

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 24792 of 2008 (B)

ID 22/2004 OF LABOUR COURT, ERNAKULAM.
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PETITIONER:

**HINDUSTAN PETROLEUM CORPORATION LTD.,
REGIONAL OFFICE, POST BOX NO. 1601.,
TATAPURAM P.O., ERNAKULAM - 682 014,
REPRESENTED BY SR. REGIONAL MANAGER .**

**BY SRI.E.K.NANDAKUMAR (SENIOR ADVOCATE)
ADVS. SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR**

RESPONDENT(S):

- 1. SUKRAN M.G., SHANMUGAPURATHU HOUSE,
LOTUS ROAD, NARAKKAL P.O., ERNAKULAM.**
- 2. CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, ERNAKULAM.**

**R1 BY ADV. SRI.PAULSON C.VARGHESE
R2 BY SRI.N.NAGARESH, A S G
SMT.M.LALITHA NAIR, CGSC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON 05-10-2015 DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE CLAIM STATEMENT IN ID.NO.22 OF 2004 FILED BY
THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT
DATED 21.6.2005.
- EXT. P2 : TRUE COPY OF THE COUNTER STATEMENT IN ID.NO.122 OF 2006
FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
DATED 16.10.2006.
- EXT. P3 : TRUE COPY OF THE AWARD PASSED BY THE 2ND RESPONDENT
DATED 25.4.2008.

RESPONDENTS' EXHIBITS:

- EXT.R1 A : TRUE COPY OF THE SALARY CERTIFICATE FOR THE MONTH
OF DECEMBER 2003.
- EXT.R1 B : TRUE COPY OF THE SALARY CERTIFICATE FOR THE MONTH
OF JANUARY 2003.
- EXT.R1 C : TRUE COPY OF THE DISCIPLINARY ORDER DATED 19.2.2004
ISSUED BY THE HINDUSTAN PETROLEUM CORPORATION
LTD.

//TRUE COPY//

P.S. TO JUDGE

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ANU SIVARAMAN, J.

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W.P.(C).No.24792 of 2008

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Dated this the 5th day of October, 2015

JUDGMENT

The writ petition is filed by the Hindustan Petroleum Corporation Ltd. challenging Ext.P3 award of the Central Government Industrial Tribunal Cum Labour Court, Ernakulam. By Ext.P3 award, the 1st respondent workman was directed to be reinstated in service without back wages and the punishment of termination imposed by the management was altered to reduction to a lower stage in the scale. The contention of the workman in Ext.P1 claim statement preferred by him was to the effect that he had 15 years of service as security guard with the petitioner. While so, a charge sheet was issued on 15.04.2002 alleging the misconduct of habitual unauthorised absence and pursuant to an enquiry, the petitioner was terminated from service. The termination was challenged on the ground that the enquiry was vitiated by non-observance of the principles of natural justice and that the punishment imposed was highly disproportionate and excessive. The petitioner had filed Ext.P2

counter statement specifically pointing out that the 1st respondent had been unauthorisedly absent for a total number of 352 days during the period from 1998 January to 2002 January. It was stated that it was only because the unauthorised absence on the part of a security worker could not be countenanced beyond a point that the memo of charges was issued to the petitioner. It was submitted that the enquiry was conducted in conformity with the principles of natural justice and the punishment of termination had to be issued on the 1st respondent since he was found to be totally unfit to continue in service due to his conduct.

2. The Tribunal proceeded to take the evidence and consider the matter on merits. The Tribunal raised three points for consideration they are:-

- 1.Is the enquiry vitiated?
- 2.Is the charge sheet sustainable?
- 3.Is the punishment proportionate?
- 4.Reliefs.

3. As the preliminary point, the Tribunal found that the enquiry was not validly conducted and therefore the

management was permitted to adduce evidence in support of the charges. On the second point, the Tribunal found that the sole charge of absenteeism and unauthorised absence stands proved. On the third charge of proportionality of the punishment, the Tribunal found that the dismissal from the service is the ultimate punishment to which an employee can be subjected. Taking note of the contention of the employee that he was forced to avail leave and remain absent due, in the first instance, to the serious and disabling illness of his mother which ultimately resulted in her death and thereafter, due to his own ill health and sickness, the Tribunal found that the imposition of maximum punishment provided in the standing orders was not warranted in such a case. On the basis of the above finding the Tribunal passed an award finding that the action of the management in terminating the service of the workman is not fair and proper and the punishment imposed was altered to reduction to a lower stage in the scale and the management was directed to reinstate the workman at the earliest; but without payment of back wages or other benefits for the period he was out of service. This award is challenged in this writ petition.

4. Heard Sri.Benny P. Thomas, learned counsel appearing for the petitioner, Sri.Paulson C. Varghese, learned counsel appearing for the 1st respondent and Smt.Lalitha Nair, learned Central Government Standing Counsel. It is the contention of the learned counsel for the petitioner that the Tribunal had specifically found that the charge of unauthorised absence raised against the 1st respondent stood proved. The Tribunal has also found that the illness of his mother or of the workman himself is not a reason to remain absent unauthorisedly. The practice of submitting leave applications on rejoining duty was deprecated. However, the Tribunal went on to consider the mitigating circumstances pleaded by the workman and found that the termination from service in such a case was totally unjustified. It is urged by the learned counsel for the petitioner that after finding the workman guilty as charged, it was not open to the Tribunal to have reduced the punishment and directed reinstatement in service. The award of the Tribunal is totally vitiated and is one issued in excess of jurisdiction, it is submitted.

5. The learned counsel appearing for the 1st respondent would, on the other hand, submit that in the instant case, the workman had been out of service since 2004. The enquiry conducted by the management was found to be vitiated for non-compliance with the principles of natural justice. Thereafter, the parties were permitted to let in fresh evidence before the 2nd respondent. In the above circumstances, the 2nd respondent had all the power of the disciplinary authority in the matter of imposition of punishment. After having found that the petitioner was guilty of the charge of misconduct, the 2nd respondent has evidently applied its mind to the punishment to be awarded to the workman. The 2nd respondent has come to a reasoned conclusion that the punishment of termination from service initially imposed by the management was decidedly excessive and has given proper reasons for reduction of the punishment. The 2nd respondent found that reduction to a lower stage in the scale would be appropriate punishment for the misconduct found against the

petitioner. Moreover, considering the facts and circumstances of the case, reinstatement was directed without back wages or any attendant service benefits. In the above view, the workman contends that there is no illegality, irregularity or unreasonableness in Ext.P3 award which warrants interference under Article 226 of the Constitution of India.

Having considered the arguments advanced on either side as well as the pleadings and the recitals in the award of the 2nd respondent, I am of the view that the 2nd respondent has given anxious consideration to the issue on hand. The 2nd respondent found that the charge of absenteeism stood proved. However, the reasons urged by the workman for his unauthorised absence were also considered by the 2nd respondent. Thereafter, on an overall evaluation of the facts and circumstances of the case, the 2nd respondent came to a conclusion that this was not a fit case where the award of the maximum punishment of dismissal from service would be justified. The punishment was modified as reduction to a lesser stage and reinstatement was directed without back

wages. It is trite law that the power of this Court to interfere with the finding of fact made by a Labour Court or Industrial Tribunal as well as in matters of award of punishment is extremely limited. From a consideration of the pleadings and materials on record in this case and the contention of the parties, I find no illegality or arbitrariness in the award of the 2nd respondent. The writ petition therefore fails and is accordingly dismissed.

Anu Sivaraman, Judge

sj