Mangt.Of Madurantakam Co-Op.Sugar ... vs S.Viswanathan on 22 February, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1954, 2005 (3) SCC 193, 2005 AIR SCW 1418, 2005 LAB. I. C. 2271, 2005 AIR - JHAR. H. C. R. 1062, (2005) 27 ALLINDCAS 23 (SC), 2005 (27) ALLINDCAS 23, 2005 (3) SRJ 392, (2005) 2 JT 481 (SC), 2005 (3) SLT 342, 2005 (1) LABLN 38, 2005 (2) SCALE 274, 2005 LAB LR 357, 2005 SCC (L&S) 372, (2005) 2 LABLJ 1, (2005) 2 SCT 111, (2005) 2 SCJ 475, (2005) 104 FACLR 1229, (2005) 1 CURLR 1078, (2005) 2 SERVLR 700, (2005) 2 SUPREME 128, (2005) 2 SCALE 274

Bench: N.Santosh Hegde, P.K.Balasubramanyan

CASE NO.:
Appeal (civil) 2619 of 2003

PETITIONER:
Mangt.of Madurantakam Co-op.Sugar Mills Ltd.

RESPONDENT:
S.Viswanathan

DATE OF JUDGMENT: 22/02/2005

BENCH:
N.Santosh Hegde & P.K.Balasubramanyan

JUDGMENT:

J U D G M E N T SANTOSH HEGDE, J.

In this appeal the appellant is challenging an order made by the Division Bench of the High Court of Judicature at Madras which allowed a writ appeal filed by the respondent-workman (the workman) reversing the order of the learned Single Judge of the same court who in turn had set aside the award of reinstatement made by the Labour Court.

The respondent was working as a Clerk in the Divisional Office of the appellant - Sugar Mills which had several godowns in different places under the control of the said Divisional Office. The appellant - Sugar Mills used to issue permit for supply of manure in bags to cane growers. The workman used to attend to the distribution of manure bags at two such godowns on different days of the week. It is alleged that on 5.2.1976 while the workman was attending to work in the godown at Sathancheri, he made an illegal demand of additional sum of Rs.10/- purportedly as a donation for a temple festival stating that the said collection was authorised by the higher ups in the Management. The complainant - cane grower had stated in his complaint that this is an illegal gratification which the

workman was collecting from the cane growers. He had also alleged that the appellant had behaved in a rude manner with him by using insulting words when he met him on that day. The complainant further stated that the workman was given defective manure bags and no opportunity was being given to the cane growers to select their own bags.

Based on the above complaint, a departmental enquiry was instituted and the same was conducted by the Labour Welfare Officer who on the basis of the evidence recorded by him found the workman guilty of alleged misconduct and recommended his dismissal.

The disciplinary authority before passing the order based on the enquiry report, re-appreciated the evidence recorded by the enquiry officer and came to the conclusion that though the misconduct is proved a punishment of dismissal was too harsh and converted the same to one of discharge.

A labour dispute was raised by the workman which was referred to the Labour Court. Before the said court one of the contention of the workman was that the enquiry officer, namely, Labour Welfare Officer was specifically debarred under the rules applicable from conducting an enquiry. Therefore, the enquiry against him was vitiated. The Management while admitting that the said enquiry officer was disqualified from conducting the enquiry contended that the material collected in the enquiry ipso facto would not be vitiated even though the enquiry officer was an unauthorised person and the disciplinary authority having considered the entire material on record and in fact having reduced the punishment it is not open to the workman to plead that any prejudice has been caused to him.

On the facts of this case and for the reasons recorded herein below, it may not be necessary for us to decide this issue, since inspite of the fact that the enquiry officer was not an authorised person, the workman himself had relied on certain portions of the evidence recorded by the said enquiry officer before the Labour Court for proving his innocence. Hence, we leave this question of law open.

Before the Labour Court, the Management had sought permission to adduce further evidence to establish its charge against the workman. The Labour Court permitted both the parties to adduce additional evidence pursuant to which the Management examined two witnesses while the workman examined himself in support of their respective cases.

The Labour Court having perused the material on record came to the conclusion that though the demand for donation might have been made by the workman, the same was not as an illegal gratification and since the complainant had not paid the amount demanded, the workman had cancelled the receipt of such amount which was done on the back of the permit issued by the Management. It also came to the conclusion that the Management has failed to prove that the workman had misbehaved with the complainant and further held that the workman was justified in not allowing the cane growers to enter the stores for choosing the manure bags of their choice. On the basis of the said finding the Labour Court set aside the punishment of discharge and directed the Management to reinstate the workman with back wages and other retiral benefits.

The aggrieved Management preferred a writ petition before a learned Single Judge who on re-appreciation of the evidence came to the conclusion that the Management has proved the

demand of illegal gratification in the guise of donation. Hence, it set aside the award of the Labour Court upholding the order of discharge made by the Management.

As stated above, this order of the learned Single Judge came to be reversed by the appellate bench of the High Court recording a finding that there was no evidence to conclude that the amount demanded was towards illegal gratification and not as a donation for the temple festival. The Division Bench further came to the conclusion that on the back of the permit a sum of Rs.10/- was stuck off since the complainant did not pay that money and a figure of Rs.4.95 was entered by the workman which was towards the payment of cooly charges. Thus taking a different view on facts from that of the learned Single Judge and agreeing with the finding of the Labour Court, it allowed the appeal of the workman and upheld the award by setting aside the order of the learned Single Judge.

This ding-dong battle on facts between the Management and the workman has reached this Court by way of this appeal and leave having been granted, it is for us now to decide which of the four views is justifiable and is to be upheld. Is it the view of the Management taken in the domestic enquiry ? Or is it the view of the Labour Court ? Or is it the view of the learned Single Judge of the High Court ? Or is it the view of the Division Bench of the High Court ?

Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as by the learned Single Judge and disagreed with the finding of the learned Single Judge. It is in this context that we are called upon to decide the validity of the impugned order of the Division Bench of the High Court.

Shri R.Sundaravardan, learned senior counsel appearing for the appellant contended that under Article 136 of the Constitution it is open to this Court to correct the injustice that is done by the

impugned order. According to the learned counsel the Division Bench was in error in coming to the conclusion that the Management had not established the fact that the workman had abused the complainant. He also submitted that the finding of the Division Bench that money demanded was for donation to the temple festival and not as a bribe was again contrary to records. Therefore, he contended the Division Bench has erred in coming to the wrong conclusion.

We note that the Labour Court has taken into consideration the fact that the complainant had stated that on the day when he went to meet the workman he was greeted with an abuse, but this piece of evidence was not accepted by the Labour Court rightly because it is rather difficult to accept that any normal person who meets another person for the first time in his life would straight away abuse him without any rhyme or reason. In this background, we cannot conclude that the finding of the Labour Court on this question is perverse. The other argument of the learned counsel for the appellant is that there was evidence to show that the demand of Rs.10/- was made as illegal gratification in the guise of donation and that case ought to have been accepted. We must state that even this question was considered by the Labour Court and was rejected on the ground that the mere statement of the complainant in this regard without there being any corroborative material was insufficient to hold the workman guilty. Even this finding in our opinion cannot be held to be perverse taking into consideration the over all facts of the case. In regard to the third charge of not allowing the complainant to enter the godown also, it cannot be said that the finding of the Labour Court is perverse. In such a background it is not possible for this court to accept the contention of the Management that the Labour Court's findings are unsustainable in law. It may be possible for another person to take a different view, but certainly it is not possible to give a finding that the conclusion of the Labour Court was either perverse or not based on evidence.

This takes us to the consideration of the next argument of the learned senior counsel for the appellant who submitted that the direction of the tribunal granting full back wages is highly onerous, in the background of the fact that the appellant-Management is in a state of financial crises. He submitted that there is material to show that the respondent-workman during his period of non employment with the appellant-Management was gainfully employed elsewhere. Therefore, now that the respondent-workman is entitled to his gratuity and other retiral benefits, the direction to pay the full back wages may be modified.

Ms.Hetu Arora, learned counsel appearing for the respondent-workman strongly opposed this prayer of the appellant and contended that the case is going on since 1976 and the workman had to spend considerable amount of money on the litigation solely because of the attitude of the Management. She also submitted that the statement of the learned senior counsel for the appellant that the workman was gainfully employed is not substantiated by any material on record, hence the said prayer should be rejected.

We have anxiously considered the argument addressed by both sides in regard to the quantum of back wages to be paid to the workman. It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent-workman will be entitled to his retiral benefits like gratuity etc. and accepting the statement of the learned senior counsel for the appellant-Mills that it is undergoing a financial

crises, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages. In addition the respondent-workman will also be entitled to all other retiral benefits as if he was in service throughout the period when his services were discharged. The decision under appeal is confirmed subject to the above modification. Ordered accordingly.