

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.16475 of 2004
and
W.M.P.No.19467 of 2004

K.Palanivel

... Petitioner

/Vs/

1.The Presiding Officer,
Labour Court,
Karaikkal.

2.Soundararaja Mills Limited,
Nedungadu,
Karaikkal.

... Respondents

Prayer: Writ Petition filed under Article 227 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the award dated 31.10.2002 passed by the first respondent/Labour Court in I.D.No.9 of 1999 and published in the Pondy Gazette dated 23.04.2003 and quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits and to regularise his services.

For Petitioner : Mr.C.K. Chandrasekaran

For Respondent-1 : Labour Court

For Respondent-2 : No Appearance

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O R D E R

This writ petition is preferred by the petitioner calling for the records relating to the award dated 31.10.2002 passed by the Presiding Officer, Karaikal /1st respondent Labour court in I.D.No.9/99 and published in the Pondy Gazette dated 23.4.2003 quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits and to regularize his services.

2. Brief case of the petitioner:

The facts of the case is that the petitioner joined the 2nd respondent mills on 6.7.1990 as an apprentice and completed apprenticeship on 31.8.1993, On 4.9.1993 petitioner was appointed as Badli. As a Badli used to be given work whenever a permanent employee was absent petitioner worked like this till 1997. When petitioner was about to get a chance of being made permanent, the 2nd respondent mills issued a charge sheet dated 19.8.1997 stating that in the month of July 1997 petitioner had absented for 14 days i.e. between 2.7.1997 to 14.7.1997, 21.7.1997 and 23.7.1997 and in the month of August, petitioner had absented on four days i.e 2nd, 6th 7th and 17th, in all aggregating to 18 days, a misconduct understanding order 17(3) (e) of the Mills, standing order 17(3)(e) of the certified standing order which reads as follows:

"(e) Habitual absence without leave or absence without leave for more than ten days in a year"

3. The petitioner gave an explanation dated 29.8.1997 stating that on account of the petitioner illness and on account of family circumstances the petitioner was forced to be absent. The petitioner assured them that Petitioner will not absent like this in future and requested the Management to accept the petitioner apology for his absence. In spite of this, the 2nd respondent issued an enquiry notice dated 8.9.1997 asking him to appear for an enquiry on 11.9.1997. In that enquiry the petitioner gave a letter dated 11.9.1997 stating that it was true that the petitioner had absented for 18 days in July and August 1997, but the petitioner assured them that it will not happen in future and petitioner requested them to close the enquiry. The petitioner apologized for what had happened because petitioner was assured by the Management that nothing will happen. Notwithstanding the same on 20.10.1997 the Management dismissed the petitioner from service.

4. Heard the arguments on behalf of the petitioner and perused the entire materials available on record. No representation on behalf of the 2nd respondent.

5. The petition under section 2-A of the Industrial Disputes Act to the Government Labour Officer on 22.12.1997 in which the petitioner stated that he accepted the charge on the management's assurance that they will not terminate from services. The Government of Pondicherry by an order dated 27.5.1999 referred the dispute relating to non employment for adjudication to the 1st respondent Labour Court, who heard the dispute as I.D.No.9/99.

6. The Labour Court by the impugned award dated 31.10.2002 which has been published in the Pondicherry Government gazettee

dated 23.4.2003 has unfortunately upheld his dismissal on the ground that the petitioner had not applied for leave and therefore it amounts to misconduct under the Standing Order 17(3)(e) of the certified standing orders. The Labour Court also held that the petitioner had absented even in the past and therefore the Management action was justified.

7.The Labour Court was not justified in upholding the petitioner's dismissal for his absence without leave for 14 days in July 1997 and 4 days in Aug.1997 merely on the ground that the petitioner admitted such absence without going into the reasons given by his explanation dated 29.8.1997 for such absence.

8.Though the petitioner was absent on account of illness and family circumstances and not produced any certificates from ESI for the leave. The labour court failed to see that merely because the petitioner had not produced a certificate from ESI it does not mean that petitioner was not ill. Had they directed to produce the medical certificate for petitioner absence it would have done so.

9.The Labour Court failed to see that this is not a case whereas petitioner is a permanent worker had not reported for duty. The petitioner work itself was contingent on a permanent worker remaining absent. Even if the petitioner had turned up at the Mill gate, there was no guarantee that Petitioner will get work on that date. Under those circumstances the labour court erred in upholding the petitioner's dismissal which meant removal of the petitioner's name from badly list.

10.This reasoning of the labour court is contrary to standing order 11(2) which is as follows:

"11(1) If a worker remains absent without leave for eight consecutive working days, he shall lose his lien on his appointment.

2) In case the workman loses his lien on his appointment, he shall be entitled to be on the badly list (emphasis supplied)

Dismissal from service which amounts to removal from badly list is contrary to the standing orders."

11.The learned counsel for the petitioner submits that there was no evidence to show that on account of the petitioner's absence the Mill could not get another badly and there was a production loss. Even otherwise that cannot be a ground for removing from the service. In my absolute view that the above reason given by the Management itself discloses that there was a case for making permanent but they continued to keep as a badly nearly four years only in order to deprive the benefit of permanency which amounts to unfair labour practice as per item

10 of schedule V of the Industrial Dispute Act 1947.

12.The Labour Court did not exercise its discretion properly under section 11-A of the Industrial disputes act, 1947 by upholding petitioner dismissal as a badli worker. The petitioner worked for nearly 7 years, only on the ground that the petitioner absented himself without leave for 18 days in July/August 1997 without taking into account his age and the prospects of employment in a place like Karaikal being very remote as the 2nd respondent is the only mill in Karaikal.

13.This Court and the Hon'ble Supreme Court very categorically held in various cases that if the employee absented for minimum days that will not amount to long absence and for that reason only the petitioner employees cannot be dismissed from service. But in this case, because of the absence for the 18 days, the petitioner was dismissed from service which was confirmed by the Labour Court is totally against the law and natural justice.

14.In the result;

(a) this writ petition is allowed;

(b) the award dated 31.10.2002 passed by the Presiding Officer, Karaikal /1st respondent Labour court in I.D.No.9/99 and published in the Pondy Gazette dated 23.4.2003 is quashed;

(c) consequently the 2nd respondent is directed to reinstate the petitioner into service with backwages, continuity of service and all other attendant benefits by regularising the petitioner's services. No costs. Consequently, connected W.M.P.No.19467 of 2004 is closed.

vs

Sd/-

Assistant Registrar(CS IV)

//True Copy//

To

Sub Assistant Registrar

The Presiding Officer,
Labour Court, Karaikkal.

+1cc to M/s.Row & Reddy, Advocate, SR.No.51677

W.P.No.16475 of 2004 and
W.M.P.No.19467 of 2004

Kak(25/03/2019)