

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-3-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.7956 of 1998

B & C Mills,
Unit of Binny Limited,
65, Armenian Street,
Chennai - 600 001.

Petitioner

Vs.

1. The Chief Inspector of Factories,
Chennai - 600 005.

2. P. Madhavan

Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari to call for the records of the first respondent in appeal No.1/98, and quash his order dated 21.5.1998.

For Petitioner : Mr.John
for Mr.T.S.Gopalan & CO.

For 1st Respondent : Mr.P.Subramanian
Government Advocate

For 2nd Respondent : Mr.T.P.Kathiravan

O R D E R

Petitioner seeks to quash the order of the first respondent dated 21.5.1998 setting aside the dismissal of the second respondent from service.

2. Brief facts necessary for disposal of the writ petition are as follows.

(i) The petitioner Textile Mill employed 4159 workmen, 202 staff, 4 Welfare Officers apart from an Industrial Relations Officer and an Industrial Relations Manager in the factory. Second respondent was working as Welfare Officer in the Mill. During June, 1996, when the petitioner mill was not functioning due to the

damage caused by severe rains, the Officers were attending various jobs connected with salvaging operations of the Mill. The Officers of the Industrial relations Department were attending to various labour related issues like supply of rations, payment to the employees in terms of Government Order, etc.

(ii) It is stated in the affidavit in support of the writ petition that on 26.2.1997 one D.Balasubramaniam, management staff Grade-VIII, attached to Industrial Relations department was talking to one Kesavankutty, Administrative Officer in his room situated in the Industrial Relations Office. The said Balasubramaniam was expressing his grievance that he was working under tremendous pressure in the wake of difficult situation faced in the Mill. The said Kesavankutty was advising Balasubramaniam that in spite of the grave situation, the officers should raise to the occasion in a calm manner and attend to all the duties. The second respondent herein, who came to the office at that time, misunderstood the comments of the said Balasubramaniam as if it was uttered against him. Thus, the second respondent got enraged and said to have abused Balasubramaniam in filthy language. The second respondent also removed one of his chappals and tried to assault the said Balasubramaniam. One A.Ravindran, Senior Officer, Industrial Relations, along with the said Kesavankutty intervened and prevented the second respondent from assaulting the said Balasubramaniam.

(iii) In respect of the said misconduct committed by the second respondent on 26.2.1997, a show cause notice was issued on 14.3.1997 and he was also placed under suspension pending enquiry. Second respondent submitted explanation on 17.3.1997 and denied the charges. The said explanation having been found not satisfactory, a domestic enquiry was directed to be conducted by a retired District and Sessions Judge. The petitioner and the second respondent through their legal practitioners, attended the enquiry. Second respondent's counsel elaborately cross-examined the four witnesses cited on the side of the petitioner and the second respondent examined 8 witnesses on behalf of him and number of documents were also marked as exhibits on both sides.

(iv) The Enquiry Officer submitted his findings on 20.8.1997 holding that the charges are proved. Petitioner management accepted the findings of the Enquiry Officer and dismissed the second respondent from service by order dated 2.9.1997 after issuing show cause notice on 28.8.1997 and getting his reply.

(v) Second respondent preferred appeal before the first respondent under rule 6(2) of the Tamil Nadu Factories (Welfare Officers) Rules, 1953. The first respondent, considering the unblemished record of service of the second respondent for about 12 years, interfered with the punishment and allowed the appeal on 21.5.1998 and set aside the order of dismissal.

(vi) The said order is challenged in this writ petition by the petitioner management on the ground that merely on the basis of the

reliance on the past record of service, a lenient view could not have been taken in favour of the second respondent, particularly when the charges are proved and the Mill is not functioning from 15.6.1996 and the employees have also left the service of the petitioner Mill accepting voluntary retirement scheme. It is further stated that there is no scope for engaging the second respondent as Welfare Officer pursuant to the impugned order as the Mill is closed.

3. Counter affidavit is filed by the second respondent, wherein it is stated that the petitioner was appointed as Labour Welfare Officer on 29.4.1985 by the petitioner management and he was having 12 years of meritorious service in the petitioner Mill. In the year 1991 he was transferred to Materials department as management staff from the post of Labour Welfare Officer. and the said transfer order was challenged in W.P.NO.5133 of 1991 before this Court. The said writ petition was dismissed by this Court. The appeal filed against the said order in W.A.No.1353 of 1991 was allowed on 21.1.1992 and the SLP 15420 of 1992 preferred before the Honourable Supreme Court by the petitioner management was dismissed on 11.12.1992. Thereafter second respondent was given the post of Labour Welfare Officer in the year 1992, but he was denied backwages. Therefore second respondent initiated contempt proceeding against the petitioner Mill in Contempt Application No.100 of 1993, pursuant to which backwages were paid by the management. In view of series of litigations including the initiation of contempt proceeding by the second respondent, the management took vindictive attitude against the second respondent and created records in the name of misconduct. Second respondent sent a complaint before the Deputy Chief Inspector of Factories, Chennai-5 for violation of section 6(2) of the Tamil Nadu Factories (Welfare Officer) Rules, for non payment of medical claim and illegal deduction of ESI benefits and the Deputy Chief Inspector of Factories by order dated 19.4.1993 gave a direction to the petitioner Mill to comply with the demand. On 31.8.1996, second respondent again sent a complaint to the Chief Inspector of Factories about the attempt made by the management for appointing the said D.Balasubramaniam as Labour Welfare Officer, without complying with the statutory requirements. Therefore, the management got prejudiced against the second respondent and induced the said D.Balasubramaniam and one Kesavankutty to create records as if the second respondent used unparliamentary words against the said D.Balasubramaniam on 26.2.1997 at 8.00 a.m. The show cause notice for the said allegation was issued only on 14.3.1997 without conducting any preliminary enquiry as contemplated under clause 15 (a) of the standing orders. It is further stated in the counter affidavit that the enquiry Officer failed to conduct enquiry in a fair and proper manner even though second respondent requested to issue summons to the Deputy Superintendent of Police on deputation to the B&C Mill acting as Vigilance/Security Officer. The Enquiry

Officer failed to take any steps to produce him as witness. It is further stated in the counter affidavit that the management witness No.3 viz., A.Ravindran, Assistant Industrial Relation Officer came for duty only at 8.05 a.m. as per the attendance register, who could not have seen the incident said to have taken place at 8.00 a.m. The Welfare Officer was not summoned as independent witness as per Rule 7(a) and he was returned by the Enquiry Officer without taking his evidence either in favour of the second respondent or in favour of the management. Therefore the second respondent in the counter affidavit contends that the Enquiry Officer's findings is perverse and on the basis of which the order of dismissal was passed, which was rightly set aside by the first respondent particularly taking note of the proportionality of the punishment.

4. The learned counsel for the petitioner Mill argued that the second respondent having been charged for using abusive words against one D.Balasubramaniam and the management staff Grade-VIII, while he was talking to one Kesavankutty and having removed one of his chappals and attempted to hit the said D.Balasubramaniam, a regular enquiry was conducted, wherein it was proved and the first respondent ought not to have interfered with the punishment imposed solely on the basis that the second respondent's past record was without blemish.

5. The learned counsel for the second respondent submitted that the second respondent was victimised since he has challenged the order of transfer by filing writ petition and after the same having been allowed, the writ petitioner management filed SLP and even after the dismissal of the SLP, salary was not paid, for which he filed contempt application and thereafter only second respondent was paid backwages and therefore the motive to punish the second respondent is clearly established. The learned counsel further submitted that the alleged attempt to appoint the said D.Balasubramaniam as Labour Welfare Officer was objected by the second respondent by sending representation to the then Inspector of Factories and the said Balasubramaniam was used as a tool to give complaint against the second respondent as if the second respondent abused and attempted to slap him. The learned counsel also submitted that under the standing order, while imposing punishment the Mill management shall take into account the gravity of the misconduct, the previous record, if any of the employee and any other extenuating or aggravated circumstances that may exist.

6. I have considered the rival submissions made by the petitioner as well as the second respondent and perused the dismissal order, order of the first respondent and also the past litigations between the second respondent and the petitioner Mill.

7. The manner in which the second respondent was dealt with by the petitioner Mill is elaborately considered by a Division Bench of this Court in the decision reported in 1992 (1) LLN 574 (P.Madhavan v. Binny Ltd.), wherein the second respondents transfer order was set aside. It is not in dispute that an attempt was made by the petitioner Mill to promote the said Balasubramaniam as Labour Welfare Officer, who is not qualified. The objection raised by the second respondent before the Inspector of Factories is also not denied. In such circumstances, there is an element of motive to create complaint against the second respondent at the instance of the said Balasubramaniam.

8. As rightly contended by the learned counsel for the second respondent, there is no independent evidence to show that the petitioner indulged in the alleged delinquency, except the evidence of the said Balasubramaniam. The attendance register on 26.2.1997 discloses the fact that one A.Ravindran, Assistant Industrial Relation Officer, MW-3 came to the office only at 8.05 a.m. and therefore he had no chance to witness the alleged incident said to have taken place at 8.00 a.m. Even assuming that the allegation against the second respondent is proved, as rightly held by the first respondent, the second respondent's past service records should have been given due consideration and a lenient punishment could have been imposed in terms of the standing order of the petitioner Mill. Even though there is a reference about the past conduct in the order of dismissal, non-appreciation of the unblemished record of service of 12 years is a serious matter and taking note of the same, first respondent interfered with the punishment and the same cannot be treated as perverse finding warranting interference in writ jurisdiction.

9. It is well settled in law that when two views are possible, if a statutory authority has taken one view, the writ Court sitting under Article 226 of the Constitution of India, cannot upset the said finding and take a different view. Since I find there is no perversity in the decision of the first respondent, I hold that there is no merit in the writ petition and the writ petition is liable to be dismissed.

10. The learned counsel for the petitioner submitted that the Mill is closed from 15.6.1996 and there is no textile activity carried on in the Mill and only 39 workers are employed in the Company, of which two are securities, three are drivers and the remaining are doing security work looking after the lands of the petitioner Mill. There are only five officers presently employed by the petitioner Mill. Second respondent was employed as Welfare Officer. Under the Factories Act, for every 500 workemen, there shall be one Welfare Officer. When only 39 workers are there in the petitioner Mill and there is no manufacturing activity carried

on after closure of the Mill, there is no need for engaging Welfare Officer at this point of time.

11. Taking into consideration the above said averments made by the petitioner Mill through additional affidavit filed in February, 2007, I am of the view that the second respondent is not entitled to be reinstated. However, having regard to the setting aside of dismissal order passed by the first respondent, second respondent shall be given voluntary retirement as it was given to all other employees in the petitioner Mill, with all attendant benefits.

12. The writ petition is dismissed with the above directions. No costs.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

The Chief Inspector of Factories, Chennai - 600 005.

1 cc to M/s. T.S. Gopalan, Advocate, sr., 20827

W.P.No.7956 of 1998

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