

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.NO.226 OF 2016
AND C.M.P.NOS.3576 AND 7228 OF 2016
AND 6030 TO 6032 OF 2016

The Senior Manager,
M/s.Whirlpool of India Ltd
Thirubhuvanai
Puducherry.

..... Appellant/Petitioner

Vs.

1. S.Vijayakumar
2. The Presiding Officer,
Labour Court (II Additional District Judge)
Puducherry.

..... Respondents

APPEAL filed under Clause 15 of the Letters Patent against the order dated 29.09.2015 made in W.P.No.13266 of 2010 on the file of this Court.

W.P.No.13266 of 2010:- 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 Appellant : Mr.Vijay Narayanan, S.C.
for M/s.D.Ravichander
For Respondents : Mr.V.Viswanathan - R1

J U D G M E N T

(Judgment of the Court was delivered by HULUVADI G.RAMESH,J.)

1. This Writ Appeal is filed challenging the order dated 29.09.2015, passed in W.P.No.13266 of 2010, whereby, the learned single Judge dismissed the Writ Petition filed by the Management

observing that the imposition of dismissal was the most severe punishment.

2. The facts in brief are as follows:

The first respondent herein joined the services of the appellant on 02.03.1992. After ten years of service, he was served with a charge memo, alleging three charges, viz., i) absenteeism, ii) disorderly behaviour in the shop floor with the co-worker and iii) poor health condition. Upon receipt of the charge memo, the first respondent has submitted his explanation. Not satisfied with the explanation, the appellant decided to hold an enquiry on the charges levelled against the first respondent and appointed a domestic enquiry officer. After conducting an enquiry and after examining the witnesses, the Enquiry Officer held that the charges levelled against the first respondent was proved. Consequently, the appellant had dismissed the first respondent from service.

3. Aggrieved by an order of dismissal, the first respondent had raised an Industrial Dispute before the Labour Officer. The Labour Court, by an award dated 08.04.2010, ordered reinstatement of the first respondent in service with full backwages and attendant benefitss.

4. As against the said order of reinstatement, the appellant has filed a Writ Petition before this Court. This Court, by order dated 29.09.2015 dismissed the said Writ Petition holding that the order of dismissal is a severe punishment.

5. Challenging the said order, the appellant has filed the instant appeal.

6. Learned Senior Counsel appearing for the appellant has submitted that with regard to the allegation that the first respondent had abused the co-worker in a filthy language, by using unparliamentary words, the co-worker had been examined before the Enquiry Officer, who deposed the disorderly behaviour of the first respondent. The learned single Judge, without taking into consideration the said deposition of the co-worker, dismissed the Writ Petition. Apart from that, it is an admitted fact that the first respondent had not reported for duty for more than an month. Hence, the order of termination is justified. Accordingly, the order of the learned single Judge needs interference at the hands of this Court.

7. Per contra, learned counsel appearing for the first respondent submitted that the order of the Labour Court as well as the order of the learned Single Judge is justified.

8. Heard the learned Senior Counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

9. Having heard the learned counsel for respective parties, we are of the firm view that the order of termination is a harsh punishment. In respect of the second charge, ie., disorderly behaviour with the co-worker, the learned Single Judge has correctly dealt with the matter that the co-worker was not examined before the Labour Officer in order to substantiate his statement.

10. It is an admitted fact that the petitioner was on unauthorised absence for more than a month. However, the learned Single Judge has taken a lenient view and ordered reinstatement with backwages. Since the first respondent had already been paid 17-B wages, the order of backwages is not justified. Since the allegation of unauthorised absence is proved, the first respondent is not entitled to any backwages. With regard to the third charge, as correctly held by the learned Single Judge, the practicing Medical Officer was not examined.

11. In the above circumstances, we hold that the first respondent is entitled for reinstatement, albeit, without any backwages. Accordingly, the appellant is directed to reinstate the first respondent with continuity of service by treating the period of suspension till the date of reinstatement as on duty only for final count length of service. However, the first respondent is not entitled to any backwages. The appellant shall issue a warning letter to the first respondent indicating that the first respondent shall not quarrel with the co-workers and to be regular to duties. The appellant shall reinstate the first respondent within a period of two (2) months from the date of receipt of a copy of this order.

12. The Writ Appeal is disposed of accordingly. Consequently, the connected Miscellaneous Petitions are closed. However, there will be no order as to costs.

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Asst.Registrar (CS II)

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Sub Asst. Registrar

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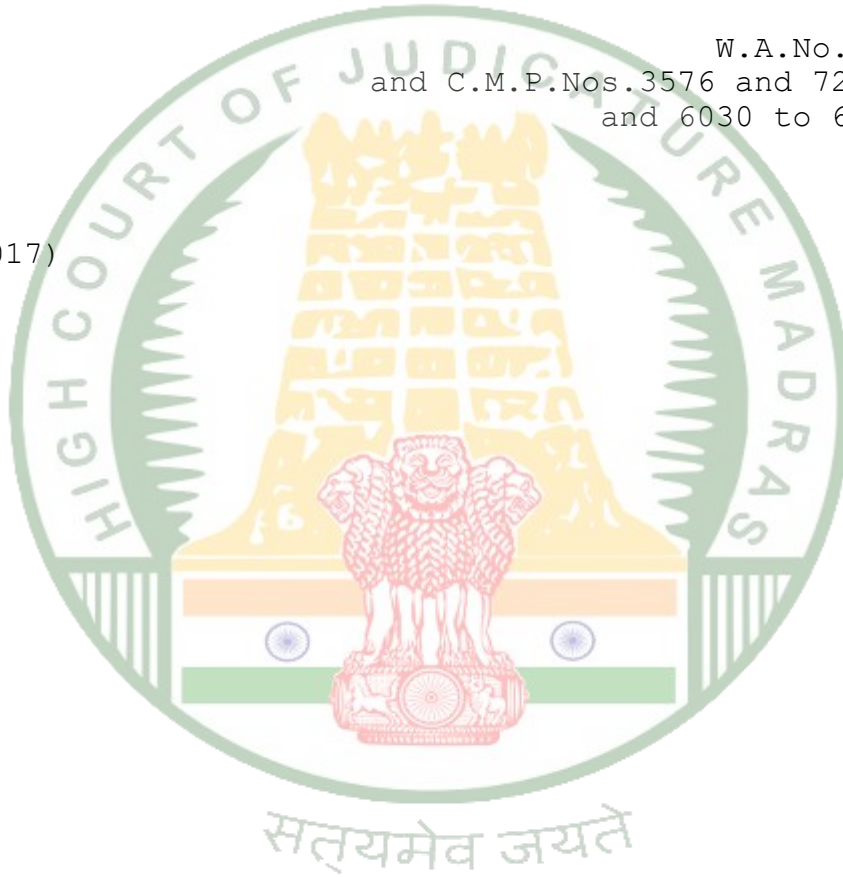
To

1. The Presiding Officer,
Labour Court (II Additional District Judge)
Puducherry.

+2cc to Mr.V.Viswanathan, Advocate Sr. 53524

W.A.No.226 of 2016
and C.M.P.Nos.3576 and 7228 of 2016
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KJ (CO)
VR(23/8/2017)



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