



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2018

DELIVERED ON : 03.08.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.18162 of 2017 and

W.M.P.(MD)No.14625 of 2017

The Management,
Kothari Sugars and Chemicals Ltd.,
Kattur, Lalgudi Taluk,
Trichy District.

... Petitioner

Vs.

1. S.K.Gunasekaran

2. The Presiding Officer,
Labour Court,
Thiruchirapalli,
Trichy District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the entire records of the second respondent relating to the award dated 24.04.2017 passed in I.D.No.15 of 2010 and quash the same.

For Petitioner : Mr.R.Rajaram
For R-1 : Mr.R.Narayanan,
for M/s.T.Banumathy
For R-2 : Labour Court

O R D E R

The first respondent herein S.K.Gunasekaran was appointed as a Seasonal Mazdoor in the Writ petitioner Factory in the year 1988. His services were regularized and confirmed in the year 1991. Subsequently, he was promoted as a Cane unloading operator. He was issued with a charge memo dated 17.11.2007, as he was unauthorizedly absent for 13 days from 06.06.2007 to 09.11.2007. Domestic enquiry was conducted. There are totally four charges framed against the delinquent workman. The enquiry officer submitted his report stating that all the four charges stood



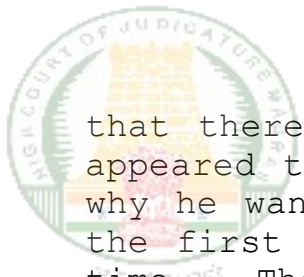
proved. After getting explanation of the first respondent, he was dismissed from service on 09.04.2008.

2. Questioning the same, the first respondent raised an Industrial Dispute in I.D.No.15 of 2010 before the Labour Court, Thiruchirapalli. Before the Labour Court, the workman did not question the fairness of the domestic enquiry. On the side of the workman as many as 23 documents were marked. The workman examined himself as a witness. On the side of the Management, no oral evidence was adduced, but 20 documents were marked. The Labour Court by the impugned award dated 24.04.2017, took the view that while the charge of unauthorised absence was proved, the charges 3 and 4 were not established. It also set aside the punishment of dismissal. Since the labour Court was in agreement with the contention of the Management that the workman was found to be habitual absent, even while directing reinstatement, it denied backwages. It is relevant to point out here that the order of dismissal came on 09.04.2008. The award of the Labour Court was passed on 24.04.2017. Thus, for almost nine years, the backwages were negatived. The Labour Court took the view that this would constitute sufficient punishment. It also denied the other attendant benefits. However, continuity of service was ordered. Questioning the same, the Management has filed this Writ petition.

3. The learned counsel appearing for the Management pointed out that after holding that the domestic enquiry was fairly conducted, if the Labour Court wanted to interfere with the order of the punishment, it must give a specific finding that the punishment that was imposed on the workman was not commensurate with the gravity of the charges. Such a finding has obviously not been rendered in this case.

4. Therefore, this Court is in agreement with the contention of the learned counsel for the petitioner that the discretionary power of the Labour Court conferred under Section 11(A) of the Industrial Disputes Act, 1947 was not properly exercised. There is also considerable force in the submission of the learned counsel for the petitioner that the workman was unauthorisedly absent for a period of 463 days. The eligible leave will only be 446 days. Still I am of the view that substantial interference with the order passed by the Labour Court may not be warranted in the facts and circumstances of this case.

5. The charge against the workman is that he was unauthorisedly absent for a period of 13 days from June to November, 2007. It is true that the workman was given punishment for a similar misconduct on as many as six occasions. This is the seventh occasion. This Court is conscious of the fact that the Hon'ble Supreme Court has held that the punishment of dismissal may be warranted, if the workman concerned is found to be unauthorisedly absent on a habitual basis. But in the present case, it is seen



that there are quite a few mitigating circumstances. The workman appeared to have suffered grievous injuries in his leg which was why he wanted to go on leave. It is also seen that the wife of the first respondent was bed ridden during the relevant point of time. The workman was not guilty of any act involving mortal turpitude. It is also a fact that the workman was not employed in essential service. If a driver is on leave, the bus cannot run. But in the present case, the absence of the workman concerned could very well be made up. But then the Management will have to appoint an extra hand and to pay wages to them. This Court is of the view that the charge memo No.3 issued is also established. To this extent this Court has to interfere with the award passed by the Labour Court. To a pointed question, the learned counsel for the petitioner on instructions submitted that he would forego the wages for the period of pendency of this Writ proceedings.

6. Therefore, while disposing of this Writ petition, this Court sustains the impugned award to the extent that it directed reinstatement of the first respondent with continuity of service. The first respondent is not entitled to claim any backwages for the period up to 01.08.2018. The learned counsel for the first respondent has given this concession only on the understanding that the Management would agree to reinstate the petitioner forthwith. If the Management is not reinstating the first respondent forthwith, this concession would stand withdrawn and the award passed by the Labour Court would stand confirmed in toto.

7. The Writ petition stands disposed of, accordingly. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Presiding Officer,
Labour Court,
Thiruchirapalli,
Trichy District.

+ 1 CC TO Mr.R.RAJARAM, ADVOCATE IN SR No. 77232

PMU

TE/RP/SAR-3 : 23/08/2018 : 3P/3C

<https://hcservices.ecourts.gov.in/hcservices/>

Order made in

W.P. (MD) .No.18162 of 2017 and

W.M.P. (MD) No.14625 of 2017

03.08.2018