



W.A. No. 364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 364 of 2023

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C.M.P. No. 3475 of 2023

1. The General Manager (Marketing),
The Tamil Nadu Co-operative Milk
Producers Federation Ltd.,
3-A, Chamiers Road,
Nandhanam, Chennai – 600 035.
2. The Managing Director,
The Tamil Nadu Co-operative Milk
Producers Federation Ltd.,
Madhavaram Milk Colony,
Chennai – 600 051.

..Appellants

Vs.

1. A.M. Alikhan



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2. The Presiding Officer,
II Additional Labour Court,
High Court Campus,
Chennai – 600 104.

..Respondents

Prayer: Writ Appeal as against the order dated 28.10.2021 passed in

W.P. No. 8230 of 2018.

For Appellants :: Mr.C. Jayaprakash,
Govt. Advocate for
Mr.M. Balachander
Standing Counsel for AAVIN

For Respondents :: Mr.Akhil Akbar Ali for R1

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present writ appeal is filed challenging the order dated 28.10.2021 passed in W.P. No. 8230 of 2018.

2. The 1st respondent herein/workman, while working as Selection Grade Assistant, under the appellant Management, had applied for privilege leave for the period from 10.10.1995 to 27.10.1995 and leave was



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sanctioned by the Management on 17.10.1995. Thereafter, the 1st respondent sought for extension of leave by another 10 days, which was also permitted by the Management. However, the 1st respondent sought further extension of leave and did not report for duty inspite of several reminders sent to him, which ultimately resulted in framing of two sets of charges against him. There were two enquiries conducted with regard to his absence, which was termed as unauthorised. The charges were held proved and the 1st respondent was removed from service on 20.10.1998.

3. Aggrieved by the order of removal from service, the 1st respondent raised an industrial dispute in I.D. No. 110 of 1999 before the II Additional Labour Court, Chennai to set aside the order of removal and for reinstatement with all consequential benefits. The Labour Court, on overall consideration of the materials placed before it and relying upon various decisions of the Hon'ble Supreme Court, passed an award dated 21.05.2009 setting aside the punishment of removal from service. Since the 1st respondent had already attained the age of superannuation, the Labour Court held that he would not be entitled to reinstatement but only entitled to 50%



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backwages. Challenging the said award, the Management filed W.P. No. 26996 of 2009 and by order dated 29.03.2016, the writ petition was allowed and the matter was remanded to the Labour Court for fresh consideration. On remand, the Labour Court held that the charges are not proved and passed an award dated 26.04.2017 setting aside the order of removal passed by the Management and directing payment of full backwages till the date of retirement of the 1st respondent with all benefits and consequential benefits. Aggrieved by the award, the Management once again knocked the doors of this Court by filing W.P. No. 8230 of 2018.

4. The learned Single Judge, while observing that the powers of this Court under Article 226 of the Constitution of India to interfere with an award of the Labour Court is very limited and this Court cannot reappraise the evidence adduced before the Labour Court and that the Management has not been able to substantiate that unauthorised absence, without any intention or the absence of compelling circumstance, would amount to a misconduct, dismissed the writ petition holding that the reasoning adopted by the Labour Court that the disciplinary authority should establish in the



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departmental enquiry that a mere unauthorised absence would not amount to a misconduct, unless and until it is wilful in nature, seems acceptable. As against the dismissal of the writ petition, the present writ appeal has been filed by the Management.

5. Learned counsel for the appellants would contend that though the learned Single Judge has taken note of the observation of the Labour Court that since there are discrepancies in the entries found in the passports of the 1st respondent marked as Exs.M17 and M18 by the Management and that the same cannot be relied upon to conclude that the 1st respondent was out of the Country during the relevant point of time, the fact that the Labour Court has not given any finding on the admission of the 1st respondent vide letter dated 07.04.1998 addressed by him to the Superintendent of Police, Vigilance Cell, marked as Ex.M14 that during the period from 17.10.1995 to 08.04.1997, he was in United Arab Emirates, should have been considered. Further, according to the learned counsel for the appellants, the unauthorised leave taken by the 1st respondent cannot be termed as bona fide as he had suppressed the fact that he was in foreign Country and only on



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enquiry by the Vigilance Officers, it had come to light that he had gone abroad. Therefore, the learned counsel for the appellants would submit that the order under challenge has to be set aside and the writ appeal has to be allowed.

6. On the other hand, according to the learned counsel for the 1st respondent, the contention of the Management that the 1st respondent had gone abroad has not been proved was the finding of the Labour Court and that the workman had produced a medical certificate with regard to his depressed state of mind from a Government Civil Surgeon, which was marked as Ex.M15. The Medical Certificate shows that he was in a state of depression and taking treatment for the period between 17.10.1995 to 08.04.1997. The Labour Court, at paragraph No.9 of its award dated 26.04.2017 has stated as follows:

"9. On perusal of the Petition, Counter and written arguments, this Court can understand that the petitioner had put up more than 22 years of service and he had been suffering from depressed state of mind and he has produced a medical certificate from a Government Civil Surgeon. It is



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evident from Ex.M15. The medical certificate produced by the petitioner is sufficient to prove that there is no violation of the instruction on his part. Therefore, this Court finds that the charge and imposing the punishment is erroneous and vitiated. After rendering more than 22 years of service, for genuine reasons such as family disputes, medical and psychological grounds, he was forced and compelled to avail leave for which he had submitted leave application from time to time for reasons beyond his control, he has been punished with major punishment, that too, removal from service, which is grossly disproportionate to the misconduct committed by the petitioner.

Further, one of the Management Witnesses, namely, M.W.1, in his cross examination, has stated as follows and the same finds place in paragraph No.10 of the award of the Labour Court:

"மனுதாரர் எடுத்துக்கொண்ட லீவுக்கு எல்லாம் லீவு கடிதம் கொடுத்துள்ளார்.....மனுதாரர் சொத்து சம்மந்தமாகவும் அதனால் ஏற்பட்ட மன உளைச்சல் காரணமாக புத்தி பேதலித்திருக்கிறது, உடம்பு நிலை பாதிக்கப்பட்டுள்ளது என்று சொல்லியிருக்கிறார் என்றால் ஒருசில கடிதத்தில் அவ்வாறு சொல்லியிருக்கிறார்.....மனுதாரர் சார்பாக அவருடைய மனைவி பல கடிதங்கள் எழுதியிருக்கிறார்கள்.



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லீவு எடுத்ததற்கான காரணமும் அதில் சொல்லியிருக்கிறார்கள்.....மனுதாரர் வேலைக்கு வந்து சேரும்படியும், லீவு சேங்ஜன் செய்யவில்லை என்றும் உடனடியாக வேலைக்கு வந்து சேரும்படி எந்த நோட்டீசிலும் பிரசுரிக்கப்படவில்லை. மனுதாரர் வராததால் வேலையின் டிஸ்லோகேஸ் காரணமாக பொருளாதார ரீதியில் எந்த இழப்பும் ஏற்படவில்லை....எம்.12 சார்ஜ் மெமோவில் அனுப்பியுள்ள விளக்கத்தில் தான் வேலைக்கு வருவதாக சொல்லியிருக்கிறார். எம்.15 வரிசை மருத்துவ சான்றிதழ் போலியானவை என்று ஸ்டான்லி மருத்துவமனை அதிகாரிக்கு எழுதி விசாரணை எதுவும் செய்யப்படவில்லை. எம்.16 விஜிலென்ஸ் ஆபீசர், மேனேஜிங் டைரக்டருக்கு எழுதிய கடிதம் ஆகும். எம்.16ல் பாரா 7ல் கண்டுள்ளபடி ஸ்டான்லி மெடிக்கல் காலேஜ் நிர்வாகத்தின் கவனத்திற்கு மெடிக்கல் சான்று பற்றி அவர்களின் கவனத்திற்கு கொண்டு வரும்படி கேட்டுள்ளதற்கு நிர்வாகம் எந்தவிதமான நடவடிக்கை எடுக்கவில்லை.....மனுதாரர் அனுப்பிய லீவு கடிதத்தில் தனக்கு மன அழுத்தம் உள்ளது என்று அதில் சொல்லியிருக்கிறார். மனுதாரர் பணியில் சேரும்போது அவரை பணியில் அனுமதிக்கவில்லை.....என்கொபரி புரீசீடிங்ஸ் நிலுவையில் இருந்தபோது மனுதாரருக்கு பிழைப்பு ஊதியம் ஏதும் வழங்கப்படவில்லை."



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The 1st respondent/workman has also relied on two decisions of the Hon'ble Supreme Court rendered in ***Management of Madurantakam Co-operative Sugar Mills Limited V. S. Viswanathan*** reported in (2005) 3 SCC 193 and ***Krushnakant B. Parmar V. Union of India*** and another reported in 2012 3 SCC 178 and paragraph Nos. 17 & 18 of the judgment rendered in *Krushnakant B. Parmar's case* are extracted hereunder:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”



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The learned counsel would submit when the Labour Court has given a finding that the reasons for absence of the 1st respondent are genuine and supported by medical certificate, the order of the learned Single Judge confirming the award of the Labour Court warrants no interference.

7. Heard both sides.

8. Admittedly, the 1st respondent/workman absented himself from attending duty, as could be seen vide his letter dated 07.04.1998, marked as Ex.M14. He had also not informed the Management about his going abroad. It is also not in dispute that he was not in employment between 17.10.1995 and 08.04.1997. From Ex.M14, it is very clear that during the period in question, the employee was not in India. Besides, he has admitted that during the said period, due to mental depression, he was taken to United Arab Emirates by his family members without his knowledge. He had also stated that he was not consciously aware of what was happening in and around him. From the passport entry, which was marked as Ex.M18, it is evident that during major portion of this period, the 1st respondent was



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abroad. From the award of the Labour Court, it is also very clear that the employee had not written any letter and many of the letters had been written by his wife explaining the ill-health/mental condition of her husband, namely, the 1st respondent/workman. The judgment of the Hon'ble Apex Court reported in (2012) 3 SCC 178 (*cited supra*) relied on by the learned counsel for the 1st respondent/workman may not be applicable to the facts of this case. Merely getting a letter from a Civil Surgeon/Doctor who has not treated the 1st respondent cannot be taken as evidence at all. There may be different eventualities that may make an employee to abstain from work like illness, accident, hospitalisation, etc as observed by the Hon'ble Supreme Court in the aforecited decision. However, in the present case on hand, the workman could not have reported for work because he was not at all in India. That being so, the Labour Court is not justified in granting full backwages when the 1st respondent was not in employment between 17.10.1995 and 08.04.1997.

9. The Hon'ble Supreme Court, in the decision rendered in ***Management of Madurantakam Co-operative Sugar Mills Limited V. S.***



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Viswanathan reported in **(2005) 3 SCC 193**, has categorically held under what circumstances, the Courts can interfere by exercising the powers under Article 226 of the Constitution of India and the relevant paragraph No.12 is extracted hereunder:

“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.”



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Normally, finding of fact rendered cannot be interfered with. But, if the order or award is perverse, the Apex Court has categorically held that it can be interfered with, more so, when it is not based on legal evidence. In the case on hand, the employee has taken two different stances, one is that he was in India and taking treatment and the other is that he was taken abroad and he did not know what was happening to him by his communication dated 07.04.1998 (Ex.M14). In the case on hand, the 1st respondent/employee was unauthorisedly absent from duty after availing sanctioned leave. Eventhough he had obtained prior permission for leave initially and it was only for a limited period, thereafter, he did not report for work for the reasons stated supra. The period of leave that was sanctioned was from 10.10.95 to 27.10.95 and it was sanctioned vide Ex.M4. The wife sent a letter dated 03.06.1996 to the Managing Director that her husband was suffering from mental illness from 17.10.1995 to 08.04.1997 i.e, during the period of authorised leave, he had developed mental illness and continued treatment and he was not in this Country.



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10. Now that the employee has attained the age of superannuation, in the light of the judgments referred to supra and taking note of the mental illness of the 1st respondent/employee, removal from service imposed was a capital punishment. The punishment of removal from service, according to us, is shockingly disproportionate and for the services rendered, the 1st respondent/employee is entitled to get benefits in the absence of any past misconduct. However, we are not inclined to grant full backwages to the employee as has been observed by the learned Single Judge. We modify the punishment of removal from service into one of discharge from service, in order to enable the employee to get terminal benefits for the actual service rendered by him, namely 22 years. For this, we place reliance upon the judgment of the Hon'ble Apex Court in ***B.C. Chaturvedi V. Union of India and others reported in (1995) 6 SCC 749*** wherein it was held as follows:

*18. ... 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*



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*its own conclusion on penalty and impose some other penalty. It 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)

The punishment of removal from service having been modified into one of discharge from service, the employee would be entitled to all the terminal benefits for the actual period of service of 22 years under the Management like gratuity, pension, etc, if any. The 1st respondent/employee is permitted to withdraw the amount lying in deposit to the credit of the Labour Court with accrued interest within a period of 15 days from the date of receipt of a copy of this order and the remaining amount shall be paid by the Management within a period of three months thereafter. The writ appeal is disposed of accordingly. No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (R.K.M.J.)

20.02.2023

S. VAIDYANATHAN,J.

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