(2014) 10 MAD CK 0319

Madras High Court (Madurai Bench)

Case No: W.P (MD) Nos. 6527 of 2009 and 1412 of 2010 and M.P (MD) Nos. 1 of 2009 and 1 to 3 of 2010

M. Rajendran		APPELLANT
	Vs	
The Management of Arul Anandar College The Management of Arul Anandar College Vs The Presiding Officer		RESPONDENT

Date of Decision: Oct. 31, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 2(j), 2(s)
- Tamil Nadu Private Colleges (Regulation) Act, 1976 - Section 24

Citation: (2015) 2 LLN 202

Hon'ble Judges: R. Mahadevan, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R. Mahadevan, J.
Since both the writ petitions arose out of the award passed by the first respondent in I.D.No. 579 of 1989, they are taken up together for hearing and decided by this common order.

2. For the sake of convenience, the parties are referred to as ''workman'' and ''management''.

3. The petitioner in W.P.[MD].No. 6527 of 2009 was appointed as Head Clerk in the first respondent college, on 01.08.1970. The petitioner was given promotion as Selection Grade Head Clerk. Charge memos were issued to the petitioner. Denying the same, the petitioner submitted his explanation before the first respondent.

Being dissatisfied with the explanation offered by the petitioner, the first respondent continued the disciplinary proceedings. Finally, the first respondent, by order, dated 25.06.1982, passed an order of dismissal from service. Challenging the order of dismissal, the petitioner raised an Industrial Dispute by filing I.D.No. 579 of 1989. The first respondent filed the counter statement, denying the claim of the petitioner. When the matter stood thus, the first respondent approached this Court, questioning the orders passed by the Labour Court in the interim applications filed by the first respondent, raising preliminary objections. However, this Court negatived the claim of the first respondent. Finally, the Labour Court, Madurai, passed an Award, dated 02.04.2009, and set aside the order of dismissal from service, holding that the charges levelled against the petitioner were not proved. The Labour Court further held that the petitioner is entitled to all the back wages from the date of his dismissal from service till the date of his superannuation. In pursuance of the Award of the Labour Court, the petitioner submitted a representation, dated 12.04.2009, before the first respondent, with a request to comply with the Award of the Labour Court. However, there was no response from the first respondent. The petitioner, thereafter, submitted a representation before the second respondent, on 02.04.2009. Based on the said representation, the second respondent addressed a letter to the first respondent stating that the retirement benefits payable to the petitioner will have to be paid by the first respondent. In such circumstances, the petitioner has come forward to file W.P.[MD].No. 6527 of 2009.

4. Assailing the correctness of the Award of the Labour Court, dated 02.04.2009, directing reinstatement of the workman in service, the management has come forward to file W.P.(MD)No. 1412 of 2010.

5. Mr.S.Arunachalam, learned Counsel for the petitioner/ workman submitted that though the workman raised an industrial dispute in the year 1989 and the Labour Court passed an award in the year 2009, till date, the Management had not considered the plight of the workman and that his terminal benefits had not even been disbursed by the Management. He also contended that the Management had adopted the dilatory tactics in dragging on the proceedings before the Labour Court, which resulted in the inordinate delay in deciding the dispute by the Labour Court and that the Management had instituted several litigations before the Labour Court as well as before this Court and succeeded in its attempt to deprive the workman till the order passed by the Labour Court and even thereafter, the workman had not been given with the terminal benefits, to which, he is legally entitled to.

6. He further argued that the Management did not adhere to the principles of natural justice, before passing the dismissal order as against him and no opportunity of personal hearing was afforded to the workman to put forth his case by examining the witnesses on his side and to disprove the charges levelled by the

Management. According to him, in the several litigations, the case of the workman had been upheld by this Court and moreover, the Labour Court, while allowing the industrial dispute, had gone into the material evidence placed on record and thoroughly scrutinized the depositions of the witnesses and set aside the order of dismissal passed by the Management.

7. The specific stand of the workman is that he would come under the definition of ''workman'' as per Section 2(s) of the Industrial Disputes Act (in short "I.D.Act"), as the dispute had been referred to the Labour Court by virtue of the order dated 08.08.1989 passed by this Court in W.P.No. 9959 of 1985, and therefore, the question of applicability of the Tamil Nadu Private Colleges (Regulation) Act, does not arise at all. Though the Management had been in possession of the documents to prove the nature of the duties of the workman, it had conveniently omitted to mark before the Labour Court in order to defeat the claim of the workman, he argued.

8. It is further canvassed by the learned Counsel for the petitioner that the educational institutions are industries as defined under Section 2(j) of the I.D. Act and that the non-teaching employees of the educational institutions can very well raise industrial dispute and avail remedies under the said Act. Therefore, the learned Counsel contended that the Labour Court had rightly allowed the industrial dispute, warranting no interference at the hands of this Court.

9. In support of his submissions, he placed reliance upon the following decisions:

(i) C.M.C.Hospital Emp Union, Vs. C.M.C.Vellore ASSN, reported in 1998 SCC [L&S] 53.

(ii) Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Madras v. Their employees reported in 1954(I) LLJ 21 LAT.

(iii) Swadesamitran, Ltd. v. Labour Appellate Tribunal of India and another reported in 1954(II) LLJ 153 MHC.

(iv) Burmah-Shell Oil Storage and Distributing Company of India, Ltd. Madras Branch, Mysore and Travancore-Cochin States v. Their workmen reported in 1955(2) LLJ 228 LAT.

(v) Andhra Scientific Co. Ltd. Vs. A. Seshagiri Rao and Another, .

(vi) Management of Hindustan Motors Ltd. Vs. Lakshmiah and Another, .

(vii) Ranjeet Singh Vs. Ravi Prakash, .

(viii) Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan, .

(ix) Neeta Kaplish Vs. Presiding Officer, Labour Court and Another, .

(x) The Management Arul Anandar College Vs. The Presiding Officer, Labour Court and M. Rajendran, .

(xi) The Management, Arul Anandar College, Karumathur, Madurai District - 625 514 v. The Presiding Officer and another [W.P.No. 626 of 2006, decided on 08.03.2006].

(xii) Amar Singh Vs. The State of Bihar, .

10. On the other hand, Mr.S.Seenivasagam, learned Counsel for the Management submitted that the Labour Court failed to consider the material evidence placed before it while passing the impugned award and that though the workman had been charged with several allegations, he never disproved the same by adducing proper evidence during the enquiry and that since the workman had not participated in the enquiry proceedings, he had been treated as exparte and that the Enquiry Officer found that the charges framed against him, were proved, based on the materials available on record.

11. His next limb of argument is that since the Management is a Minority College governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as ''T.N.P.C.R. Act''), the Government was not justified in referring the matter to the Labour Court and therefore, the reference made by the Government to the Labour Court was not tenable. He further contended that as per Section 24 of the T.N.P.C.R Act, the Management of the College has been exempted and that the provisions of the I.D. Act are not applicable to the present case. It is also the stand of the Management that as the workman had discharged the administrative and supervisory functions, he could not be termed as a ''workman'' and that when the workman in this case, having not come under the definition of a ''workman'', the Labour Court had erroneously allowed the industrial dispute raised by him.

12. He further contended that when the workman himself was not prepared to put forth his case before the Enquiry Officer, the enquiry has to be conducted on the basis of the material evidence available on record and that the Enquiry Officer found that the charges against the workman were proved and consequently, the workman had been dismissed from service. However, the Labour Court, while passing the impugned award had not at all gone into the correctness of the finding of the Enquiry Officer and allowed the industrial dispute raised by the workman, warranting interference at the hands of this Court, he concluded.

13. I have considered the above submissions and perused the records carefully, including the decisions relied on by the workman.

14. Here, is a case, where the unfortunate workman instituted a litigation against his dismissal from service in the year 1982 and the same had been successfully dragged on by the Management till 2009. At last, the running of the workman from pillar to post, came to an end by setting aside the order of dismissal, by the Labour Court. Even then, the fruits of the said litigation had not been allowed to be enjoyed by the

workman till date, by the Management. In effect, the delay caused in this case, would prejudice the interest of the workman by all means, which emanated in knocking the doors of this Court.

15. The workman herein was originally appointed as Head Clerk in the College, on 01.08.1970 and he was given promotion as Selection Grade Head Clerk. Meanwhile, he was given with the charge memos levelling certain allegations against him. He also submitted his explanation. However, the Management continued with the disciplinary proceedings, being not satisfied with the explanation of the workman. Ultimately, the workman was dismissed from service, by order, dated 25.06.1982. Challenging the same, the workman raised an Industrial Dispute in I.D.No. 579 of 1989 before the Labour Court. After contest, the Labour Court allowed the Industrial Dispute raised by the workman, by setting aside the order of dismissal from service. Since the order of the Labour Court has not been complied with, the workman has come before this Court with W.P.(MD)No. 6527 of 2009, seeking to implement the same. Whereas, challenging the vires of the order of the Labour Court, the Management filed W.P(MD)No. 1412 of 2010.

16. The main issues that arise for consideration before this Court are:

(i) Whether the workman in the case on hand, would come under the definition of ''workman'' as per Section 2(s) of the I.D. Act, 1947?

(ii) Whether the finding of the Labour Court in allowing the dispute raised by the workman, is perverse?

Point No. (i):

17. The consistent plea of the Management is that the workman had discharged only the administrative and supervisory works and therefore, he would not come under the ambit of Section 2(s) of the I.D. Act. Whereas the workman took a stand that the Management had no documentary evidence to disprove the claim of the workman and it had miserably failed to establish that the workman herein was discharging only the supervisory functions.

18. Before analysing this issue, this Court feels that it is worthwhile to refer to Section 2(s) of the I.D. Act and it reads thus:

"Section 2(s).- "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

(emphasis added.)

19. A mere poring over the above definition would make it clear that the workman in this case, who had not performed the supervisory duties as claimed by the Management, would come under the ambit of the definition of ''workman'' and that the Labour Court had dealt with such issue and found that the Management had not produced any documentary evidence in support of their case. The Labour Court, while concluding that the Management failed in their attempt to make out a case that the workman herein had discharged only the supervisory functions and therefore, he was not a workman, found that the provisions of Section 2(s) of the I.D. Act would apply to the case of the workman herein and hence, this Court finds that the contention of the Management that the reference made by the Government to the Labour Court was not tenable, does not merit acceptance.

20. Further, what could be discerned from the above pleadings, is that the reference made by the Government was not simply as though the dispute was referred to the Labour Court, but only at the instance of the workman by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, whereby this Court directed the Government to refer the dispute to the Labour Court, Madurai, to resolve the issues thereon. When that being the factual position, one cannot lose sight of the fact that the reference had been made in accordance with law, after taking into consideration all the relevant provisions of the Act and Rules applicable from time to time. Therefore, the plea of the Management that the College is a Minority College and hence, the provisions of T.N.P.C.R. Act alone would be applicable to the present case, needs to be rejected, on the premise that once the issue regarding the reference made to the Labour Court had reached finality, the Management could not raise such a plea in all further proceedings, including in the present writ petitions.

21. In this connection, the decision of the Division Bench of this Court in Management of Hindustan Motors Ltd., v. Lakshmiah and another reported in 2002-II-LLJ 134, could fruitfully be referred to hereunder:

"12. Apart from such overwhelming evidence adduced on behalf of the management itself, the first respondent also deposed before the second respondent explaining that he was only performing the work of purely technical and clerical in nature without any supervising power and that he was not performing the duties of any supervisory or managerial cadre. In the circumstances, by relying upon exhibit M-3 alone, it cannot be concluded that the first respondent was performing the work of supervisory/managerial/clerical grade. The primary work performed by the first respondent, as stated by the management witnesses themselves were of purely technical with that of skilled workmen. There is absolutely no evidence to show that the first respondent was performing the work of any supervisory/managerial grade. As far as exhibit M-3 is concerned, the said statement seemed to have been made by the first respondent, when he was aspiring to better his career. Therefore, in that context, when he was called upon to describe the nature of duties assigned to them, he seemed to have given exaggerated views of what was performed by him earlier. Even the so called duties performed by him does not inspire us to say that the first respondent can be said to be performing the duties of a supervisor or manager status. In our considered opinion, the management has failed to substantiate its contention that the first respondent was only performing the duties of supervisory/ managerial character. On the other hand, the evidence tendered on behalf of the appellant itself disclosed that the first respondent was only performing the duties of an ordinary skilled workman and nothing more.

13. Therefore, by merely relying upon the ipse dixit of exhibit M-3 one cannot come to the conclusion that the first respondent was not a "workman" as has been done by the second respondent herein. In fact the second respondent Labour Court though would state that the evidence of W.W.-1 should be appreciated with much care and caution, when he deposed about the nature of the duties, failed to appreciate the evidence in that manner. The appreciation of the evidence of the management witnesses by the second respondent also thoroughly lacks details. The finding of the second respondent that the nature of the work performed by the first respondent was more of administrative and managerial nature, was in our opinion, arrived at by a total misreading of the evidence of the management witnesses and documents placed before it. As stated earlier going by the evidence of the management witnesses themselves, it is brought out beyond doubt that the first respondent was only performing the work of an ordinary skilled workman and not beyond that. Unfortunately, the second respondent has completely omitted to analyse the said evidence that was tendered before him by the appellant themselves, which unfortunately led to the passing of the award impugned in the writ petition. Moreover, exhibit M3 was never considered by the second respondent for reaching the conclusion that the first respondent was not a "workman" and that he was employed in the managerial and administrative capacity. Therefore, when there was no evidence, much less, acceptable evidence, tendered on behalf of the

appellant to prove their stand that the first respondent was not a "workman" as defined under Section 2(s) of the Industrial Disputes Act of 1947, the award impugned, in the writ petition rejecting the claim of the first respondent solely on that ground cannot be sustained. The award is, therefore, liable to be set aside."

(emphasis added.)

22. Keeping in mind the ratio laid down in the above decision, this Court finds that the Management had not tendered any evidence, much less, acceptable evidence, so as to prove their stand that the first respondent was not a "workman" as defined under Section 2(s) of the I.D. Act and in view of the same, the contention of the Management falls to the ground.

23. Moreover, when a plea was taken before the Labour Court as to the nature of the work performed by the workman herein, it is the paramount obligation on the part of the Management to adduce at least any one of the materials in support of their claim. In the present case on hand, before the Labour Court, no such material evidence regarding the nature of the duty performed by the workman herein was produced, which ultimately resulted in rejecting the case of the Management. In those circumstances, the Labour Court had gone through the materials available on record and reached a conclusion that the workman herein would come under the purview of the definition under Section 2(s) of the I.D. Act and therefore, this Court finds no illegality or irregularity in the finding of the Labour Court in this regard. Accordingly, Point No. (i) is answered in favour of the workman and as against the Management.

Point No. (ii):

24. Before deciding on this issue, in order to throw some light on the powers of this Court under Article 226 of the Constitution of India, to interfere with the awards of the Labour Court or the Industrial Tribunal, it is not out of context to place reliance upon the following decisions of the Honourable Supreme Court:

(i) Ranjeet Singh Vs. Ravi Prakash, . Paragraphs 4 and 5 are extracted hereunder:

"4. Feeling aggrieved by the judgment of the Appellate Court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the Appellate Court and restored that of the Trial Court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the Appellate Court. Though not specifically stated, the phraseology employed by the High Court in its judgment, goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the Appellate Court. In Surya Dev Rai Vs. Ram Chander Rai and Others, , this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error

committed by the Court or Authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self- evident. An error which needs to be established by lengthy and complicated arguments or by indulging into a long- drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai Vs. Ram Chander Rai and Others, that the jurisdiction was not available to be exercised for indulging into re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal. The High Court has itself recorded in its judgment that "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the Appellate Court. On its own showing, the High Court has acted like an Appellate Court which was not permissible for it to do under Article 226 or Article 227 of the Constitution.

5. The approach of the High Court cannot be countenanced. The appeal is allowed. The judgment of the High Court is set aside and that of the Appellate Court is restored. The respondent is allowed four months time from today for vacating the suit premises subject to filing the usual undertaking within a period of 4 weeks from today. No order as to costs."

(emphasised by me)

(ii) Management of Madurantakam Co-operative Sugar Mills, Ltd. v. S.Viswanathan reported in 2005 (2) L.L.N. 38. Paragraph 12 would run thus:

"12. 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."

(underlined by me)

25. Keeping in mind the above dicta laid down by the Honourable Supreme Court regarding the powers of the High Court while exercising the jurisdiction either under Article 226 or Article 227 of the Constitution of India, this Court finds that the Labour Court is the final Court of facts in the present case on hand. This Court, while exercising the power under Article 226 of the Constitution of India, could see as to whether the finding of fact arrived at by the Labour Court or Industrial Tribunal is perverse or not. In case, such a finding is found to be perverse, this Court can very well examine the correctness of the said finding, however, by recording reasons as to the reconsideration of such finding of fact. It is also well settled legal principle that this Court at no point of time, could act as an appellate Court over the finding of fact.

26. Before the Labour Court, the workman examined himself as L.W.1 and marked 191 exhibits on his side. On the side of the Management, 8 witnesses were examined and 41 exhibits were marked. After analysing the entire material evidence adduced on either side, the Labour Court framed two issues for consideration. Thereafter, the Labour Court dealt with the materials available on record in detail and arrived at a finding that the dispute raised by the workman could be allowed and accordingly, granted the relief as prayed for, to the workman.

27. Further, on a perusal of the award passed by the Labour Court, this Court finds that the Labour Court had gone into the veracity of the material evidences available and thoroughly scrutinized the depositions of the witnesses and concluded that the workman had made out a case for interference and accordingly, allowed the Industrial Dispute. The Labour Court further found that the workman is entitled to all the back wages from the date of his dismissal from service till the date of his superannuation.

28. No doubt, the Management had levelled several allegations as against the workman and the workman had duly submitted his explanation, but the Management rejected the same and initiated disciplinary proceedings, which ended in dismissal from service. The Labour Court had examined the material facts by way of oral and documentary evidence and found that the industrial dispute raised by the workman was tenable and the stand of the Management in portraying him as not an workman, was rejected and ultimately, the Labour Court granted the relief to the workman.

29. Further, it could be seen that the workman had been facing his litigative battle since 1982 as against the dismissal order passed by the Management. Until filing of the present writ petition by the workman to implement the award of the Labour Court, he had instituted so many litigations before this Court to come across the hurdles before him, in proving his case. One such litigation is by the Management in W.P.No. 626 of 2006, seeking to quash the order of rejection passed by the Labour

Court in receiving the documents relating to the disciplinary action filed by the Management and for a consequential direction thereon, wherein this Court, by order dated 08.03.2006, while dismissing the said writ petition with costs, held that the order of the Labour Court was tenable and painfully observed that though the workman was dismissed from service on 25.06.1982, till that date, the proceedings before the Labour Court were not yet completed and thus, it would shake the very root of the system and procedure in the eye of the public.

30. Ultimately, this Court is of the considered opinion that there is no perversity or infirmity in the finding of the Labour Court to arrive at a conclusion in allowing the Industrial Dispute raised by the workman and in rejecting the plea of the Management. It is painful to note that though the Industrial Dispute had attained finality in the year 2009, the Management had challenged the findings of the Labour Court before this Court and till date, the workman has been kept without any remedy. Accordingly, Point No. (ii) is answered in favour of the workman and as against the Management.

31. For the aforesaid reasons, this Court is of the view that the findings of the Labour Court are sustainable in law and therefore, W.P(MD)No. 6527 of 2009 succeeds and the writ petition filed by the Management in W.P(MD)No. 1412 of 2010 fails.

32. In the result,

(i) W.P(MD)No. 6527 of 2009 stands allowed, directing the Management to pay the back wages and other terminal benefits to the petitioner, as directed by the Labour Court, Madurai, in the Award, dated 02.04.2009, passed in I.D.No. 579 of 1989, within a period of four weeks from the date of receipt of a copy of this order. Needless to state that it is for the second respondent to consider the payment of pension with arrears to the workman, from 01.11.2001. Consequently, the connected miscellaneous petition is closed.

(ii) W.P(MD)No. 1412 of 2010 stands dismissed. Consequently, the connected miscellaneous petitions are dismissed.

(iii) There will be no order as to costs, in both the writ petitions.