IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	**27.04.2023**
DELIVERED ON	**25.05.2023**

CORAM

THE HONOURABLE MR.S.VAIDYANATHAN,
ACTING CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.1835 of 2021
and C.M.P.No.10184 of 2021

S.Raja ... Appellant/2nd Respondent

vs.

1. M/s.Hindustan Unilever Ltd.,
   Tea Factory Manager,
   Puducherry – 695 102. ... Respondent / Writ Petitioner

2. The Presiding Officer,
   Labour Court,
   Puducherry. ... Respondent / 1st Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order of the learned Single Judge dated 25.09.2019 made in W.P.No.33610 of 2013.

For Appellant : Mr.P.R.Thiruneelakandan

For R1 : Mr.Sanjay Mohan
For R2 : Labour Court

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J U D G M E N T

(*Judgment of the Court was made by S.Vaidyanathan, ACJ*)

This Writ Appeal has been filed against the order dated 25.09.2019 made in W.P.No.33610 of 2013, in and by which, the award of the Labour Court was interefered with, thereby justifying the act of the Management in terminating the Appellant herein from service. Aggrieved by the same, the Appellant is before this Court.

2. For the sake of brevity, the parties would be referred to as the "Workman" and the "Management" (Appellant & R1 respectively herein)

3. Brief facts of the case as put forth by the Workman:

i) The Workman, who was a Secretary of the Hindustan Lever Limited Tea Workers' Welfare Union, was asked to participate in a meeting on 29.07.2009, in which one Sundaram, an Officer in charge of Total Productive Maintenacne (TPM) was threatening workers to increase the production of "Hassia Machine" and there was hue and cry. It was the Workman, who pacified all workers and requested to resume their duty and he also requested the said Officer to discuss all issues with the Union;

ii) On 03.08.2009, all of a sudden, the Workman was issued with an Enquiry Notice and a charge memo with false allegations and thereafter, an Enquiry Officer was appointed, who submitted a report according to the wishes of the Management with a view to satisfy the Management without following the principles of natural justice;

iii) Though the Workman had submitted an explanation, the Management, without considering the same properly, based on the farce of an enquiry, imposed a major punishment of termination from service, which, according to the Workman, was disproportionate to the gravity of misconduct. The alleged misconducts are that a) he barged into the shop floor, where the Production Manager and H.R.Executives were holding a meeting with the operators of Hassia Machine; b) he disrupted the meeting and started abusive language against the Executives and the Manager and scolded the Executive by name Sundaram in a filthy language and c) he also intimidated him by holding him by his shift collar, thereby created an unpleasant atmosphere;

iv) The Workman alleged that he was victimized for the trade union activities and the act of the Management is unfair labour practice and against the provisons of the Model Standing Order, especially Clause 39(c) and the Industrial Disputes Act, 1947. He was not called upon to give any explanation and he was denied the opportunity to reply to the charge sheets;

v) Challenging the dismissal order, an Industrial Dispute was raised, which resulted in the Government of Puducherry to refer the dispute for adjudication and the same was taken up by the Labour Court in I.D.No.3 of 2011;

4. The stand of the Management before the Labour Court:

i) The Management took a stand that the Workman, a permanent employee, exhibited his aggressive, subversive and temperamental character and quarrelled with Officers of the industry and that he had suffered past punishment;

ii) It was stated that on 29.07.2009 around 1.00pm, the Workman, who was not in duty on the particular day, entered into the factory premises

wanted to meet the HR Executive, that too, in her cabin and subsequently, he left the cabin and barged into the shop floor area without prior permission and misbehaved with the Executives and created restlessness in the factory, apart from scolding the Executive in filthy language and holding his shift collar. The behaviour of the Workman disrupted the normal operation of the factory and he was never invited by the Management for any discussion. The Executive, being hurt by the mishandle exhibited by the Workman, immediately lodged a complaint against the Workman, due to which, the Workman was suspended from service;

iii) After a detailed enquiry, it was established that the charges were proved against the Workman and therefore, he was dismissed from service on 22.06.2010, as the misconduct committed by the Workman was grave in nature. The stand of Workman that he was not afforded any opportunity, cannot be accepted, for the reason that after enquiry, the Workman pleaded guilty and with a view to provide more opportunity, a warning letter dated 19.11.2004 was served upon him, which was duly received by him;

iv) The Workman filed an application in I.A.No.148 of 2012 for summoning witnessess, which came to be dismised by the Labour Court and

thereafter, another application in I.A.No.4 of 2013 was preferred by the Management for deciding the fairness of enquiry and the Labour Court, while allowing the application of the Management, held that the domestic enquiry against the Workman was fair, just and proper, warranting no intervention and the order passed in I.A.No.4 of 2013 attained finality.

5. The Labour Court, upon considering the material facts and records available before it, arrived at a conclusion that for the misconduct committed by the Workman, the punishment of dismissal from service is grossly disproportionate and by invoking its power under Section 11-A of the Industrial Disputes Act, 1947, the punishment imposed on the Workman was converted into the one of reinstatement with continuity of service and 50% back wages. The Labour Court relied upon the following judgments in support of its decision in favour of the Workman:

a) 1984 (1) LLJ 546 (Prakash Gupta vs. Messrs.Delton Cable India (P) Ltd.;

b) 1982 Lab IC 1790 (Rama Kant Misra vs. The State of Uttar Pradesh;

c) 1989 (1) LLJ 71 (Scooter India Limited, Lucknow vs. Labour Court, Lucknow)

d) AIR 1996 (1) LLJ 982 (Ram Kishan vs. Union of India)

6. Aggrieved by the award of the Labour Court, the Management preferred a Writ Petition in W.P.No.33610 of 2013 before this Court and the order passsed therein is impugned in this Writ Appeal.

7. Learned Single Judge, in the order dated 25.09.2019, observed that though there is a discretionary power vested with the Labour Court under Section 11-A of the Industrial Disputes Act, 1947, it should not be used in a routine manner, by always modifying, reducing or quashing the punishment and while applying the said provision, there should be a pragmatic and logical approach with proper application of mind, depending upon the gravity of the misconduct involved in each case. Learned Single Judge finally allowed the Writ Petition filed by the Management, holding that the award of the Labour Court is not in consonance with the established legal principles. For the sake of convenience, the relevant portions of the order dated 25.09.2019 are extracted hereunder:

> "38. Ultimately, the Labour Court come to the conclusion that themisconduct levelled against the workman stands duly proved throughevidence placed before the Labour Court. After coming to theconclusion that the enquiry was conducted in a free and fair mannerand after made a finding that the charges levelled against theworkman were proved beyond doubt, there is no reason whatsoever tointerfere with the quantum of

punishment by invoking Section 11-A ofthe Industrial Disputes Act.

39. Section 11-A of the Act cannot be used in a routine manner,so as to modify or reduce the punishment and a pragmatic andbalanced approach is required. The exercise of discretionary powersunder Section 11-A of the Industrial Disputes Act must be exercisedwith logic, reasoning and by application of mind. The situationestablished before the Labour Court and the gravity of the chargesproved against the workman must be considered before modifying or quashing the punishment imposed by the employer. The Labour Courtought to have considered the fact that discipline in an industrialestablishment is of paramount importance and the nature of theproved misconduct its gravity and seriousness are to be looked intobefore modifying the punishment. In a case, where a workmanassaulted, the superior official by using filthy language and hisprevious misconducts in the factory were also established by theemployer, then this Court is of the considered opinion that there is noreason whatsoever to interfere with the penalty of terminationimposed by the employer. Every such punishment imposed is meant tosent a clear message to the society at large, more specifically to theemployees working in industrial establishments / public institutions.The major penalty in this regard is to ensure that the industrialestablishments are protected from such unruly activities of fewworkman and to protect the interest and the welfare of theorganisation itself. Therefore, the Labour Court cannot simply interferewith the quantum of punishment without assigning proper andacceptable reasons. Merely invoking Section 11-A of the IndustrialDisputes Act is certainly impermissible and in all such cases, where Labour Court has taken a decision to modify the punishment or toquash the punishment imposed by the employer, then adequatereasons are to be recorded in the award and a mere observation thatthe punishment of termination is "grossly disproportionate" isunacceptable for arriving such a conclusion that the punishment isgrossly disproportionate. The Labour Court is bound to assign properand acceptable reasons. Thus, the findings of the Labour Court thatthe punishment is grossly disproportionate is not based on any validmaterial and in the absence of any convincing reason, the said findingsare construed to be perverse and unsustainable.

40. Under these circumstances, this Court is of the opinion thatthe findings in the award impugned that the punishment of terminationimposed on the 2nd respondent is grossly disproportionate is neithercandid nor convincing, but the said finding is made blanketly andwithout assigning reasons.

41. This being the factum, this Court has no hesitation in comingto the conclusion that the award of the Labour Court is perverse and not in consonance with the established legal principles.

42. Thus, the Award dated 15.05.2013 passed in I.D.No.03 of2011 is

quashed and the writ petition stands allowed. However, thereshall be no order as to costs."

8. Mr.P.R.Thiruneelakandan, learned counsel for the Workman has submitted that the Workman, in the capacity of the Secretary of the HLL Tea Workers Welfare Union espoused the cause of co-workers in protecting the rights and welfare of the workers, demanding payment of compensation for the death of the workers, arrangement of ESI coverage to all workers and the Management, being irritated by the trade union activities of the Workman dismissed him on false allegations. In fact, the Management was always in the habit of ousting Trade Union Activists, who raise their voice in favour of workers, on one charge or the other and the person, who was elected as the Secretary of the Union was also terminated from service in the form of victimization. The installation of Hassia machine was a starting point for the incident that was alleged to be taken place in the factory premises, as the machine was proposed to be installed by the Management without obtaining proper permission from the authority concerned and solely with an intention to reduce the work force. The Management, in contravention to Rule 39(d) of the Certified Standing Order, appointed one Mr.Noel as Enquiry Officer and concluded the enquiry in a hasty manner

with a predetermined mind to terminate the Workman.

8.1. Learned counsel for the Workman has further submitted that though the Workman was called upon to attend the meeting and he had also duly made entry in the register kept at the factory precint before attending the meeting, a false charge was levelled against him to the extent that he suddenly barged into the shop floor, used filthy language and held the collar of the Executive, which is far from imagination. Moreover, the Enquiry Officer acted according to whims and facies of the Management, as no list of witnesses and documentary evidence were furnished to the Workman, so as to effectively defend his case and he was not allowed to engage an advocate for necessary legal assistance. He has also submitted that despite the request made by the Workman to enquire the eye witnesses, namely, Om Kumar Shuka, Factory Manager, Vijayalakshmi, HR Manager and one Vijayakumar, an employee, who called the Workman over phone on behalf of the Management to attend the meeting. The Labour Court, though set aside the order of termination and modified the punishment into one year wage increment cut with cumulative effect, with a direction to reinstate the Workman with continuity of service, 50% of back wages and all other

attendant benefits, held in the preliminary issue that the domestic enquiry was fair and proper. When the award of the Labour Court was challenged by the Management, it was allowed by the learned Single Judge with the observation as afore-stated.

8.2. Learned counsel for the Workman conceded that after the order passed in the Writ Petition, the Workman's Writ Petition in W.P.No.29043 of 2019, seeking to quash the preliminary order of the Labour Court in holding that the domestic enquiry conducted by the management was fair and proper which was dismissed by this Court on merits and also on the ground of laches, holding that the settled issue cannot be re-adjudicated. Though after the final award the preliminary order can be questioned, in the present case on hand the said order of the Learned Judge in WP 29043 of 2019 has not been challenged by way of Writ Appeal.

8.3. Learned counsel for the Workman has relied upon the following judgments in support of his argument in order to highlight the effect of improper enquiry, non-production of list of witneses, refusal to examine the eyewitnesses to the occurrent, powers of the Labour Court under Section

11-A of the Industrial Disputes Act, 1947, etc.

i) State of Punjab vs. V.K.Khanna [(2001) 2 SCC 330];

> "38. The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias - What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply - Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

ii) Workmen of The Food Corporation of India vs. Messrs Food Corporation of India (1985 AIR 670);

> "....The next question to which we must address ourselves is whether once on the introduction of the direct payment system, the workmen acquired the status of the workmen of the Corporation, was it open to the Corporation to unilaterally discontinue the system without the consent of the workmen and reinduct contractor so as to again introduce a smoke-screen which may on paper effectively deny the status of being the workmen of the Corporation, acquired by these workmen. And on discontinuance of the system of direct payment, without ordering

retrenchment of their services by the Corporation, they obtained a fresh employment under the Contractor Is it legally permissible ? The question provides its own correct and effective answer. No employer since the introduction of the I.D. Act, 1947 and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the J.D. Act, 1947 would be void.....

iii) Ved Prakash Gupta vs Messrs Delton Cable India Private Limited [AIR 1984 SC 914];

"13.....**It is also seen from the judgment of the Labour Court that the appellant was not given a list of the management's witnesses before the commencement of the domestic enquiry. In these circumstances, we are of the opinion that the conclusion of the Labour Court that the Enquiry Officer had not acted properly in the proceedings and that he had not given full opportunity to the appellant as required by law does not call for any interference. The charge levelled against the appellant is not a serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge.** It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are therefore of the opinion that **the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to**

the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service. The appeal is allowed accordingly with costs quantified at Rs. 1,000. The writ petition is dismissed without costs."

iv) State of Mysore vs. K.Manche Gowda [AIR 1964 SC 506];

"12.... If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what Acts or omissions of his in a particular period would be considered. It that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances

or some other explanation why those punishments were given to him or that subsequent to the punishment he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry," as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

13. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intend to be relied upon for imposing a punishment, should be made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinises if and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it, relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a

reasonable opportunity to know that fact and meet the same.

v) Raghubir Singh vs. General Manager, Haryana Roadways, Hissar [(2014) 10 SCC 301];

> "33. Once the reference is made by the State Government in exercise of its statutory power to the Labour Court for adjudication of the existing industrial dispute on the points of dispute, it is the mandatory statutory duty of the Labour Court Under Section 11A of the Act to adjudicate the dispute on merits on the basis of evidence produced on record. Section 11A was inserted to the Act by the Parliament by the Amendment Act 45 of 1971 (w.e.f. 15.12.1972) with the avowed object to examine the important aspect of proportionality of punishment imposed upon a workman if, the acts of misconduct alleged against workman are proved. The "Doctrine of Proportionality" has been elaborately discussed by this Court by interpreting the above provision in the case of Workmen of Messrs Firestone Tyre and Rubber Co. of India v. Management and Ors.1973 (1) SCC 813 as under:
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> > 33. The question is whether Section 11A has made any changes in the legal position mentioned above and if so, to what extent? The Statement of objects and reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the Legislature wanted to achieve. At the time of introducing Section 11A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the, Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of objects and reasons has specifically referred to the limitation on the powers of an Industrial Tribunal, as laid, down by this Court in Indian Iron and Steel Co. Ltd. v. Their Workmen

MANU/SC/0084/1957MANU/SC/0084/1957 : AIR 1958 SC 130 at P.138.

34. This will be a convenient stage to consider the contents of Section 11A. To invoke Section 11A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the, order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the work-man including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence.

Thus, we believe that the Labour Court and the High Court have failed in not adjudicating the dispute on merits and also in not discharging their statutory duty in exercise of their power vested under Section 11A of the Act and therefore, the impugned judgment, order and award are contrary to the provisions of the Act and law laid down by this Court in the above case....

vi) Laxmikant Revchand Bhojwani vs. Pratapsingh, Mohansingh Pardeshi deceased through his heirs and LRs [(1995) 6 SCC 576];

"9. Before parting with this judgment we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in the present case. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or

> wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

8.4. It was finally argued by the learned counsel for the Workman that the learned Single Judge, without considering the materials on record in its proper perspecive interfered with the award of the Labour Court and the same requires a re-visit by this Court in this Appeal.

9. Mr.Sanjay Mohan, learned counsel appearing for the Management has contended that the Labour Court, having recorded and observed the fairness of enquiry in an affirmative tone, exercised its power under Section 11-A of the Industrial Disputes Act, 1947 and interfered with the punishment, which is prejudicial to the interest of the Management. The learned Single Judge rightly held that such power cannot be exerted in a mechanical manner, especially when there was a bad antecedent attributed to the Workman. He has further contended that the acrimony of the Workman was against the established Rules and Regulations and Standing Orders, which had forced the Management to initiate disciplinary action, which every Management is entitled to, for the interest of the Management and smooth functioning and administration of the factory. The misconduct

committed by the Workman cannot be taken in a slighter manner, as he had entered into the cabin of a lady Executive and thereafter, barged into a shop floor without any permission, with an object to cause disruption to the meeting held therein. He has also contended that above all, there was an intimidation and mishandling of his immediate superior officer by the Workman and therefore, the punishment of dismissal from service imposed on the Workman is proportionate to the gravity of the charges duly proved and the order of the learned Single Judge does not call for any interference by this Court.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. A circumspection of the facts elucidates that the Workman was employed in the Management in the year 1999 and he was terminated from service on account of serious misconducts committed by him. The charges levelled against him include usage of unparlimentary words against his immediate superior and an assault on the Executive by holding his collar shift. The use of abusive words and showing a threat posture may not be

construed to be grave in naure, which will depend upon the facts of each situation, as the Workman would have lost his self-control due to the behaviour exhibited by the Executive. However. it was stated that he was also punished for the similar type of incident on the earlier occasion and even one past record is sufficient to impose a capital punishment in the light of the judgment of the Gauhati High Court in the case of ***Workmen of Tanganagaon Tea Estate vs. Management of Tanganagaon Tea Estate and others***, reported in ***1987 II LLJ 491***, by holding as under:

> "As regards antecedents, unless the workman was earlier punished after disciplinary enquiry, no inference of guilt could be normally drawn "

In case of misappropriation or breach of trust, there is no need to bother about the past record. Other than this, while imposing the punishemnt, the authority concerned must take into account the extenuating or aggravating situation as well as the past record of an employee.

12. In this case, the Workman was imposed with a punishment in the year 2001 and the present incident has taken place after a decade. It cannot be construed that the Workman has been indulging in exhibition of such misbehaviour frequently. As stated earlier, the usage of abusive language may not be a serious one to impose a capital punishment of dismissal from

service. Similarly, the Labour Court is empowered to interfere with the punishment, if it is found that the punishment is grossly disproportionate and the power exercised by the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 cannot be curtailed by any Court, unless the finding of the Labour Court is perverse. Hence, the Labour Court, based on the materials on record, arrived at a different conclusion than the one arrived at by the Management. At the same time, it cannot be lost sight of the fact that no Workman shall cause hindrance to the peaceful atmosphere of the factory and its Management. In the present case, the Enquiry Officer had rendered a finding that the Workman had gone near one Sundaram, TPM Executive and shouted at him angrily in a singular form. The relevant portion of the report of the Enquiry Officer is extracted hereunder:

> "On 29.07.2009, the DE's actual shift was 3rd shift (10pm to 6am). But on that day between 12.30pm to 12.45pm, the DE had come into the factory to visit the HR Executive, on Visitor's Pass. Coming to HRE's cabin, the DE had asked the HRE if any meeting is being conducted inside the shop floor. While the HRE was trying to confirm if a meeting was being held or not, the DE had come to know that about the meeting being held in the shop floor, through Mr.Vijayakumar V, Union Leader. Immediately, the DE had left HRE's cabin and went towards shop floor, angrily, without heeding to the words of HRE. The DE went into the shop floor, without permission, un-authorisedly. In the shop floor, Mr.Dhananjay Nair, Production Manager, Mr.Sundaram TPM Executive, Mr.Purushothaman, Shift Executive, Mr.Om Kumar

> Shukla, Hassia machine Circle Facilitator, were all discussing with the Hassia machine operators about the machine improvement. Mr.Sundaram was addressing the meeting. Then, the DE, inside the shop floor, making loud noice, using unparliamentary words, disturbed that day's departmental meeting. The DE had come near Mr.Sundaram addressed him in singular form (disrespectfully) "Who are you to address to my workmen?" Saying thus, very angrily, he had held his shirt collar. Holding it abused him using un-parliamentary words ("For what hair (curse) are you talking to my workmen").....”

13. This Court, while dealing with an identical issue of disorderly behaviour of an employee, in ***Charles vs. First Additional Labour Court, Madras and others***, reported in ***MANU/TN/1064/1993***, held as under:

> “It is to be remembered at this juncture the adage, "words will not break bones." Words uttered in a surcharged atmosphere will not mean what they ordinarily intended to convey. Such words used are also referable to the culture and heritage of the user. After all, the petitioner who has joined as a worker in the second respondent-company rose to the position of a general machinist and had been occupying such a position on the date of the incidents in question. We do not know the stress and strain the petitioner had been undergoing at the time when the occurrence took place, but one thing is certain that something could have happened making him lose his balance, which resulted in the volley of abuses being hurled against his superior officer. Though such an act of his cannot at all be appreciated, yet it cannot be stated that he should be dismissed from service, even considering his past misconducts which are after all trivial in nature. He had been undergoing the agony and anguish of being terminated from service and for the past 12 years and during this period, the incident in question could have been wiped out from the memory of everyone and in such circumstances, interests of justice require a much lesser

> punishment. In this view of the matter, I feel that it would not be besides justice to order reinstatement of the petitioner in service without back-wages but with continuity off service and other attendant benefits. There will be an order accordingly and the writ petition is partly allowed. There shall be no order as to costs."

14. In a recent judgment, the Apex Court, in the case of ***Kaushal Kishor Vs. State of U.P. and others***, reported in ***(2023) 4 SCC 1***, quoted the poetry of Tamil Poet-Philosopher Tiruvalluvar in his classic "Tirukkural", which means that "The scar left behind by a burn injury may heal, but not the one left behind by an offensive speech" and was pleased to hold that hate speech does not fall within the protective perimeter of Article 19(1)(a) and does not constitute the content of the free speech right. It was further held that when such speech has the effect of infringing the fundamental right under Article 21 of another individual, it would not constitute a case which requires balancing of conflicting rights, but one wherein abuse of the right to freedom of speech by a person has attacked the fundamental rights of another.

15. Even assuming for the sake of argument that the domestic enquiry conducted by the Management is bad in law, the same will have to be set aside by the Labour Court and an opportunity must be given to the

Management to establish the charges, in case they sought for an opportunity to let in evidence. Here, the Labour Court already held that the domestic enquiry was fair and proper. That finding has been upheld by this Court by dismissing the writ petition filed by the workman.

16. The decision cited by the Workman in the case of **State of Punjab vs. V.K.Khanna** (supra) may not be applicable to the facts of this case, as, as stated supra, the fairness of enquiry has already been upheld by this Court. Though much reliance was placed on the decision of this Court in the case of ***MFL, Manali, Madras vs. The Presiding Officer***, reported in ***CDJ 1989 MHC 057*** to contend that while awarding punishment under the Standing Order, the Management must take into account the gravity of misconduct, the previous record of the Workman and other circumstances that may exist, on a close scrutiny of the decision, it is obvious that there was a clause in the Standing Order therein, such a provision is absent in the present case on hand.

17. In this case, the words uttered by the Workman appear to be harsh and abusive, but, however, one cannot expect better words from a Group-III

or IV employee and the punishment imposed for uttering abusive language may be disproportionate to the misconduct. The judgments relied upon by the Labour Court pertained to the use of abusive language alone and in the present case, apart from abusing the immediate superior with vulgar words, there was an intimidation attributed to the Workman.

18. The next plea taken by the Workman was that there is no obligation specified under Order 41 Rule 22 of CPC to file cross objection against an adverse finding of a Lower Court and that the employee could attack such finding in its submission to the appellate forum. First of all, the provisions of CPC are not applicable to Labour matters. It is true that a finding of the Labour Court can be attacked / supported without filing a Writ Petition by filing a counter in the Writ Petition filed by the aggrieved party. Insofar as the present case is concerned, a writ petition has been filed with regard to fairness of enquiry and the same has gone against the Workman. That being the case, unless the said finding is challenged by way of appeal, it cannot be canvassed. Though the Workman has challenged the finding regarding the fairness of enquiry, learned Single Judge has dismissed the said Writ Petition on 15.10.2019. Hence, the judgment relied upon by the Workman in

M.Gowrishankar vs. The Deputy General Manager (SME), State Bank of India, Chennai and others [CDJ 2016 MHC 989], in which references were drawn from the judgments of the Apex Court reported in 1980 (2) SCC 593 & (1995) 6 SCC 749, will not extend its helping hand to the Workman.

19. In the light of the judgment of the Apex Court in the case of **Cooper Engineering Ltd. Vs. P.P.Mundhe** reported in ***1975 (2) SCC 661***, an employer can question the preliminary order along with the final Award and that, the proceedings cannot be stalled. In case an employee loses in both, namely, preliminary issue and final award, it is open to him to challenge both at the same time. But, in this case, the Workman had the benefit of reinstatement with 50% of backwages and fairness of preliminary enquiry has gone against him, which was challenged by him only in the year 2019 after the final award was passed as early as on 15.05.2013. Though the Writ Petition was dismissed on the ground of laches, almost four years have gone by from the date of the order and pendency of the present appeal cannot be a ground to entertain any appeal that may be filed by the Workman, challenging the fairness of enquiry with laches.

20. The Hon'ble Kerala High Court in the case of ***Instrumentation Employees' Union vs. Labour Court, Kozhikode***, reported in ***1993 (I) LLN 75***, following the judgment of the Hon'ble Supreme Court in the case of ***Syed Yakoob vs. K.S.Radhakrishnan (AIR 1964 SC 477)*** held as under:

> "16. As pointed out by the Supreme Court in Syed Yakoob vs. K.S.Radhakrishnan [AIR 1964 SC 477], the jurisdiction of the High Court to issue writ of certiorari or direction under Article 226 or Article 227 of the Constitution of India is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. Findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the fact of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari under Article 226 or Article 227 of the Constitution of India...."

21. Section 11-A of the Industrial Disputes Act, 1947 was introduced on 15.12.1971 and after its introduction, the Labour Court is empowered to reappreciate the evidence and come to a different conclusion. Even though charges stood proved in this case, the Labour Court has every right to interfere with the same, in its wisdom as contemplated under Section 11-A

of the I.D.Act, 1947. It is true that Tiruvalluvar in his Tamil Masterpiece "Tirukkural", which was referred to by the Apex Court in ***Kaushal Kishor Vs. State of U.P. and others*** *(supra) had vindicated that wound that was made by a hateful speech will not heal and remain forever, but, however, the Poet nowhere stated that the person, who indulged in such proclamation should be punished immediately by way of dismissal from service, as the very same Poet had emphasized in Kural No.151 that*

> *"அகழ்வாரைத் தாங்கும் நிலம்போலத் தம்மை இகழ்வார்ப் பொறுத்தல் தலை."*
>
> *Translation: "To bear with those who revile us, just as the earth bears up those who dig it".*
>
> *Inner Tamil Meaning: தன்னை வெட்டுவோரையும் விழாமல் தாங்குகின்ற நிலம் போல், தம்மை இகழ்வாரையும் பொறுப்பதே தலையான பண்பாகும்.*

22. As to what induced the Workman to behave like this against his Superior Officer that made him to hold his collar and who was the root cause for the sudden provocation of the Workman, which is of course construed to be unbecoming of a Workman, is a question of fact. We cannot expect a low-level employee to behave like Jesus so as to turn his other cheek for getting a voluntary slap. The disputed question of fact cannot be gone into in this Appeal. This observation does not mean that we justify the

act of the employee and approve his misconduct. According to us, simple absolvation of charges will not make the Workman realize about his misconduct, as rightly pointed out by the Labour Court and therefore, we are of the view that while interfering with the order dated 25.09.2019 *of the learned Single Judge, the award of the Labour Court is liable to be modified partially. T*he Workman is aged about 48 years and getting employment at this age with the same emoluments would be very difficult. Of course, the age factor cannot be a criteria, if the charges are grave in nature and the same stood proved. It was brought to our notice that the Workman's last drawn wages of Rs.11,450/- was paid upto August, 2019, as mandated under Section 17-B of the Industrial Disputes Act, 1947 and the Workman was paid a total sum of Rs.7,32,800/- between 2013 and 2019.

23. Considering the totality of the circumstances, we are inclined to interfere with the order of the learned Single Judge and the award of the Labour Court is modified as under:

i) The Management is directed to reinstate the Workman in the same post with continuity of service and all other attendant benefits;

ii) The Workman is not entitled to any backwages and the award of the Labour Court insofar as backwages is interfered with;

iii) The entire period will have to be taken into account as continuous one for the purpose of terminal benefits and for the period, during which the Workman is not in service, there is no need for the Management to pay PF contribution from the date of dismissal till today;

iv) If the minimum wages payable is more than the last drawn wages, last drawn wages shall be paid from today. The wages paid under Section 17-B of the I.D.Act, 1947 shall not be adjusted at any cost;

v) The Workman shall not be posted in the same place where he worked on the date of dismissal and he shall be transferred to someother far off place in Tamil Nadu, if the Management has a branch therein.

24. With the above observations and directions, this Writ Appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

[S.V.N.,A.C.J.,] [R.K.M,J.,]
25.05.2023

Index: Yes / No
Speaking Order: Yes / No
ar

To:

The Presiding Officer,
Labour Court,
Puducherry.

S.VAIDYANATHAN, ACJ
AND
R.KALAIMATHI,J.
ar

Pre-Delivery Judgment in
W.A.No.1835 of 2021

25.05.2023