

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
Writ Petition No.2431 of 2010

R.Pandian

... Petitioner

Vs.

1. The Presiding Officer, III Additional Labour Court,
High Court Campus, Chennai

2. The Management, Tamil Nadu Agro Industries
Development Corporation Ltd.,
Guindy, Chennai 600 032

.... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records from the first respondent, Labour Court, relating to the impugned award, dated 30.03.2009 in I.D.No.501 of 2002, quash the same and consequently, to direct the second respondent management to reinstate the petitioner in service with full backwages, continuity of service and to pay all other attendant service benefits.

For Petitioner : Mr. R.Rajaram

For Respondents : Mr. C.Venkatesalu, for R-2.
R1 Labour Court.

O R D E R

The petitioner herein, who was terminated from service about 28 years back, is now before this Court, by way of this writ petition, challenging the award of the III Additional Labour Court, dated 30.03.2009, confirming the dismissal of the employee / petitioner herein.

Brief facts:-

2. The petitioner joined as Grade II Worker in the second respondent Corporation during the year 1978 and continued till 1992. He was terminated from service on 29.07.1992 on the charge of unauthorized absence. The petitioner filed W.P.No.13130 of 1993 challenging the order of termination. The petitioner was ordered to be reinstated in service with effect from 27.03.1997.

2.1. The petitioner, while being in the service of the

second respondent, started a private business under the firm name, M/s. Gayathiri and Company, in the name of his brother-in-law Gajendran and indulged in activities, which was against the interest of the second respondent. In fact, the tender i.e., Ex.M-7 dated 08.07.1999 quoted by M/s.Gayathiri and Company proved detrimental to the interest of the second respondent.

2.2. The certificate issued by the Joint Director of Industries, i.e., Ex.W-1 stood in the name of the petitioner herein. The firm quoted the lowest rate of Rs.660/- per cap net. The second respondent has to reduce the quote by Rs.67/- per cap net (725 to Rs.658/-). There was loss to the tune of Rs.2,21,100/-. The second respondent believed that, but for the quotation given by the firm of the petitioner, the second respondent would not have sustained such a huge loss. Therefore, disciplinary action was initiated against the petitioner. The enquiry was held in full fledge. During enquiry, the petitioner has not produced any document showing the transfer of M/s.Gayathiri and Company to his brother-in-law Gajendran. Based on the findings of the enquiry officer, further opportunity was given to the petitioner to substantiate that he is not the proprietor of M/s.Gayathiri and Company. Only in the further explanation, he has produced documents, dated 18.12.2001, (Ex.W-2) showing that he had already sold the concern to his brother-in-law for a sum of Rs.1,500/-. That document was not found acceptable by the second respondent, as the second respondent believed that it is the fabricated document in order to get rid of the charges against the petitioner herein. The non-examination of Gajendran also proved fatal to the petitioner. A pertinent observation was made that the petitioner has chosen to retain the licence in his own name. Thus, the charge against the petitioner is that he willfully acted against the interest of the second respondent Corporation. Therefore, he was dismissed from service by the order dated 06.02.2002. The appeal preferred before the Board of Directors was also rejected.

2.3. As per the policy decision taken by the Government of Tamil Nadu, all the activities of the second respondent / Management had been closed with effect from 28.03.2002, vide Ex.M-8-G.O.Ms.No.339, dated 28.11.2001 and all the employees of the second respondent Corporation have been retrenched.

2.4. Relying upon these facts and the circumstances and the reasoning given by the Enquiry Officer, the Labour Court has confirmed the findings of dismissal. Challenging the same, this writ petition has been filed by the petitioner / workman.

3. The learned counsel appearing for the Management relied upon the previous conduct of the workman having been on unauthorized absence for a period of one month and seven days and his involvement in doing private business, while being in the service of the second respondent, are matters which are

proved before the enquiry officer and therefore, the Labour Court has rightly upheld the dismissal of the workman.

4. The learned counsel appearing for the workman has challenged the award of the Labour Court in respect of the procedure adopted while passing the award. It is the contention of the learned counsel appearing for the petitioner that only after setting-aside the findings of the enquiry officer, the Labour Court should have permitted the parties to lead evidence and in any event, it is only the Management who should be permitted to give evidence and only by way of rebuttal, the employee would be entitled to give evidence and as this procedure is not followed, the award of the Labour Court, based on fresh evidence, is liable to be set-aside.

4.1. In support of the said contention, the learned counsel for the petitioner relied upon the decision reported in 2007-I-LLJ 634 (Damodaran K v. Presiding Officer), wherein it has been held as follows:-

"10. The Proviso only emphasizes that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal for the purposes referred to above, cannot call for further or fresh evidence, as an Appellate Authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal."

5. A perusal of the award of the Labour Court would go to show that without raising any objection, the workman has chosen to give evidence and only thereafter the evidence of the Management has been recorded. Having failed to raise objection before the Labour Court, raising objections before this Court, at this distant point of time, cannot be entertained.

6. It is a matter on record that the institution of the second respondent has been closed down on 26.03.2012 itself. It is the case of the petitioner that if the dismissal is set-aside he may get the retrenchment compensation like all other employees. But it is the case of the Management that the dismissal shot at the employee is perfectly correct as he was found guilty of willful absence from duty and also engaging in private business that too at the detriment of the second respondent under whom he was working has been proved and therefore, it is fit case for dismissal and the dismissal should not be set-aside.

7. This Court perused the evidence adduced before the enquiry officer and the order passed by the disciplinary authority. As rightly pointed out by the disciplinary

authority, there is ample evidence to show that the petitioner has been engaged in the private business, which was not only against law but also against professional ethics. Apart from that, the petitioner has also caused loss to the second respondent by engaging himself in the very same business. The second respondent is bound to lose confidence on his own employee, if he is engaging himself in the very same business, as that of his employer.

8 Keeping this kind of the employee on the roll of the second respondent is certainly not for the benefit of the second respondent and rightly the second respondent has chosen to dismiss him. There is no scope for interference and hence the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Presiding Officer, III Additional Labour Court,
High Court Campus, Chennai

+1cc to Mr.C.Venkatesalu, Advocate, S.R.No.58186

W.P.No.2431 of 2010

KAN (CO)

rrs 01/10/2018

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