

BEFORE THE PRESIDING OFFICER Mrs. R.R.DESAI,  
LABOUR COURT, SURAT.

**Reference L.C.S. No. 203/2003**

**Ex. 75**

**Reliance Industries Limited**

At : Hazira, Surat.

**...First Party**

**AND**

**Sam Swamindason Suganthan**

At : D-10, Maruthi Apartments,  
87, Dr. Alagappa Road  
Purasawalkam  
Chennai - 600084.

**....Second Party**

**Appearance:**

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Ld. Advocate Mr. H. M. Desai for First Party

Ld. Advocate Mr. S. T. Chaudhari for the Second Party.

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**:: J U D G M E N T ::**

[1] The Assistant Commissioner i.e. the proper government has referred the dispute to this Court for adjudication vide Order as reference dated 30.06.2003. On receipt of the Order from the Assistant Labour

Commissioner, the reference was registered to this Court.

The point of reference is :-

"Whether the workman namely Sam Swamidason Suganthan is required to be reinstated in the service with full back-wages or not".

[2] The brief facts leading to the present Reference are that as per the case of the employee (hereinafter referred to as 'second party') he was employed by the Reliance Industries Ltd. (hereinafter referred to as 'first party') on the post of 'Chief Engineer' on 20.06.1994. He was performing his assigned duties as per the service conditions stated in the appointment letter. It is the case of the second party that considering the nature of duties assigned to him, he was a 'workman'. It is the case of the second party that his service period was clean and he was also awarded special increments. It is further the case of the second party that without affording any opportunity of being heard and without following the principle of nature justice, his services are terminated by the first party, which is illegal, arbitrary, unjust and improper. The second party has submitted statement of claim at Exh. 5, in which the termination order

dated 10.11.2001 is challenged on the ground that the principle of natural justice has not been followed by the first party and the unilateral action of the management is arbitrary, unjust and improper and he is required to be reinstated with full back-wages and all consequential benefits.

[3] The first party has filed written statement at Exh. 28. It is mainly contended by the first party that the Assistant Labour Commissioner has no power to make reference as there is no industrial dispute between the parties. He has further stated that the second party is not a 'workman' as defined in Section 2(s) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'). It is further stated that the Labour Court has no jurisdiction to refer this reference as no cause of action has arisen as the second party is not the 'workman'. It is the case of the first party that the second party was Chief Engineer and was in-charge of Engine Department and all the officers of the Engine Department were responsible to the Chief Engineer for all technical actions pertaining to engine room and their operational function. It is further stated that all recommendations were

to be made through Chief Engineer for consideration by Master for improvement of the ship operation and crew welfare. It is further stated that the second party used to allot duties to subordinate engineer and he used to make assessment and review of the main engine performance including the work of staff of machine and maintenance. Hence, the duties were administrative and supervisory in nature and therefore, the second party is not a 'workman'. The first party has denied that the service of the second party was illegally terminated without affording any opportunity and without following the principle of natural justice. The statement of the claim of the second party is denied by the first party. It is further stated by the first party that the second party has raised dispute at two places i.e. one is before this Court and another is before the Labour Appellate authority at Chennai and therefore, this reference is not maintainable. It is further stated that the second party has committed irregularities during the course of his job on the board. It is further stated that the second party has left his vessel on 06.11.2001 without any intimation and his service was not satisfactory and therefore, his services were terminated, which is as per the statutory provisions. It is

further stated that the first party Shipping Division is functioning under the direct control and as per the instruction of the Central Government and the provisions of the Merchant Shipping Act, 1958, are applicable to the first party establishment and as per the Merchant Shipping Act, the reference made by the Assistant Labour Commissioner is not maintainable.

[4] On behalf of the second party, following documentary evidence are produced vide list Exh. 35.

| <b>Sr. No.</b> | <b>Particulars</b>                                                  | <b>Exh. No.</b> |
|----------------|---------------------------------------------------------------------|-----------------|
| 1              | Letter by First Party asking to produce CDC copies zerox            | Mark 35/1       |
| 2              | Reply from second party to above letter                             | Mark 35/2       |
| 3              | Letter from second party regarding above subject                    | Mark 35/3       |
| 4              | Letter from second party for Eng. 2 endorsement                     | Mark 35/4       |
| 5              | Letter from second party for Eng. 2 endorsement                     | Mark 35/5       |
| 6              | Letter of first party regarding charge of acting chief engineer     | Mark 35/6       |
| 7              | Letter from first party to join first party as Addl. Chief Engineer | Mark 35/7       |
| 8              | Complaint to Director Gen. of Shipping by second party              | Mark 35/8       |
| 9              | Complaint to Central Vigilance Commissioner by second party         | Mark 35/9       |
| 10             | Letter of Master to Chief Eng. of ship of                           | Mark            |

|    |                                                         |            |
|----|---------------------------------------------------------|------------|
|    | first party regarding cargo religue function.           | 35/10      |
| 11 | Repairing work report done by second party              | Mark 35/11 |
| 12 | Letter by second party to Vice President of first party | Mark 35/12 |

[5] On behalf of the first party, following documentary evidence are produced vide list Exh. 29/A.

| <b>Sr. No.</b> | <b>Particulars</b>                                                          | <b>Exh. No.</b> |
|----------------|-----------------------------------------------------------------------------|-----------------|
| 1              | Appointment letter from RIL to Suganthan Dr. 20.06.1994                     | 47              |
| 2              | Joining report of Suganthan Dr. 20.06.1994                                  | 48              |
| 3              | Reporting line & responsibility of Chief Engineer at RIL                    | Mark 29/A/3     |
| 4              | Certificate of competency of Sugnathan.                                     | 49              |
| 5              | Letter by Suganthan to Vice president RIL Dt. 26.08.1997.                   | --Mark 29/A/5   |
| 6              | Letter by Suganthan to GM (Technical) RIT Dt. 08.07.2001.                   | --Mark 29/A/6   |
| 7              | Performance report for seagoing staff Dt. 02.11.1996 reported by Suganthan  | -Mark 29/A/7    |
| 8              | Performance report for seagoing staff Dt. 16.06.1999 reported by Suganthan. | --Mark 29/A/8   |
| 9              | STOP round (A part of safety management system)                             | --Mark 29/A/9   |
| 10             | Incident report Dt. 27.06.1998                                              | --Mark 29/A/10  |
| 11             | IOM Dt. 18.04.1997 on Failure of BT engine                                  | --Mark 29/A/11  |
| 12             | Inspection report Dt. 18.07.2001                                            | --Mark 29/A/12  |
| 13             | IOM sent to Vice President - Shipping Dt. 06.11.2001 incident of 04.11.2001 | --Mark 29/A/13  |
| 14             | Letter by RIL to Suganthan Dt. 09.11.2001 to sign off and proceed on leave  | --Mark 29/A/14  |

|    |                                                                                                            |                   |
|----|------------------------------------------------------------------------------------------------------------|-------------------|
| 15 | Termination notice by RIL to Suganthan Dt. 10.11.2001                                                      | 50                |
| 16 | Complain filed by Suganthan at Chennai before the Special Deputy Commissioner of Labour in November - 2002 | 51                |
| 17 | Acknowledgment of Dt. 10.11.2001                                                                           | --Mark<br>29/A/17 |

[6] The second party has filed his evidence by way of affidavit at Exh. 33. Whereas on behalf of the first party, affidavit of Mr. Siddharth Mithabhai Surati is produced at Exh. 43, affidavit of Rajeev Kumar Singh is produced at Exh. 61 and the affidavit of Kuldeep Raj is produced at Exh. 65.

[7] The Ld. Advocate for the second party has submitted that the second party was a 'workman' as per Section 2(s) of the Act. He has submitted that there is no evidence on record to justify the termination. He has submitted that when the second party has been terminated from the job, such termination is grounded upon conduct attaching stigma to him and therefore, without holding departmental inquiry, no punitive action can be taken. He has submitted that after the termination, the second party has not been gainfully

employed and therefore, is entitled for fully back-wages along with all the consequential benefits

[8] On behalf of the first party, the Ld. Advocate has filed written submission at Exh. 74 along with certain citations, which are considered by this Court. It is mainly contended that the duties assigned to the second party was managerial and administrative work. He has submitted that looking to the appointment order and conditions, the second party was employed in the supervisory capacity and therefore, he cannot be said to be a 'workman'. He has further submitted that as per the provisions of the Merchant Shipping Act, 1958, the Assistant Labour Commissioner has no power to refer the dispute. He has referred to the provisions of Merchant Shipping Act, more particularly the definition of 'Seaman' as defined in Section 3(42) and submitted that the second party was a 'Seaman' and therefore, as per Section 150 of the Merchant Shipping Act, the Central Government has to refer the dispute to the concerned Tribunal for adjudication. He has further submitted that considering the documents produced on record, it is established that the second party has admitted in his evidence that he has not



applied anywhere for job after termination of his service with the first party. He has further submitted that from the perusal of his passport, it is clear that the second party was gainfully employed during the said period to maintain his family of five members.

[9] From the rival controversies, following points arise for determination of the present reference.

1. Whether the second party is required to be reinstated in the service with back-wages in the first party company or not?

2. What Order ?

[10] My findings on the above points for the reasons stated below, are as under:

1. In affirmative.

2. As per final order.

**:: REASONS ::**

**POINT NO. 1:**

[11] Heard the Ld. Counsels for the respective parties and perused the record. The main contention raised on behalf of

the first party is that the second party was not a 'workman' and therefore, this Court has no jurisdiction to entertain this Reference. Section 2(s) of the Act defines the term "Workman" which reads as under:

*"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.”*

[12] The appointment letter dated 20.06.1994 of the second party is produced at Exh. 47. From the perusal of the said document, it is clear that the second party was appointed in the Rank of Chief Engineer in the first party company and his basic salary was Rs. 10,770/- per month. It is further mentioned in the appointment letter that the services of second party was liable to transfer to any vessel/ Foreign Flag vessels owned, managed, manned by the first party. Considering the conditions of the vessels, different types of service conditions were made applicable. The document at Exh. 48 is the Joining Report of the second party. In the documentary list Exh. 29(A)/3, Annexure - 2 is produced. The said documents is not exhibited, however, the contents of the said document are being referred to in the affidavit of the witness of first party. The Annexure - 2 reveals the Department and Reporting Lines. It is stated in the said document that the Chief Engineer is in-charge of the Engine Department and all officers/crew of the Engine Department are responsible to the Chief Engineer for all

technical matters pertaining to engine room and their operational function. It is further stated that all complaints / recommendations were to be routed through the Chief Engineer for consideration by Master for improvement of ship operations and crew welfare. Hence, as per the appointment order and Annexure - 2, the primary duties and dominant purpose of the employment of second party was to ensure satisfactory maintenance and upkeep of all machinery in engine room as well as on deck. His responsibility included allocation of duties and responsibilities to the engineers, assessment and review of main engine / auxiliary engine performance parameters etc.

[13] If the oral evidence is perused, the second party has been cross-examined by the Ld. Advocate for the first party at Exh. 33. In the cross-examination the second party has denied that he was the highest authority in the Shipping Department. He has further stated that ship department was administrated by the management and in the set-up of the shipping department, there was Sr. Vice President, General Manger, Deputy Manager and Manager. He has further asserted that they were administrating the Department. He

has further admitted that as per his appointment order, his services were transferable from one ship to another. It has also come on record that the Master was above the Chief Engineer in the ship and he was working under him.

[14] Further if the evidence on behalf of the first party is perused, the evidence of Siddharth Mithabhai Surati who was Second Engineer in the shipping division of the first party is produced at Exh. 43. He has stated that the post of Chief Engineer is supervisory in nature and second party was performing supervisory work like allocation of duties and responsibilities to the engineers. However, in the cross-examination he has admitted that he has not produced any evidence to show that how many employees were working under him or under second party. He has admitted that the higher officers were appointed above the second party. He has admitted that the information were provided by the higher officers to him and he was required to inform the higher officers regarding the work. He has admitted that he has not produced any documentary evidence to show that any duties were entrusted to him by the second party. He has also not produced any evidence to show that the duties

were entrusted to other employees by the second party. He has admitted that the second party was not empowered to terminate any worker. He has admitted that the second party was reporting to the company through General Manager and not directly. He has admitted that the second party has not terminated any workman. He has admitted that he has not produced any document to show any sanction of leave of any workman. On behalf of the first party, another witness Rajeev Kumar Singh, who is Sr. Vice President, is examined at Exh. 61. He has stated in the chief-examination that the post of Chief Engineer is supervisory in nature. He has further stated that all the complaints, recommendations were to be routed through the Chief Engineers for consideration by the Master for improvement of ship operation and due welfare and the second party was the key person in the engine department. However, in the cross-examination he has admitted that the second party was required to do his job on different vessels of the first party and on every ship the controlling in-charge of the vessel was the captain. He has admitted that if any fault is found in the vessel, it was the responsibility of the second party to repair it and in support of second party, other employees were engaged. He

has admitted that the other employees were not appointed by the second party. He has admitted that he has not produced any document to show that the second party has issued any Shaw-cause notice or any charge sheet to other employees working in support of second party. He has admitted that the second party was not authorised to sanction the leave of other employees. He has admitted that the work of second party was manual. He has admitted that the order appointing the other employees in the vessel is not produced on record. Another witness on behalf of the first party examined is Kuldeep Raj at Exh. 65, who is the Vice President. He has stated in his chief-examination that the second party was in-charge of the Engine Department and there were other officers like Second Engineers, Third/Forth engineers, Electric officers and Engine room ratings (2 - 3 personnel), who were working under the second party and were reporting to him. He has further stated that the necessary instructions regarding the Engine Department work were given by the second party and the other officers were working under the direct supervision and control of second party and therefore, the post of Chief Engineer is supervisory in nature. He has admitted in the cross-examination that the second party

used to do the work of repairing in the vessel and the second party was not authorised to appoint or terminate any employee in the company. He has admitted that the second party was not authorised to sanction any leave of the employee also. He has admitted that he has not produced any evidence to show that the second party was authorised to issue charge sheet to the employees working in the vessel. He has admitted that he has not produced any evidence to show that the second party was authorised to allot work to the employees working in the vessel with him.

[15] Hence, looking to the oral as well as documentary evidence on record, it is clear that the primary duties of the second party was to take charge of engine room and operational function of the vessels. The basic duties was to ensure the satisfactory maintenance and upkeep of all machinery in engine room as well as on the deck. Hence, his work in the vessel was manual, technical and operational and not mainly of managerial, administrative or in supervisory capacity. It has also come on record that the Chief Engineer was working under the Master of the vessel and the administration of the shipping department was in



the control of Sr. Vice President and General Manager. Only because of the fact that other employees were working in the Engine Department in which the second party was the Chief Engineer and that he might be issuing some technical instructions to the concerned employees working under the second party and other crew members of the engine department, it cannot be said that the second party was in supervisory category on the basis of which, he can be excluded as 'Workman' in terms of Section 2(s) of the Industrial Disputes Act.

[16] It is the settled legal position of law that the designation alone is not important to determine whether a person is working in a supervisory capacity or is a workman. The test to decide whether an employee is a workman is to take into account his basic or primary duties and the dominant purpose of his employment. An incidental performance of supervisory duty will not make the character of employment supervisory. The focus shall be on the nature of the duties. From the evidence on record, it appears that there is nothing on record to show that the basic and primary duties of the second party was supervisory and

mainly of a managerial nature. The incidental purpose of allocation of duties and responsibilities to engineers would not make the second party a person employed in supervisory capacity. He was performing certain supervisory duties in addition to his normal duties to ensure the satisfactory maintenance and upkeep of machinery in the engine room as well as on the deck as a Chief Engineer. Allocation of duties and responsibilities to engineers would not bring about any substantial change in the status of the employee concerned. In the present case, looking to the evidence, there is nothing on record to show that the second party was allotting the duties and responsibilities to the other engineers and crew members working in the vessel.

[17] The authorities relied on by the Ld. Advocate of the first party are considered by this Court. However, facts of the said authorities are absolutely different from the facts of the present case. Merely because certain engineers were working under the second party and he was taking some technical help from other employees would not make substantial change in his manual and technical work as a Chief Engineer and he would not become an administrative officer. The

primary function of the second party was not to see whether the work is properly done by the skilled and unskilled workman working under him. But the primary work of the second party was to manage all the technical work pertaining to engine room and their operational function. Hence, the said judgments are not applicable to the facts of the present case.

[18] On behalf of the first party, the contention is raised that as defined in Section 3(42) of the Merchant Shipping Act, the second party was a 'seaman'. The said definition is as under:

*“3(42). seaman” means every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under this Act, but in relation to sections 178 to 183 (inclusive) includes a master”*

[19] The second party was appointed as a Chief Engineer and as per the definition of Section 2(s) of the Industrial Disputes Act, 1947, he was employed to do the technical work and cannot be said to be the member of the crew of the

ship and therefore, the second party cannot be said to be a 'seaman'. Hence, the provisions of the Merchant Shipping Act are not applicable and therefore, the submission that the Central Government can only refer the dispute to the Tribunal is not accepted.

[20] It has come on record that the second party was terminated on 10.11.2001. The said termination order is produced at Exh. 50. From the perusal of the said order it appears that the second party was terminated on the ground that his performance was not found satisfactory and there was lack of commitment and efforts towards the job function. In the dismissal order dated 10.11.2001 the reference of letter dated 09.11.2001 is made, however the said letter is not exhibited by leading any evidence by first party. On behalf of the first party, the affidavit of Siddharth Mithabhai Surati is filed at Exh. 43, in which nothing is stated why the second party was terminated. In the affidavit of Rajeev Kumar Singh of first party at Exh. 61, he has stated in para - 5 that various complaints regarding indiscipline and misconducts of the second party were received. It is further stated that there was gross negligence and failure of his

performance while on duty on the part of the second party and therefore, his services were terminated after following internal approval process. The affidavit of witness Kuldeep Raj of first party is produced at Exh. 65. He has stated nothing with respect to the fact that why the services of second party was terminated.

[21] Looking to the evidence of Rajeev Kumar Singh at Exh. 61 as well as the written statement of the first party at Exh. 28 along with the termination order at Exh. 50, it is clear that due to his performance as Chief Engineer he was terminated. However, nothing is produced on record to show that there was any misconduct on the part of the second party. No evidence is led by the first party to show that by affording any reasonable opportunity of being heard, punitive actions were taken.

[22] It is the settled legal position of law that when the services of a workman is terminated due to loss of confidence such termination amounts to punishment inflicted by way of disciplinary action. Since, the termination is grounded upon conduct attaching stigma to the second party, disciplinary

proceedings are necessary as condition precedent to infliction of termination as a measure of punishment. If no disciplinary proceedings are held, the order of termination is vitiated in law and cannot be sustained. Further, there is absolutely no evidence led before this Court to justify the order of termination. Witness Rajeev Kumar Singh at Exh. 61 has stated in his affidavit that the second party was terminated after following internal approval process.

[23] This Court is required to examine the case of the terminated workman qualitatively in the nature of inquiry and quantitatively in the matter of adequacy of punishment. In the present case, it is established from the evidence on record that without following any inquiry and without following the principle of natural justice, the second party was terminated and therefore, the same is required to be quashed and set aside.

[24] So far as the back-wages are concerned, when termination is set aside, normally the full back wages are required to be awarded. However, considering the facts and circumstances of the present case, it appears that after

termination the second party was employed but it has not come on record that throughout he was gainfully employed. Hence, considering the facts and circumstances of the case and the evidence on record, 50% back-wages are required to be awarded. Hence, I answer Points No. 1 in affirmative accordingly.

**POINT NO. 2:**

[25] In view of the above discussion, I pass the following final order.

**:: ORDER ::**

1. The present reference is hereby **Allowed**.
2. The termination order dated 10.11.2001 is hereby quashed and set aside. The second party is ordered to be reinstated in the first party company on his original post with continuity of service with 50% backwages and other consequential benefits.
3. The first party shall award the costs of Rs. 25,000/- towards litigation to the second party.

4. The first party shall comply with this order within 30 days from the date publication of this order.

Pronounced in open Court today on this 21st September,  
2019

Date : 21.09.2019

(Mrs. Rinku Rajesh Desai)

Place : Surat

UID CODE GJ01089  
Presiding officer, Labour Court No 2  
Surat