

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.10.2018
Pronounced on : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8697 of 2008

Munusamy

..Petitioner

Versus

1. The Management,
Parkside Estate,
Nonsuch Post 643 238
Nilgiri.

2.Presiding Officer,
Labour Court,
Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the award in I.D.No.434/2001 on the file of the Labour Court, Coimbatore dated 15.09.2006, to quash the same and consequently, direct the 1st respondent to reinstate the petitioner with backwages.

For Petitioner : Mr.S.Purushothamadosh
For Respondents : Mr.A.Ramkumar for
Mrs.A.L.Ganthimathi
R2-Court

ORDER

The writ petition has been filed to call for the records pertaining the award in I.D.No.434/2001 on the file of the Labour Court, Coimbatore dated 15.09.2006, and to quash the same and consequently, direct the first respondent to reinstate the petitioner with backwages and other available benefits to the petitioner.

2.The petitioner was employed by the 1st respondent and was in service with the 1st respondent since 1970. On 17.02.1999, the petitioner was referred to the Government Hospital at Coonoor, Nilgiris by the 1st respondent. However, after taking

treatment, the petitioner did not return to duty. The petitioner's service was therefore terminated on 17.02.2001, after an enquiry on the charge memo dated 21.09.2000 and second show cause notice dated 02.01.2001. However, the 2nd show cause notice proceeding the dismissal was not served on the petitioner.

3.The charge against the petitioner was that he had worked for only nine days out of 306 working days between 01.01.1999 to 01.12.1999 and was therefore guilty of misconduct of as per clause 23(6) of the Standing Orders.

4.According to the 1st respondent, the petitioner violated clause 23(6) and clause 23(12) of the Standing Rules applicable to the 1st respondent Tea Estate. The respective clauses of the Standing Orders read as under:

Clause 23(6) : Habitual absence without leave or absence without leave for more than 10 consecutive working days or habitual absence from the work spot without permission.

Clause 23(12) : Acts subversive of discipline.

5.Though dismissal order dated 17.02.2001 was the basis of the proceeding before the Labour Court, same has neither been filed by the petitioner nor by the 1st respondent. According to the petitioner, none of the documents were issued were served to him except the charge sheet dated 21.09.2000 vide Exhibit M.3.

6.It is the case of the petitioner that he was not even served with enquiry report and his signature was forged and therefore the proceeding that came to be initiated by the 1st respondent was contrary to principles of natural justice and therefore, it is submitted that the Labour Court erred in upholding the dismissal order.

7.After concluding that there was no violation of principles of natural justice in so far as the conduct of the disciplinary proceedings are concerned, the Labour Court proceeded to consider whether the finding of the respondent was perverse or not and whether the punishment inflicted on the petitioner was justified or not and whether the petitioner was entitled for reinstatement with continued to service and back wages.

8.The Labour Court has concluded that there is no perversity in the finding of the record in the disciplinary proceeding conducted by the 1st respondent and therefore decided the issue against the petitioner.

9.Before the Labour Court it was demonstrated that the Charge Memo and enquiry report were served in person to the petitioner and was acknowledged by the petitioner by Exhibit

M.3. It was further observed that by Exhibit M.11, 14, 15 notices, the petitioner was intimated regarding Domestic Enquiry. By Exhibit M.10 and 7 the petitioner was served with Enquiry Report.

10.The Labour Court also concluded that the second show cause notice vide Exhibit 21 also reflects furnishing of copies of the enquiry proceedings and the enquiry report.

11.In the present writ petition, it is submitted that the second show cause notice dated 02.01.2001 vide Exhibit M.21 was also not served on the petitioner.

12.Under these circumstances, it was submitted that the Labour Court committed error in upholding order of dismissal passed by the first respondent.

13.The petitioner submits that he should have been given a fair chance to explain the reason for his absence from service and therefore the order of the Labour Court was liable to be quashed.

14.I have gone through the affidavit filed in support of the writ petition. Heard Mr.S.Purushothamadosh, learned counsel for the petitioner and Mr.A.Ramkumar for M/s.A.L.Ganthimathi for the 1st respondent.

15.Learned counsel for the petitioner relied on the following decisions:

- (i)2002 LAB.I.C.210 - Jamila V. State of Rajasthan
- (ii)2002 LAB.I.C.3248 - G.S.R.T.C.Ahmedabad V. Gokalbhai M.Patel
- (iii)2008(1) C.L.T. 387 - Bhagwan Dass & Anr. Vs. Punjab State Electricity Board.

16.The petitioner was himself sent to the Coonoor Government Hospital by the 1st respondent during the month of February 1999 as evident from para 3 of the impugned order.

17.Exhibit M.2 dated 17.05.2000 show cause notice was issued pursuant to letter from D.F.O. dated 18.03.2000 to the first respondent. Thereafter, the petitioner was charge sheeted vide Ex.M3 dated 21.09.2000, wherein, it has been alleged that the petitioner had worked only for a period of 9 days out of 309 days.

18.In the Eviction petition No.1 of 2007 after the impugned order came to be passed, it was alleged that the petitioner was absent from service from 01.01.1999 to 01.12.1999 except for a period of 9 days.

19. In paragraph 16, the Labour Court has observed that the petitioner was served notice of the Domestic Enquiry by Ex.M14 dated 14.10.2000. In paragraph 16, it was further observed that Ex.M15 dated 17.10.2000 addressed to the petitioner reveals that due notice was served on the petitioner regarding the conduct of Domestic Enquiry.

20. However, it is not clear how Domestic Enquiry could have been completed on the same day of the notice issued dated 17.10.2000 on the petitioner.

21. The petitioner has also submitted in the writ petition that the 1st respondent kept changing the date of the Domestic Enquiry and therefore could not attend the Domestic Enquiry.

22. In the list of document marked appended to the impugned order of the Labour Court further reveals that there are only postal receipts vide Ex.M16 and 17 and "Certificates of Posting" vide Ex.M18. However, there is no proof of service of notice dated 17.10.2000 on the petitioner.

23. Ex.M 19 dated 17.10.2000 is the enquiry proceeding and Ex.M20 is the finding of the Enquiry Officer. They also remained undelivered. Thus, the observation of the Labour Court that the petitioner was served with the notice of Domestic Enquiry on the same date of the enquiry on 17.10.2000 proceeds on an improbable and impossible footing. There is a reasonable doubt as to whether the petitioner was actually informed about the proposed Domestic Enquiry.

24. It is evident that the Domestic Enquiry was conducted in a casual manner and hurried manner to dismiss the petitioner perhaps on account of certain activities undertaken by him, which attracted clause 23(12) of the Standing Orders as is evident from the Charge Memo dated 21.09.2000.

25. Domestic Enquiry was treated as an empty formality by the 1st respondent. The Labour Court has however found fault with the petitioner for not having filed any evidence to show that he was unwell to justify his absence from January 1999 to December 1999, when indeed it should have seen whether the Domestic Enquiry was conducted properly.

26. Thus, the impugned order of the Labour Court upholding the order of dismissal of the petitioner by the 1st respondent cannot be sustained and accordingly, the impugned order is liable to be quashed.

27.The petitioner was aged 49 years on the date of filing the writ petition. Now, another 10 years have lapsed since the filing of the writ petition. Under these circumstances, no useful purpose will be served in ordering reinstatement of the petitioner.

28. Therefore, the period of absence and dismissal till the date of this order shall be treated as continuous period of service by the petitioner for the purpose of determination of terminal benefit alone payable to the petitioner on superannuation.

29.The 1st respondent is therefore directed to calculate and pay the amount to the petitioner as if he was in service of the 1st respondent together with details of the calculation within a period of eight weeks from the date of receipt of a copy of this order.

30.It is made clear that the petitioner shall not be eligible wages/salary during the period of dismissal.

31.The above writ petition thus stands allowed partially.
No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Arul

To

The Presiding Officer,
Labour Court,
Coimbatore.

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W.P.No.8697 of 2008

SV(CO)
EU(06/12/2018)