

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 08.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.12773 of 2013
and
M.P.Nos. 1 of 2013

Hindustan Unilver Limited
Detergent Factory
Puducherry
Represented by its Senior Legal Executive

..Petitioner

vs

1. The Presiding Officer,
Labour Court,
Pondicherry.

2. A.S. Arokiyanathan

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent in I.D.No.5 of 2012 and quash its Award dated 30.11.2012 and pass orders.

For Petitioner : Mr. Anand Gopalan
for M/s. Gopalan and co.
For Respondents : R1- Labour Court
R2- No appearance

O R D E R

The award dated 30.11.2012 passed by the first respondent in ID.No. 5 of 2012 is under challenge in the above Writ Petition.

2. The writ petitioner is the Management of Hindustan Unilever Limited. The second respondent was employed as a permanent employee. On account of frequent absenteeism and as,

even on the earlier occasions, the second respondent refrained from reporting duty, a charge memo was issued with reference to the last spell of unauthorized absence for 113 days. A domestic enquiry was conducted and an opportunity was provided to the second respondent - employee to defend his case.

3. The learned counsel for the petitioner states that the second respondent - employee admitted the charges before the Enquiry Officer.

4. The said admission of the charges was recorded by the first respondent - Labour Court in paragraph 30 of its award. Based on the proved charges, the second respondent employee was dismissed from service. Thereafter, the second respondent - employee raised the industrial dispute in ID No.5 of 2012 and the contention of the learned counsel for the petitioner is that the charges of unauthorized absence were established before the Domestic Enquiry Officer, who also found that the charges were proved. When the second respondent himself admitted the allegations of unauthorized absence, the first respondent - Labour Court committed an error in awarding a compensation while setting aside the reinstatement.

5. The main contention of the writ petitioner - management is that even on the previous occasions, the second respondent - employee remained absent on many occasions and his previous history was also placed before the first respondent - Labour Court. On the earlier occasions, in the year 2002 he was unauthorizedly absent for 54 days; in 2003 for 45 days; in 2004 for 74 days; in 2005 for 61 days; in 2006 for 23 days; in 2008 for 146 days and 2009 for 148 days. He was a habitual absentee and refrained from attending duty on many occasions without any prior permission or intimation to the writ petitioner - management. The second respondent - employee had committed a grave misconduct and therefore, there was no infirmity on the part of the writ petitioner - management for initiating disciplinary proceedings for the misconduct committed. The first respondent - Labour Court, in its award, categorically found that the Enquiry Officer conducted the enquiry in a fair manner and the charges were admitted by the delinquent employee about the eight spells of unauthorized absence and on several occasions he was warned and he was also suspended once for such unauthorized absence. Considering all the above aspects, the first respondent - Labour Court, while arriving at a conclusion that the lapses were serious in nature and further considering the fact that the second respondent - employee was a habitual absentee, rendered a finding that the punishment of dismissal from service was disproportionate and accordingly, held that the

second respondent - employee was not entitled for reinstatement, however awarded a compensation.

6. The discretionary power under Section 11(A) of the Industrial Disputes Act (for brevity, the Act) has to be exercised only on recorded reasons and it is not as if the Labour Court can exercise the discretionary power at its choice. In fact, the power of discretion is to be exercised by recording reasons and mere usage of the word disproportionate would not be sufficient to arrive at a conclusion that the punishment was disproportionate or otherwise. While taking a decision to exercise the discretionary power under Section 11(A) of the ID Act, the Labour Court must keep in mind all the mitigating factors and the documentary evidence ought to have been considered for arriving at such a conclusion for the purpose of modifying or canceling the order of penalty imposed by the writ petitioner - management. Mere usage of the word disproportionate is undoubtedly insufficient and the Labour Court cannot exercise such a discretionary power in such an unmeaningful manner.

7. The very purpose and object of Section 11(A) of the ID Act is to consider the materials on record for modification and canceling the punishment. In the event of certain mitigating factors or gross injustice, the discretionary power has to be exercised cautiously and reasons for such an exercise must be recorded in writing, which must be acceptable from any angle. The reasons recorded must be candid and convincing. In the absence of such candid and convincing reasons, the exercise of discretionary power cannot be approved by this Court when particularly the Statute provides discretionary power and the exercise must be on certain meaningful reasons and not otherwise.

8. In the present case, the first respondent - Labour Court arrived at a conclusion that the second respondent employee admitted the charges of unauthorized absence. The unauthorized absence was a habitual one and that also was recorded. On previous occasions, several warnings were issued and only after that, the order of suspension was issued. The number of days of absence was also with considerable lengths. The Labour Court, while recording the fact that the lapses were very serious in nature, exercised the discretionary power by merely using the expression 'punishment of dismissal from service is disproportionate'. This finding becomes perverse and is not in consonance with the established legal principles.

9. Exercising of discretionary power under section 11(A) of the ID Act cannot be based on misplaced sympathy and a lenient view cannot be taken in respect of proved grave misconduct and industrial discipline is of paramount importance and as far as the industrial discipline is considered, the grave misconduct, if any established, is to be taken note of by the Labour Court and the exercise of discretionary power cannot be done in those circumstances. Thus, the Writ Petition is allowed and the award dated 30.11.2019 passed by the first respondent - Labour Court in ID. No. 5 of 2012 is quashed. No costs. Consequently, connected Miscellaneous petitions are closed.

-s/d-
Assistant Registrar

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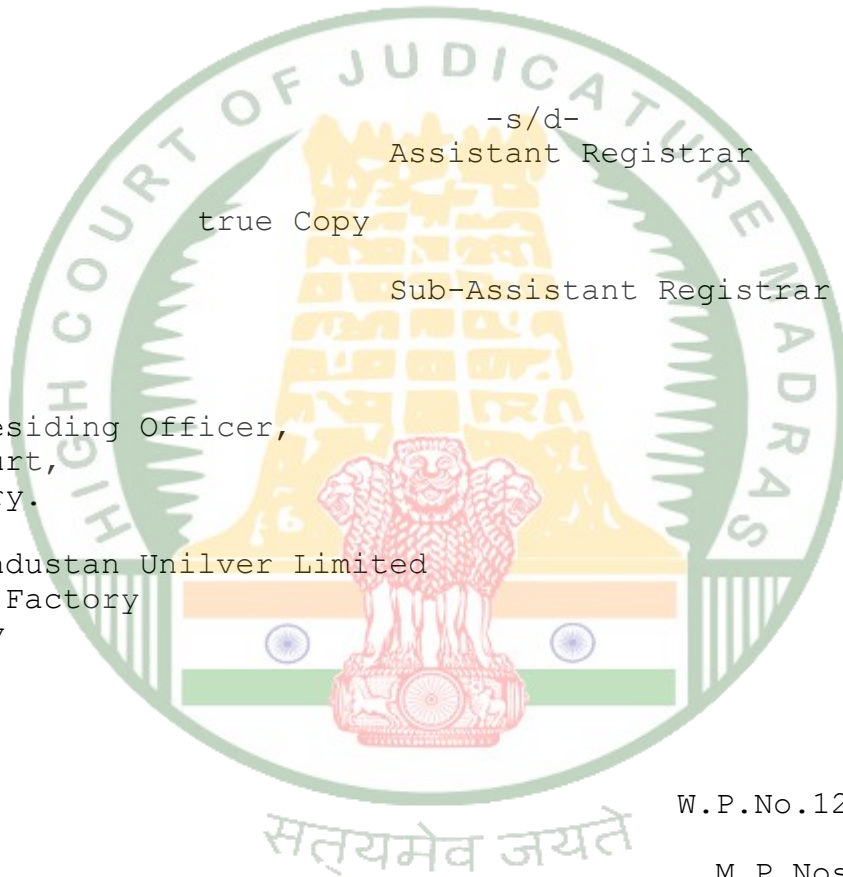
Sub-Assistant Registrar

mrn

To

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Labour Court,
Pondicherry.

2. The Hindustan Unilver Limited
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