

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25794 of 2009

and

M.P.No.1 of 2014

Order Reserved on
17.12.2014

Judgment Pronounced on
24.06.2015

The Management of the Kallakurichi
Co-op. Sugar Mills Ltd.,
Moongilthuraipattu, Sankarapuram Taluk,
Villupuram District - 605 702.

... Petitioner

Vs.

1.K.Krishnamurthy

2.The Presiding Officer,
Labour Court,
Cuddalore.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling upon the records of the second respondent relating to the Award dated 05.01.2007 made in I.D.No.150 of 2003 and quash the same.

For Petitioner : Mr.A.S.Thambuswamy

For Respondents : Mrs.Thenmozhi Shiva Perumal (for R1)
R2 - Court

O R D E R

The petitioner submits that she is presently working as Special Officer of the Kallakurichi Co-operative Sugar Mills and she is well acquainted with the facts of case from the records. The first

respondent during 2001 was working as Cane Assistant in the petitioner's Mill. At that time, a criminal complaint was given against him in Sankarapuram Police Station. The said complaint was registered and taken up for investigation. As per standing order an employee has to inform the management of any pending criminal proceeding. The first respondent deliberately suppressed the said fact. Further the first respondent was in the habit of absenting himself without prior intimation and prior permission. Therefore charge memo dated 04.08.2001 was issued to him specifying 3 charges as per standing order 40(II), (V) and (IX). The petitioner submitted his explanation dated 14.08.2001. Since his explanation was not satisfactory a domestic enquiry was ordered. The first respondent participated in the said enquiry which was conducted in a fair and proper manner adhering to all the principles of natural justice. The first respondent at no point of time complained of violation of principles of natural justice and that he was not given opportunity to defend the case. The first respondent also examined himself and he was cross examined. The enquiry officer after conclusion of enquiry submitted a report dated 27.04.2002 holding that the charges levelled against the first respondent were proved.

2. The petitioner by the show cause notice dated 30.04.2002 furnished a copy of the enquiry report and called upon the first respondent to submit his explanation as to why he should not be dismissed from service. The first respondent submitted his explanation. The petitioner after considering all the materials on record including the explanation submitted by the petitioner, by order dated 07.05.2002 dismissed the first respondent from service.

3. The first respondent raised an Industrial Dispute in I.D.No.150 of 2003 before the second respondent. The first respondent alleged that the domestic enquiry conducted against him was not fair and proper and not according to principles of natural justice. The petitioner filed counter statement denying all the allegations and set out the true and correct facts. The second respondent on erroneous consideration of facts and law passed a preliminary order holding that the domestic enquiry conducted by the petitioner was vitiated as the same was not conducted in a fair and proper manner. The petitioner was examined before the second respondent one witness and marked 30 documents to substantiate the charges levelled against the first respondent. The second respondent again on erroneous consideration of facts and law and the standing order set aside the order of dismissal dated 07.05.2002 passed by the petitioner and ordered reinstatement of the first respondent with continuity of service and back wages. The petitioner submits that they have conducted domestic enquiry in a fair and proper manner. The first respondent was given ample opportunity and at no point of time the principles of natural justice was violated. Further the petitioner has let in cogent evidence both oral and documentary to substantiate the charges leveled against the first respondent and order of dismissal. Further the second respondent failed to consider

that even if order of dismissal is set aside order of reinstatement and back wages are not automatic. It is well settled now that back wages need not be granted in all cases and no work no pay is the prevailing principle as settled by various judicial pronouncements of this Court and the Hon'ble Supreme Court. Hence, this writ petition is filed.

4. The first respondent has filed counter affidavit and stated that he has read the copy of the affidavit and denies all the averments made in the affidavit those that are specifically admitted herein. He denies the averments stated in paragraph-2 of the affidavit. He was appointed as a Line Assistant in the Petitioner's mill on 03.04.1984. The respondent was working with utmost sincerity. While so, on 04.08.2001, the petitioner has framed three charges against the respondent and the charges according to the charge memo is as under:

- i) About a F.I.R., said to be filed by the Sankarapuram Police Station. He was not informed about the F.I.R. by the officials.
- ii) Availed leave without permission on 30.06.2001 to 02.07.2001, 05.07.2001, 06.07.2001 and 13.07.2001.
- iii) Often availed leave i.e. absented from work and no interest in work or responsibility.

5. The charge sheet was very much vague as well as no required details with it. He has given his explanation on 14.08.2001. He has stated that due to false complaint against him in his native place, F.I.R. has been registered and the complainant himself told that, he will withdraw the complaint against him since he was not involved in the alleged occurrence. The complaint was that, due to the arrest of Chief Minister, there was a "salai marial" and the complaint was against 16 persons including three Sugar Mill employees. Apart from him, one Palanivel and Rasu aged about 50 years were also included in the F.I.R. who are also working in the Clerical Department and Office Assistant of the petitioner's mill. They have not been given any punishment and they were reinstated into service and now working and he has been penalized and victimized by the petitioner. He further explained that he has given wireless message to the petitioner and leave was obtained only after getting their permission. On 30.06.2001, he has given his leave through wireless and the petitioner has made an endorsement in the leave card which is with the petitioner only. Therefore, there is no unauthorized leave on 30.06.2001. On 01.07.2001, since it is a weekly off, he did not inform, on 02.07.2001 and 03.07.2001, he has sent his leave by wireless message and it was marked on his leave card. On 05.07.2001 and 06.07.2001, he took medical leave and he has enclosed the medical certificate. On 13.07.2001 also, he has given a leave letter in writing. Therefore, he has given a detailed explanation denying the charges, not satisfied with this, the Special Officer ordered for an enquiry.

6. He states that one A.Rajendran, Sugarcane Development Officer

appointed as a Enquiry Officer and one Mr.Jeganathan, Senior Assistant was appointed an Presenting Officer to place the case before him. The enquiry was conducted on 20.04.2002. The enquiry was conducted in a hurried manner and there was no time to furnish the documents and no witnesses were examined and also the enquiry officer has given a finding on 27.04.2002. And the findings of the enquiry officer is on the basis of assumptions and presumptions. The enquiry officer had also not conducted a full fledged domestic enquiry or departmental enquiry. No third party witness adduced, no opportunity was given on his side and contentions. The enquiry was conducted in a hurried manner and enquiry officer has predetermined the issue. He states that thereafter the show cause notice was issued on 30.04.2002 by the petitioner and the findings of the enquiry by way of enquiry report was given on 27.04.2002.

7. He states that to his shock and surprise, he has been dismissed from service on 07.05.2002 and the above dismissal order served to him. He has filed an appeal to the Commissioner of Sugarcane on 26.06.2002 raising various grounds arising on order of dismissal along with the report given by the police deleting his name in the F.I.R. and copy of the dismissal order. He has also given a reply to the show cause notice on 07.05.2002. Since the certificate issued by the Sub Inspector of Police, Sankarapuram deleting his name in the F.I.R. was received by him belatedly. He states that, thereafter he has raised an industrial dispute in I.D.No.150 of 2003, on the file of the Labour Court, Cuddalore for a plaint petition under Section 2A(2) of I.D. Act 1947. The petitioner has filed a counter contending the same. They have also stated that all the opportunities was given to him and the petitioner has no other option except from the dismissal of service. He has filed six documents and he has also filed his explanation as per Section 40(2), theft, fraud, or dishonesty alone be tried. The Labour Court after elaborately discussing the evidence and the documents have finally come to the conclusion that the dismissal order is liable to be set aside along with the reinstatement and continuity of service. The above order was passed on 05.01.2008. As against which the present writ petition has been filed.

8. The petitioner has stated that as per H.Section 40(2) all employees must inform the petitioner, if any criminal proceedings are pending against them. Here, though the respondent was not involved in any of the activities in petitioner's mill and the complaint has been withdrawn and there is no serious offences against the respondent and the petitioner failed to note that the F.I.R. was also closed and therefore, there is no misconduct on the part of the first respondent. He states that the backwages alone comes up as follows:

Basic	- Rs.4,12,240
DA	- Rs.1,94,346
EL	- Rs. 56,284

Personal Pay	- Rs.	15,660
Bonus	- Rs.	64,000

Rs.7,42,530		

It is therefore prayed that this Court may be pleased to permit the first respondent to withdraw the backwages and pending disposal of the above writ petition in W.P.No.25794 of 2009. Hence, the first respondent prays to dismiss the writ petition.

9. The highly competent counsel Mr.A.S.Thambusamy, appearing for the petitioner submits that the 1st respondent was working as Cane Assistant in the petitioner's Co-Operative Sugar Mills Ltd., Moongilthuraipattu, Sankarapuram Taluk. During the year of 2001, a criminal complaint was lodged before the Sankarapuram Police Station. The same has been taken on file for investigation. As per the Standing Order, an employee has to inform to the management of any pending criminal proceedings. As such, the employee, wantonly and deliberately suppressed the said facts. Besides, the employee was in the habit of absenting himself from duty without prior intimation or permission. Hence, the management had issued charge memo dated 04.08.2001, against the employee. He had submitted an explanation dated 14.08.2001. Since, his explanation was not satisfactory, a domestic enquiry was ordered.

10. The highly competent counsel further submits that an erring employee had participated in the said enquiry, which was conducted in a fair and proper manner and adhering to all the procedures including principles of natural justice. The employee was examined and he was cross examined. After comprehensive enquiry, the Enquiry Officer submitted a report dated 27.04.2002, holding that the charges levelled against the employee were proved. Thereafter, the second show cause notice dated 30.04.2002 was issued along with a copy of the enquiry report and he was called to submit his explanation as to why he should not be dismissed from service. On the said show cause notice, the employee had submitted his explanation and then, after considering all the materials on record including the explanation as to why he should not be dismissal from service. On the said show cause notice, the employee had submitted his explanation and then, after considering all the materials on record including the explanation submitted by the employee, he was dismissed on 07.05.2002.

11. Subsequently, the employee had filed an I.D.No.150 of 2003, before the 2nd respondent. The same was allowed with a direction to the Management to reinstate him with continuity of service, backwages and other attendant benefits. The learned Labour Court Judge, had erroneously passed the award, assigning the reason that the management had given sufficient opportunity to the employee, who had participated in the domestic enquiry and then the punishment was imposed. Further, the employee had continuously absented himself,

without prior permission on several occasions and the same was proved through material evidence. Hence, the employee had been removed on two grounds of unauthorized absence and for being involved in a criminal case. Hence, the very competent counsel entreats the Court to allow the above writ petition.

12. The very competent counsel Mrs. Thenmozhi Sivaperumal, appearing for the 1st respondent submits that the 1st respondent was appointed as a Cone assistant in the petitioner's Mill on 03.04.1984 and he continued his service without adverse remarks. Under the circumstances, the management had framed three charges against the respondent namely:

(i) The Sankarapuram Police Station had registered a F.I.R against the employee and others. The same was not informed to the management;

(2) The 2nd charge was that the employee availed leave without permission from 30.06.2001 to 02.07.2001 for three days, on 05.07.2001, 06.07.2001 and 13.07.2001.

(iii) Another charge was that the employee was absent from work and he had not shown interest in the work of the management. All the three charges are vague charges. The management without following proper procedure and without considering the nature of charges had imposed the highest punishment of dismissal from service. Actually, one Allah Bakshi had filed a complaint against eighteen persons before the Sankarapuram Police Station including the employee herein. Subsequently, the Investigating Officer had conducted a Comprehensive Enquiry and the employee viz., Krishnamoorthy herein was discharged from the criminal case. The same was admitted by the Defacto Complainant viz., Allah Bakshi. As such, the 1st respondent herein is an innocent person and he had not been involved in any criminal case. As such, the question of informing to the management does not arise. The 1st respondent was a permanent employee. After serving with the management for 17 years, he had availed six days leave on four occasions. Therefore, availing leave is not an offence. Further, the 3rd charge levelled by the management that the employee had not shown interest in his work is also a baseless charge. The Enquiry Officer had conducted enquiry in a hurried manner without giving sufficient opportunity to the employee. In the instant case, no independent witness was examined. Therefore, the management had framed three charges, which is a theoretical one and not based on any authenticated documentary proof. The employee had not committed theft, fraud or been dishonest and therefore the highest punishment imposed on the employee i.e., dismissal from service is not sustainable under law. Hence, the labour Court had rightly granted relief to the employee as prayed by him.

13. On considering the facts and circumstances of the case and arguments advanced by the competent counsel on either side and on

perusing the typed set of papers, this Court is of the view that the employee had joined the petitioner management as Cone Assistant on 03.04.1984. After completion of 17 years of service, he had availed six days leave on four occasions. This is not a grave offence. The 2nd charge namely filing of a criminal case by one Allah Bakshi against eight persons including the employee herein, it is seen that the said case had been registered as Crime No.297/2001 for the offence alleged under section 147, 148, 324, 506(ii) of IPC dated 02.07.2001. Subsequently, the Investigation Officer had conducted enquiry on 06.05.2002 and discharged the employee/1st respondent from the said criminal proceedings stating that the 1st respondent had not been involved in the said case. The Investigation Officer namely Sub Inspector of Police , Law and Order, who is attached to the Sankarapuram Police Station had given a certificate that the 1st respondent had been discharged from the criminal case and no other criminal case lies against the 1st respondent.

14. The management had stated that the 3rd charge was that the 1st respondent herein had not shown any interest on his work with the management. In order to prove this charge, there is no substantial documentary evidence. Therefore, the said 3rd charge was also not a grave one. It is seen from the records, that the 1st respondent had rendered service for more than 17 years without any adverse remarks. Therefore, the dismissal of the employee from service by the management is not appropriate. Therefore, the award passed by the Labour Court is suitable for execution against the management. Further, this Court directs the management to comply with the award passed by the 2nd respondent within a period of eight weeks from the date of receipt of this order. If the management is not satisfied with this Court's findings, the writ petitioner is at liberty to file an appeal after paying backwages to the 1st respondent, as per the Labour Court's award.

15. In the result, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

-Sd/-

Assistant Registrar

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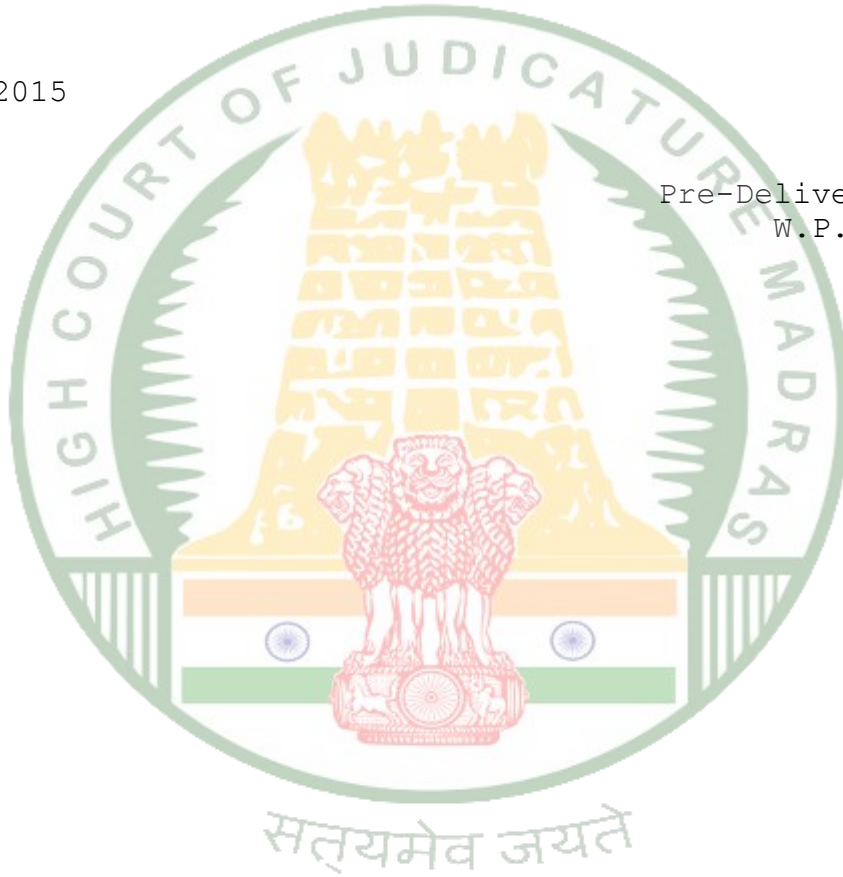
Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Cuddalore.

+ 1 cc to Mr.Thombusamy, Advocate (SR.31010)
+ 1 cc to M/S.Thenmozhi shivaperumal, Advocate (sr.31364)

MG(CO)
cp 06.08.2015



Pre-Delivery Order made in
W.P.No.25794 of 2009
and
M.P.No.1 of 2014

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