

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-09-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.11834 OF 1996

The Management of
Amalgamations REPCO Ltd.,
G.N.T Road, Ponnammanmedu Post,
Madhavaram, Madras 110. ... Petitioner

Vs.

1. The Presiding Officer,
II Additional Labour Court,
Madras.
2. R. Selvaraj,
C/o. President,
Simpson and Group Companies
Workers Union,
89, Marris Road, Madras 2 (WA) .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the first respondent in I.D.No.427/82 and quash its award dated 16.4.1996.

For Petitioner : Mr.R. Krishnamurthy
Senior Advocate for
Mr.S. Ravindran for
M/s.T.S. Gopalan & Co.

For Respondent-2 : Mr.N.G.R. Prasad for
Mr. Chandrasekaran for
M/s.Row & Reddy

Respondent-1 : Labour Court

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J U D G M E N T

The present writ petition has been filed by the Management of Amalgamations REPCO Ltd. for setting aside the award passed by the Labour Court in I.D.No.427 of 1982 dated 16.4.1996.

2. The facts giving rise to the present writ petition are as follows :-

The petitioner company is having a factory at Madhavaram, which is used for manufacturing clutch plates and clutch assemblies required for the automobile industry. The petitioner is governed by the Model Standing Orders prescribed by the Tamil Nadu Industrial Establishments Standing Orders Rules. The second respondent, hereinafter called "the workman", was employed as a machine operator. The second respondent was elected as a Group Leader of the recognised union during the year 1974-75. According to the case of the management, the second respondent became indifferent to his work. During the year 1977, several memos were issued to him alleging that he was guilty of go-slow tactic. In respect of charge dated 17.8.1977, a domestic enquiry was held and he was found guilty of adopting "go-slow". Similarly he was charged with misconduct of riotous and disorderly behaviour and he was found guilty in the domestic enquiry. It was proposed to dismiss him from service on account of these two enquiries. However, in deference to the representation of the recognised union, no punishment was imposed. During the year 1979, the workman continued in such indifferent manner and persistently refused to carry out the assigned work, which resulted in loss of wages on the principle of "no work-no pay". On 10.7.1979, a charge was issued to the workman for his insolent behaviour towards Sales Executive. He was found guilty of such charge and he was dismissed by order dated 9.8.1979. On the representation of the recognised union, the order of dismissal was rescinded on 5.9.1979 and he was permitted to join duty. After resuming duty in December, 1979, the workman again indulged in go-slow. During December, 1979 to December, 1981, numerous memos were issued. On 13.1.1982, a charge-sheet was issued for of the workman to produce even a single component on 12.1.1982. The workman was again dismissed by order dated 4.2.1982. The workman made representation to revise the order. Ultimately, the President of the Union pleaded with the Management to reconsider the order and gave an assurance that he would advise the workman to mend himself. Based on the representation and the assurance of the President of the Union, the management permitted the workman to join duty with effect

from 3.3.1982, subject to the condition that he would carry out the normal duties arising out of his employment as an operator on day to-day basis and he would abide by the provisions of the Standing Orders (Ex.M41). The workman was assigned with the work of drilling 64-202 pressure plates on K.M.T. drilling machine and as against the target of 153 Nos. per shift, the workman drilled only one piece and he was found idling for rest of the day and he was absent on 20.3.1982. On 22.3.1982, he completed only 3 Nos. of components for the whole shift. Since the workman was not performing his work as promised by the President of the Union, the management wrote to the President bringing to his notice the go-slow tactic adopted by the workman. On 25.3.1982, the President of the Union informed the management that he was taking up the matter with the concerned workman. On 23.3.1982, the workman produced only one component as against the target of 155 Nos. and similarly he completed only 2 Nos. on 24.3.1982 as against the target of 82 Nos. per shift. When he was questioned about such low output, he maintained that as a group leader he cannot be expected to do the normal work. On 29.3.1982, the workman wrote to the management stating that even though he had received letter dated 2.3.1982 from the President of the Union and he had agreed to the conditions, he was not bound by the conditions imposed in the management's letter dated 2.3.1982, in view of the changed circumstance. The go-slow activity of the workman continued. On 2.4.1982, the management issued a memo to the workman placing on record his output against the targeted output from the period 25.3.1982 to 1.4.1982 and further indicated that the workman had been permitted to resume duty on 20.3.1982 on condition that he would give the normal output, but he had gone back on that undertaking and the workman was called for to give a written undertaking expressing his willingness to perform his normal duties as an employee. By letter dated 4.4.1982, the workman took the stand that the letter dated 2.4.1982 had been issued with a view to deny him wages and also curb his trade union activities and thereby declined to give any undertaking. On 14.4.1982, the management passed an order dismissing the workman from service. The relevant portion of the letter of termination is as follows :-

- “Ref: 1. Our letter AR.AN.34536 dt. 4.2.82
2. Our letter AR.AN.34650 dt. 2.3.82
3. Our letter AR.KS.34736 dt. 21.3.82
4. Our letter AR.KS.34758 dt. 23.3.82
5. Our letter AR.KS.34771 dt. 25.3.82
6. Our letter AR.AN.34828 dt. 2.4.82
7. Your letter dated 4.4.82
8. Our letter AR.AN.34841 dt. 4.4.82
9. Your letter Dated 20.4.82
10. Our letter AR.AN.34874 dt. 11.4.82

11. Your letter dated 13.4.82

Reference is invited to the correspondence and communications referred to above.

In spite of repeated opportunities given to you to conform to the Standing Orders of the Establishment and abide by the discipline therein realising your role as an employee of the Establishment, it is now clear that you have no intention whatsoever of changing your attitude for the better. It is not possible for any Management to have on its rolls a worker who, deliberately, persistently, continuously and wilfully refuses to carry out the work to be done by him and also refuses to give even a written unqualified undertaking to do so.

A perusal of your past record also shows that your present attitude is not an isolated one. During the course of 11 years of service you have been warned on innumerable occasions; wage cuts have been imposed on you; several letters of advice have been given to you to improve your performance. You also became liable for dismissal once in 1979 though that order has been kept in abeyance pending the review by the Joint Commissioner of Labour.

In the circumstances, the Management is left with no alternative except to dismiss you from employment of the Company with immediate effect. Please note that your services stand terminated by way of dismissal with immediate effect."

3. Thereafter an Industrial Dispute was raised before the Labour Court. The main contention raised by the workman before the Labour Court was to the effect that without holding any domestic enquiry, he had been dismissed from service. It was contended by the workman before the Labour Court that being a member of the Labour Union and subsequently elected as a Group Leader of the Union, he was relieved from the normal duty and as the Management did not like the activities of the workman, it was taking various punitive actions against the workman. On an earlier occasion, the management had dismissed him on false allegations but, on the intervention of the Union, his termination had been set aside by the management. In December, 1981, the employees engaged on daily wage basis has struck work and the management took revenge on the petitioner by dismissing him.

4. In reply, the management narrated the entire history and recapitulated the various events, which had taken place, and submitted that the order of dismissal was justified.

5. The contention of the workman that since he was a group leader and had settled all the labour union problems, he was exempted from doing normal work, was rejected by the Labour Court. However, the Labour Court held that there was no formal enquiry before the order of termination was passed and, therefore, the order of termination was not valid, being violative of the principles of natural justice. The Labour Court also negated the contention that the management had lost confidence and the workman should not be reinstated but some compensation should be paid. Accordingly, the Labour Court directed that the workman should be reinstated in service with backwages, continuity of service and other benefits. Such order is challenged in the present writ petition.

6. During pendency of the writ petition, payment is being made to the workman under Section 17-B of the Industrial Disputes Act.

7. The main contention raised by the learned Senior Counsel for the petitioner is to the effect that even though a formal enquiry was not held, the undisputed materials on record clearly indicate that the workman was indulging in go-slow activity inspite of several memos issued earlier and, therefore, the Labour Court should have upheld the order of termination, more particularly when the Labour Court came to the conclusion that the workman as a group leader was not exempted from doing the normal work. It is further submitted by him that even assuming that the order of termination is illegal, since the management had lost confidence, the Labour Court should not have given direction for reinstatement with backwages but, could have directed for payment of compensation.

8. Learned counsel appearing for the Respondent No.2 has supported the order passed by the Labour Court.

9. Upon going through the order passed by the Labour Court and the other relevant materials, there is no escape from the conclusion that the order of the Labour Court regarding reinstatement with backwages is a bonanza, considering the obdurate attitude of the workman in refusing to do any work worth the name on the pretext that being a group leader he was exempted from doing the normal work. A mere perusal of the award passed by the Labour Court indicates that the Labour Court in no uncertain terms and in several places has negated the

contention of the workman that being a group leader he was exempted from discharging his normal duty. After having come to such a conclusion, the Labour Court was not justified in directing reinstatement with backwages merely on the ground that the order of termination was not preceded with any formal enquiry. Even if no formal enquiry had been held, the entire materials were before the Labour Court and in fact the Labour Court has come to a categorical conclusion that the workman was not justified in insisting that he was exempted from doing the normal work. The very letter of termination itself referred to several correspondences between the management on the one hand and the workman or the union on the other hand, which clearly point out the recalcitrance on the part of the workman to do any normal work. Therefore, the order of termination, even though without any formal enquiry, was amply justified by the materials on record. Merely because there was no domestic enquiry and in that sense the principles of natural justice were violated, the Labour Court need not have quashed the order of termination as enough justification was shown by the Management before the Labour Court. In fact this is a case where no other result would have been possible even if a formal domestic enquiry would have been held.

10. The only plea which had been raised by the workman in his correspondence or subsequently in his claim petition was the alleged exemption from doing the normal duty on account of the workman being elected as a group leader. This plea having been rejected by the Labour Court in no uncertain terms, the only inevitable conclusion is that there was no justification for the workman to adopt a go-slow tactic repeatedly and persistently in spite of several earlier reprieves at the instance of the Union. The materials on record clearly point out that the workman was a confirmed non-performer and, therefore, the management was entirely justified in terminating the workman. May be that the management could have formally complied with the principles of natural justice by holding a domestic enquiry. But, in the peculiar facts and circumstances of the present case, non-holding of a domestic enquiry cannot be considered as a ground to direct reinstatement of person who was consistently refusing to discharge the normal work.

11. In (1996) 4 SCC 374 (BHARAT FORGE CO. LTD. v. A.B. ZODGE), it was observed :- (quoted from Head Note)

"A domestic inquiry maybe vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated inquiry does not stand on a better footing than a disciplinary action with no inquiry. The right of the employer to adduce evidence in both the situations is

well recognised. So the employer is entitled to adduce evidences, for the first time, before the Tribunal even if the employer had held no inquiry or the inquiry held by the employer is found to be perverse."

12. After referring to the aforesaid decision and several others decisions, in (2000) 5 SCC 65 (SYNDICATE BANK v. GENERAL SECRETARY, SYNDICATE BANK STAFF ASSOCIATION AND ANOTHER), it was observed :-

"15. ... where domestic inquiry was not held or it was vitiated for some reason the Tribunal or Court adjudicating an industrial dispute can itself go into the question raised before it on the basis of the evidence and other material on record."

It was further observed :-

"16. Now what are the requirements of principles of natural justice, which are required to be observed? These are (1) a workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the management should be fair, reasonable and just. ..."

If the facts and circumstances of the present case are analysed in the above context, it is apparent that all the three criteria summarised in the above Supreme Court decision have been fully met in the present case. The workman cannot pretend that he did not know the nature of the complaint or accusation against him as he has been repeatedly put on prior notice to perform according to the norms which he consistently refused to follow on the ground that he was a group leader. The workman had adequate opportunity to state his case as apparent from the discussion made in the award of the Labour Court. The specific plea that he was not required to reach the norms as he was a group leader of the Union has been considered by the Labour Court in great detail and has been negatived in no uncertain terms. In the facts and circumstances of the case and keeping the background and history of the actions taken against the workman, which were being revoked on the basis of the intervention by the Union, it cannot be said that the Management did not act in a fair, reasonable and just manner.

13. For the aforesaid reasons, I am constrained to quash the order passed by the Labour Court and hold that the order of termination was valid.

14. Next question is as to whether the management would be required to pay any further compensation. The writ petition was filed in the year 1996 and thereafter the management had been paying the last wages drawn in accordance with Section 17-B of the Industrial Disputes Act. Apart from payment under Section 17-B at the rate of Rs.2000/- from 16.4.1996, the workman has been permitted to withdraw Rs.50,000/- and quarterly interest on the deposited sum of Rs.1,50,000/- as per the order in W.A.Nos.376 and 377 of 1997 dated 15.4.1997. Keeping in view the background of the case, any further direction regarding payment to the workman would amount to over indulgence. The sum of Rs.1,50,000/- kept in deposit shall be refunded to the Management.

15. The writ petition is accordingly allowed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer,
II Additional Labour Court, Madras.

+ 1 cc to M/s T.S. Gopalan & Co., SR No.41017

+ 1 cc to M/s Row & Reddy, SR No.40988

AK(CO)
SR/24.10.2005

JUDGMENT IN W.P.NO.11834/96

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