given by the Disciplinary Authority, directed the second respondent to appoint the petitioner in a rank lower than the post of Clerk. The learned counsel for the petitioner submitted that the charges levelled against the petitioner have not been proved by the Disciplinary Authority in a proper manner and the Industrial Tribunal has completely lost sight of the same. The Industrial Tribunal overlooking the power conferred under Section 11(A) of the Industrial Disputes Act, 1947 has wrongly accepted the dismissal order directing the respondent to provide employment to the petitioner to the post of Peon that too when a future vacancy arises, therefore he argued that when the Industrial Tribunal has power to give direction for reinstatement, ought to have directed to post him as peon, as his original appointment was to the post clerk and the direction to post him as peon will amount to reversion or demotion.

6. In support of his submission, he relied upon a judgment of the Apex Court in NyadarSingh and Union of India reported in [1988-II-L.L.J. at p.506] wherein, it was held that a person, who is appointed to a particular post in the beginning, cannot be reverted to a lower post. He further placed reliance upon two other judgments namely, (i)HussainSasan Saheb Kaladgi vs. State of Maharashtra reported in[1987 II-L.L.J. at p.506]; (ii)Ved Prakash Gupta vs. Messrs Delton Cable India (P) Limited reported in [1984 I-L.L.J. at p.546]. He has further contended that on that basis, the impugned award passed by the Industrial Tribunal is liable to be quashed.

7. Further, on continuing his argument on the quantum of punishment imposed by the Disciplinary Authority, as confirmed by the Industrial Tribunal, it was contended that for imposing major punishment of dismissal from service the charged employee should have either suffered strained relationship or loss of confidence, but in the present case, the learned Industrial Tribunal has directed the second respondent to appoint the petitioner to the post of Peon without proving that the petitioner has lost the confidence of the employer or had strained relationship with the employ/er. Hence, the award is liable to be set aside.

8. Finally, it was contended that when the learned Industrial Tribunal is vested with enormous power under Section 11(A) of Industrial Disputes Act, 1947 to go into the evidence and satisfy as to whether the punishment imposed to the petitioner by the Disciplinary Authority is proper, fair and justifiable, the learned Industrial Tribunal, without giving any proper finding on the evidence relied upon by the petitioner, by merely giving a short conclusion without any discussion on the evidence has confirmed the major punishment imposed on the petitioner. In any event, when the learned Industrial Tribunal has not given a proper, elaborate, exhaustive finding as to how the domestic enquiry has proceeded to hold that the charges 1 to 6 have been proved, the impugned award is liable to be set aside and resultantly, the matter has to be remitted back to the Industrial Tribunal. However, he pleaded, since twenty years have gone by, it would not meet the ends of justice, therefore, for the lacuna committed by the learned Industrial Tribunal and also by the Disciplinary Authority, the writ petition should be allowed by setting aside the impugned award.

9. In reply, Mr.V.Karthick, learned counsel for the second respondent would submit that when Section 11(A) of the Industrial Disputes Act, 1947 was introduced on 15.12.1971, the power as given to the learned Industrial Tribunal, has completely undergone a major change. He would submit that a mere reading of Section 11(A) of the Industrial Disputes Act, 1947 will answer all the arguments advanced by the learned counsel appearing for the petitioner in regard to the direction given for reinstatement of the petitioner to the post of Peon. Section 11(A) is extracted as follows:-

Section 11(A) of the Industrial Disputes Act, 1947 contemplates that Industrial Tribunal or Lab-our Court, as the case may be, is satisfied that the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceedings under this section the Lab-our Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record shall not take any fresh evidence in relation to the matter.

10. A careful reading of the above Section unambiguously shows that the Lab-our Court has got sufficient power to give suitable relief. Besides, it was pleaded that when the award clearly speaks that the Lab our Court has applied its mind on the nature of charges and also on the findings given by the Disciplinary Authority, it would not be fair on the part of this Court to look into the sufficiency of evidence. I fully agree with this submission, for, this is a case where the learned Industrial Tribunal has come to the conclusion that the petitioner has committed a serious misconduct by abusing his superior officer with filthy words and he has also refused to accept the order of deputation to go to a place where he was deputed and he has threatened the Branch Manager telling that he should not live in Trichy from the next day onwards. Since this evidence was accepted and also convincing the conclusion reached by the lab-our Court is just and proper and indeed after accepting the charges against the petitioner more indulgence was shown on the petitioner for his further appointment to the post of Peon. More over, the learned Industrial Tribunal by considering the case of the petitioner, has rightly come out to rescue the petitioner from being thrown out from the job, therefore as rightly relied by the learned counsel for the second respondent the decision of this Court in *The Management of TAFE vs. R.Venkataraman and ors.* [1990 (vol.2) Lab-our Law Journal at p.469] clearly shows that when the Lab-our Court by exercise of powers under Section 11-A of the Industrial Disputes Act, 1947, evaluated the gravity of misconduct for the purpose of the punishment to be imposed on a workman this Court while exercising its power under Article 226 of the Constitution of India, in the absence of any important legal principle, should not undertake to re-examine

the question of adequacy or inadequacy of the materials for interference with the award of the Lab-our Courts.

11. Therefore, it is not open to the petitioner to challenge the correctness of the award impugned herein on the ground that the learned Industrial Tribunal has completely failed to exercise its power conferred under Section 11(A) of Industrial Disputes Act, 1947. Though two of the charges out of eight charges were found not established, the other charges for which he was put on trial came to be established. The nature of charges shows that the petitioner neither accepted to receive the order to go to Kaniyalampatti nor he has established his case that the other charges were baseless. Therefore, when the grave nature of charges framed against the petitioner came to be finally proved on the evidence produced by the second respondent bank and on proper examination of these evidences since the learned Lab-our Court also accepted the findings of the Disciplinary Authority and issued a direction to the Management to appoint him as a Peon on compassionate ground, it can not be argued that such a direction would amount to demotion. In any event, when the learned Industrial Tribunal has rightly exercised the power conferred under Section 11(A) of the Industrial Disputes Act, 1947, which clearly shows that every Industrial Tribunal or the Lab-our Court, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and further direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Therefore, this Court is not able to agree with the arguments advanced by the learned counsel appearing for the petitioner that when he was appointed to the post of Clerk-cum-Cashier, he should not be reverted to the lower post viz., Peon. Hence, the writ petition is devoid of merits and the same fails. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition No.47764 of 2002 is closed.