IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.09.2024

PRONOUNCED ON: 17.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.1402 of 2024
and C.M.P.No.10142 of 2024

The Management,
Anthiyur Consumer Co-operative Store Limited,
Anthiyur - 638 501
Bhavani Taluk,
Erode District. ... Petitioner/Appellant

Vs.

1.R.Parthiban

2.The Presiding Officer,
Labour Court,
Salem. ... Respondents/Respondents

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, for issuance of a Writ of Certiorari, praying to set aside the order dated 24.08.2023 passed by the Hon'ble Judge of this Court in W.P.No.14519 of 2017.

For Appellant : M.R.Balaramesh

For Respondents : R1 - served - No Appearance
R2 - Labour Court

JUDGEMENT

C.KUMARAPPAN

The instant appeal has been filed by the Management assailing the order of a learned Single Judge in W.P.No.14519 of 2017.

2. The learned counsel for the appellant / Management would contend that a charge memorandum dated 29.04.2006 was issued for serious misconduct of theft of food grains and sugar, and for fabricating false accounts and for generating bogus bills. The learned counsel would also contend that, they also registered an F.I.R in Crime No.15 of 2006, under Section 457 and 380 IPC. Therefore, contended that the order of dismissal is well-merited and liable to be confirmed. It was further contended that the subsequent acquittal of the criminal case in C.C.No.104 of 2006, and it's confirmation by this Court in Crl.R.C.No.449 of 2010, will in no way affect the disciplinary proceedings, as the standard of proof

before the Criminal Court, and domestic enquiry would vary. The learned counsel for the appellant / Management would further submit that the Labour Court, as well as the learned Single Judge has not gone into the material particulars and therefore, prayed to set aside the same.

3. Per contra, the learned counsel for the first respondent would contend that, the first respondent / workman raised an industrial dispute in I.D.No.126 of 2008 before the Labour Court, Salem, challenging his order of termination dated 23.02.2008. It is his case that the appellant / Management issued a frivolous charge memorandum and that, in spite his valid explanation, Management proceeded with an enquiry, and that after enquiry, he was illegally terminated from service, with effect from 23.02.2008, which was subsequently set aside by the Labour Court. Thus, it is the submission of the first respondent / workman that the order of termination is illegal, perverse and liable to be set aside.

4.We have given our anxious consideration on the submissions made on either side.

5. According to the Management, the charge memorandum dated 29.04.2006, contains the following three charges. (1) Theft of a huge quantity of essential commodities such as sugar and rice from the appellant's society, (2) There was a deficit of stocks. (3) Preparation of a bogus bill. In the domestic enquiry vide report dated 09.06.2007, all the three charges were held as proved. However, when the first respondent / workman raised an industrial dispute in I.D.No.126 of 2008, the Labour Court, upon re-appreciation of the evidences, and on the basis of the available documents, arrived at the conclusion that the charge of theft could not be proved merely on the basis of the letter of the Inspector of Police.

6. It is the further finding of the Labour Court that, in respect of the charge of theft, there are no materials before the Court to support such a charge. Furthermore, it was held that unless the deficit of actual stock on the crucial date is proved, the question of theft cannot be justified. Apart from that, the learned Labour Judge has also relied upon the subsequent acquittal order against the first respondent / workman in C.C.No.104 of 2006, which was latter confirmed in Crl.R.C.No.449 of 2010 by this Court. Therefore, after analysing all these factors and after an elaborate

discussion, the Labour Court found that the first charge of theft has not been proved.

7. Similarly, in respect of the second charge of deficit of stock, it is the specific finding of the Labour Court that no stock records have been submitted before the Court, besides, it was admitted by the Management witness that, unless the stock registers are produced, the charge of deficit of stock cannot be proved. Therefore, based on the above admission of the Management witnesses, and on account of the absence of proof regarding the deficit of stock, the Labour Court found that the findings of the Enquiry Officer concerning Charge No.2 are unsustainable, which finding according to us is very reasonable and a just finding.

8. Regarding the third and last charge of preparation of bogus bill, the Labour Court has gone elaborately into the available material and has come to a conclusion that, unless it is demonstrated as to how and which are the bills that are bogus, a mere list containing certain bill numbers, will not be a proof to establish the charge.

9. We are in full agreement with the reasoning given by the Labour Court. As a matter of fact, the findings rendered by the Labour Court are factual findings, and based on the materials available before the Court. Apart from that, the reasoning of the Labour Court is logical and well-merited, and we could not find any perversity over the same. It is settled principle of law that, while exercising the power of judicial review under Article 226 of the Constitution of India, the Writ Court cannot go into the factual findings given by the Labour Court, unless such findings are perverse, and that there are no material to arrive at such finding.

10. At this juncture, it is very useful to refer the judgement of the Hon'ble Supreme Court in ***B.C.Chaturvedi Vs. Union of India*** reported in ***(1995) 6 SCC 749.*** The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

> *"**12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court**.*

When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. ***The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.***

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17. .....

18*. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.* ***The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.***

(Emphasis supplied by this Court)

11. In ***Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava*** reported in ***(2021) 2 SCC 612,*** the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same

can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

> ***"25**. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*
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> ***26. .....***
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> ***27**. .....*
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> ***28**. .....*
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> ***29**. The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."*

Through the above judgments, the following principles are emerging:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

11. While looking at the facts of the present case with the prism of the above legal principle, as we have already discussed, we could not find

any perversity in the order of the Labour Court. The learned Single Judge has also reviewed the order of the Labour Court and has arrived at a similar conclusion. Therefore, we do not find any infirmity in the order of either the Labour Court, or in the decision of the learned Single Judge.

12. Thus, we do not find any merits in the Writ Appeal. Accordingly, this Writ Appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] **[C.K., J]**

17.10.2024

Index: Yes/No
Internet:Yes/No
Neutral Citation: Yes/No
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To
The Presiding Officer,
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Salem.

Pre-delivery order in
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