

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.1665 of 2012
and M.P.No.1 of 2012

The Madurantakkam Coop. Sugar
Mills Ltd., Padalam,
Kancheepuram District.

.. Appellant

Vs

1.R.Raman (Deceased)

2.The II Additional Labour Court,
Chennai.

3.R.Inbavalli

4.R.Prakash

5.R.Kathiresan

6.R.Vijayalakshmi

.. Respondents

(Respondents 3 to 6 brought on
record as LRs of the deceased first
respondent vide order dated
06.03.2015 made in M.P.Nos.1 to 3
of 2015 in W.A.No.1665 of 2012)

Appeal preferred under Clause XV of Letters Patent against
the order dated 27.03.2012 made in W.P.No.37202 of 2006.

W.P.No.37202 of 2006

Petition praying to issue a writ of certiorarified mandamus
calling for the concerned records relating to the award
dated:31/05/2006 in ID No.989/1999 passed by the 2nd respondent
and quash the same and consequently direct the 1st respondent
Management to reinstate the Petitioner in service with effects
from 16/10/1996 and further direct the 1st respondent management
to pay arrears of lackwages and all other allowances with
continuity of services.

For Appellant .. Mr.R.Gopinath

For Respondents .. Mr.Govardhanan
for Mr.M.Gnanasekar
for R3 to R6
R2 - Court
R1 - Died

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal has been filed against the order of the learned single Judge, who after finding that the award passed was not in accordance with law, moulded the relief sought for from reinstatement with backwages to voluntary retirement by making the writ petitioner eligible under the Scheme.

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 3 to 6.

3.Learned counsel appearing for the appellant would submit that the charges are with respect to unauthorised absence. The first respondent was given sufficient time and an exparte enquiry report is permissible in law. The award has been passed after considering the relevant materials. The scheme would be applicable only to the serving employee. Therefore, the order of the learned single Judge would require interference.

4.Learned counsel appearing for respondents 3 to 6 would submit that the learned single Judge has rightly found that despite the request made by the first respondent, the enquiry was proceeded with. Material documents and evidence obtained by the first respondent were not looked into. Once the dismissal order is found to be not proper, the consequence will have to follow. Since the learned single Judge has moulded the relief instead of remitting it for fresh consideration, no interference is required.

5.Admittedly, the first respondent is no more. Therefore, now the only question for consideration is entitlement of the benefits which would accrue pursuant to the order of the learned single Judge. Learned single Judge has found that the request made by the first respondent through the letters and telegrams were not taken note of. Secondly, the documents and evidence submitted on behalf of the first respondent were also not taken note of. The appellant proceeds to dismiss the first respondent based upon the enquiry report. Though the enquiry report is

filed based on facts, the Labour Court ought to have considered the circumstances under which it was given. After all, the scope of Section 11 of the Industrial Disputes Act, 1947 is much wider.

6.The learned single Judge after finding that the award of the Tribunal cannot be sustained in the eye of law, moulded the relief and thus given the benefit of voluntary retirement. When once the award is set aside, which in turn would amount to setting aside the order of dismissal, the delinquent employee is deemed to be in service.

7.In such view of the matter, we do not find any error in the order of the learned single Judge, warranting interference. The appellant is directed to comply with the order of the learned single Judge within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

The II Additional Labour Court,
Chennai.

+1cc to Mr.R.Gopinath, Advocate, S.R.No.79260

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.78929

W.A.No.1665 of 2012

SAI (CO)
GSP(10/12/2018)