

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 22/07/2015

DATED : 29/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13266 of 2010

The Senior Manager,
Whirlpool India Ltd.,
Thirubuvanai,
Puducherry.

... Petitioner

Vs.

1. S.Vijayakumar

2. The Presiding Officer,
Labour Court (III Additional District Judge),
Pondicherry.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records of the second respondent pertaining to the Award passed in I.D.No.32 of 2003, dated 08.04.2010 and quash the same.

For Petitioner : Mr.D.Ravichander
For Mr.P.Rabindran

For Respondents : Mr.V.Viswanathan for R1
R2 (Labour Court)

O R D E R

The petitioner has submitted that M/s.Whirlpool India Ltd., is a Public Limited Company incorporated under the Companies Act registered on the file of Registrar of Companies, Pondicherry and he is the Senior Manager of the said Company. The Company manufactures several consumer appliances such as washing machines and refrigerators consumed within India as well as abroad. The petitioner has submitted that the first respondent herein was one of the workmen under No.E-2475. The first respondent joined on 02.03.1992 in the

capacity of Casual Labour in the employment of their Predecessor Company TVS Whirlpool India Ltd. In a subsequent process of amalgamation of Companies, M/s. Whirlpool India took over T.V.S. Whirlpool and as such, this employee-first respondent herein as well as other employees in the whole establishment were taken over by Whirlpool India Ltd. The petitioner has further submitted that this workman-1st respondent from the year 1998 onwards, was showing signs of indiscipline and exhibited in-efficiency and committed acts of absenteeism. He started taking leave beyond his eligibility. Such acts led to serving a charge sheet also in February 2002 to explain the cause for his continued absence. He admitted the charge and pleaded for leniency. In fact, the first respondent, even before July 1999, was given a charge memo for picking up quarrel with co-worker and exchanging blows. He was called upon to explain this act of mis-conduct upon receipt of the charge memo. The first respondent admitted the charge also and pleaded for leniency expressing regret. However, he was given a minor punishment to treat the period of absence as suspension. The Medical Officer of the Company also found that being a diabetic patient, he was not taking proper treatment and he was cautioned by the said Medical Officer of the Company also. Subsequent to that the first respondent's repeated acts of absence, disorderly behaviour, and his poor health condition. All the above acts surfaced to such an extent that their Administrator decided to issue comprehensively a charge memo on all the acts of misconduct committed by the workman. Hence, the petitioner served a charge memo on 23.08.2002 on the workman-first respondent which is extracted hereunder:-

"Based on the report received from the Shift Supervisor on 23.08.2002, the following charges are made against the workman-first respondent. You have behaved in a disorderly manner in the shop floor during the working hours on August 12, 2002 in the first shift. the report states that you have picked up an intense quarrel with one of your co-workers, Mr.M.Rajaraman, E.No.2678 and used abusive language on him. This disturbed the flow in the assembly line and affected production of washing machine during the shift.

There is a prima facie material that the workman-first respondent have committed such acts, which amount to "act subversive of discipline" in terms of the Industrial Employment Standing Orders (Central Rules) Act, 1946. Further, it has been observed from our records that the workman-first respondent have been consistently indulging in

several wrongful acts, culminating with the latest act of abusing your co-worker. It is submitted that counseling/several warnings have been given on previous occasions relating to the following:

a) ABSENTEEISM:

It was informed that you were absent from work beyond your normal leave vide our letter dated September 28, 1998, October 29, 1999, June 08, 2001 and February 04, 2002, affecting the overall efficiency of the organization. You have accepted the offence and a written reply given by you that the such offence will not be repeated in future vide your letter dated November 27, 1999 and March 11, 2002.

b) DISORDERLY BEHAVIOUR IN THE SHOP FLOOR WITH THE CO-WORKER:

A similar incident had occurred on July 13, 1999 with one of your co-workers and you were suspended from work. Written reply by you that such act of mis-conduct will not be repeated in future vide your letter dated July 21, 1999.

c) POOR HEALTH CONDITION:

You were informed vide our letter dated February 15, 2002, that you are diabetic patient and because of your poor health, you were absent from work for a period of one month. The letter clearly spelt out that your fitness for work is questionable.

"Considering the above chronic behaviour, the Management is in contemplation of initiating appropriate disciplinary action against you and hence hereby calls upon you to submit your explanation as to why action should not be taken against the workman-first respondent, and also separately filed along with this writ petition.

The explanation should be in writing and should reach us within three days from the date of service of this notice on you, failing which, it will be construed that you admit the above charges and action will be processed on such basis."

2. The petitioner has further submitted that the first respondent upon receipt of the said charge memo dated 23.08.2002, submitted his explanation on 28.08.2002 admitting all the charges and claiming that in future, he would not commit any such act and will see to that no such event would

re-occur in future. However, the Management decided to hold an enquiry on the charges, as such appointed a domestic Enquiry Officer i.e., Advocate by name Shri.S.Eswaran.

3. The petitioner has further submitted that pursuant to the notice for conducting enquiry issued by the said Enquiry Officer, their company appeared through one Jayaraj their representative and the workman-first respondent represented by M.Balakrishnan Employment No.2371 as one to assist him in the proceedings. Accordingly, the enquiry was conducted and on the side of the Management, Exs.M1 to M13 were marked. While on the side of the first respondent-worker, D1 to D3 were relied upon. While on the side of the management, three witnesses were examined, on the side of the employee-first respondent, he examined himself alone and submitted that there was no person available on his side to give any evidence. Both sides filed their written representation. The first respondent had the fullest opportunity to defend himself before the Enquiry Officer and on conclusion of the enquiry and thereafter the Enquiry Officer went into the charges and held that this employee was found guilty of the charges levelled against him, in the show cause notice dated 15.02.2002 and 23.08.2002 except the charge of poor health condition and based upon this enquiry report dated 07.10.2002, their Management served an order of dismissal on the first respondent dated 25.10.2002. Thereafter, the first respondent approached the Labour Officer Conciliation and raised an Industrial Dispute seeking conciliation of the same and consequently upon the submission of failure report by the said Labour Officer Conciliation, Government of Union Territory of Pondicherry made a reference to the Labour Court, Pondicherry by G.O.R5.No.147/2003/Lab./AIL/J, dated 10.11.2003, and the dispute so referred is as follows:-

"(i) Whether the non-employment of Thiru.S.Vijayakumar by the Management of M/s.Whirlpool of India Limited, Pondicherry is justified or not?

(ii) If not to what relief he is entitled to?

(iii) To compute the relief if any awarded in terms of money, if it can be so computed?"

The first respondent filed statement before the Labour Court-second respondent claiming it to be a claim statement praying for setting aside the order of dismissal and for being reinstated. The petitioner has further submitted that they also filed their reply, whereupon the first respondent examined himself besides all witnesses and marked Exs.P1 to P8 and re-examination of their Senior Manager, Mr.Murali and

marked Exs.R1 to R6 and they sought the confirmation of the order of dismissal. The Labour Court (II Additional District Judge) Pondichery by order dated 08.04.2010, passed an award holding that the non-employment of the petitioner (first respondent) by them is not justified and consequently directed restoration of the first respondent to reinstatement in service with full back-wages and attendant benefits. Aggrieved by the order of the second respondent, they are constrained to institute this writ petition challenging the impugned order passed in I.D.No.32 of 2003, dated 08.04.2010, on the file of Labour Court, Pondicherry.

4. The first respondent has filed a counter affidavit and resisted the above writ petition. The first respondent has further submitted that the second respondent analyzed all the reports filed by the Enquiry Officer during the course of Domestic Enquiry and there is no mala-fide in the award passed by the second respondent. The first respondent has further submitted that he is not employed in any company or establishment. Moreover, for his livelihood, he sold his house on 30.11.2006, and now he is staying with his father. The first respondent has further submitted that he borrowed a loan from 2005 to 2006, and till date he has not repaid the loan amount and also borrowed loans from relatives also. The first respondent has further submitted that his children are studying in schools with the help of his father and his father is looking after him and also his family. Hence, the first respondent has entreated the Court to dismiss the above writ petition.

5. The learned counsel appearing for the petitioner has submitted that the petitioner Company is manufacturing several consumer appliances such as washing machines, refrigerators etc., and consumed it within India and abroad. The first respondent had joined as a workman on 02.03.1992 in the capacity of casual labour in the employment of their predecessor Company TVS Whirlpool India Ltd. In the subsequent process of amalgamation of companies, M/s.Whirlpool India took over TVS Whirlpool and as such the employees including the first respondent were taken over by Whirlpool India Ltd.

6. Further, the learned counsel has submitted that the first respondent, from 1998, had shown signs of indiscipline, exhibited inefficiency and committed acts of absenteeism and he took leave beyond his eligibility. Therefore, a charge memo was issued to him during February, 2002. In his reply, he had admitted the charges and pleaded

for leniency. Infact, earlier he was given a charge memo for picking-up quarrel with the co-worker and exchanging blows and at that time also he had admitted the charges and pleaded for leniency. However, he had continued the acts of absence, disorderly behaviour and his poor health condition. Therefore, the Administrator had decided to issue a comprehensive charge memo to him for all the acts of misconduct. In the explanation for the said comprehensive charge memo also, he had admitted the charges levelled against him and pleaded for leniency. However, the Management had proceeded further and dismissed him from service on 25.10.2002. Aggrieved by the dismissal from service, he had approached the Labour Officer for conciliation. The same was ended in failure. Therefore, the Government of Union Territory of Pondicherry made a reference to the second respondent. The second respondent, after hearing both sides, by the impugned order has set aside the dismissal order without assigning any valid reason and directed the petitioner to reinstate the first respondent into service with full backwages and attendant benefits. Therefore, the learned counsel has prayed this Court to allow this writ petition.

7. The learned counsel appearing for the first respondent has submitted that the Management had issued a charge memo with mala fide intention. The first respondent had joined with the petitioner Management on 02.03.1992 and discharged his duties properly. He was also given several letters of appreciation and rewards. In such circumstances, the Management had issued a charge memo, after levelling three charges and coerced him to admit all the charges and he had also admitted the same. However, the Management had dismissed him from service. The charge of unauthorized absence is vague and baseless. The de facto complainant had concocted the charge for the purpose of the case. The first respondent's job was in the nature of permanent job, but without proving the allegations he was dismissed from service and as such the employer had violated the principle of natural justice. On the side of the employee, two witnesses were examined and eight documents were marked including copy of the domestic enquiry report and the case was proved against the Management.

8. Further, the learned counsel has submitted that the first respondent, after dismissal from service, had sold his house and now staying with his father. His father is taking responsibility of his family. Therefore, the learned counsel has prayed this Court to dismiss the writ petition.

9. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that in respect of the second charge, levelled in the comprehensive charge memo, namely, disorderly behaviour in the shop floor with the co-worker, the co-worker was not examined before the Labour Officer in order to substantiate his statement. Further, the other charges pertaining to his health condition, even the Practising Medical Officer was not examined in order to prove his health condition. Furthermore, the first respondent was employed on a permanent basis. But, the imposition of dismissal order is the most severe punishment. Therefore, the writ petition does not possess sufficient force to allow it and the same is liable to be dismissed.

10. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rns/krk

To:

The Presiding Officer,
Labour Court (III Additional District Judge),
Pondicherry.

+2cc's to Mr.V.Viswanathan, Advocate, S.R.No.781 & 52797
+1cc to Mr.D.Ravichander, Advocate, S.R.No.53580

W.P.No.13266 of 2010

ALA(CO)
CA(18/01/2016)

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