

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-09-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27956 of 2003

P.Tamilselvan

.. Petitioner

vs.

1.The Management,
Waterfall Estate (West),
Waterfall Estate Post,
Valparai.

2.The Presiding Officer,
Labour Court,
Coimbatore.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with impugned award in I.D. No.438 of 2000 and in eviction petition No.17 of 1999 dated 31.03.2003 on the file of the second respondent and quash the same and direct the first respondent to reinstate the petitioner in service with backwages, with continuity of service and all other attendant benefits.

For Petitioner : Mr.R.D.Ashok Kumar for
Mr.S.N.Ravichandran.

For Respondent No.1 : Mr.Haroon AL Rasheed for
M/s.T.S.Gopalan & Co.

For Respondent No.2 : Labour Court.

ORDER

The award of the Labour Court dated 31.03.2003 in I.D.No.438 of 2000 and Eviction Petition No.17 of 1999, are under challenge in the present writ petition.

2. The writ petitioner was employed as a worker in the first respondent-Estate for many years on temporary basis and subsequently regularised as a permanent worker. The writ petitioner states that the entire family of the writ petitioner

served for the first respondent-Estate and except the writ petitioner, all others were kept on temporary rolls.

3. The learned counsel for the writ petitioner states that on account of certain false allegations and in order to victimise the writ petitioner-workman, charges were framed and without any legal evidence, the writ petitioner was removed from service on 08.04.1989.

4. The management filed an approval petition before the Industrial Tribunal in Petition No.70 of 1989 in I.D.No.4 of 1982 and the writ petitioner made an endorsement for an order in the approval petition without prejudice to his rights. After the order in approval petition, the writ petitioner filed a petition under Section 2-A of the Industrial Disputes Act, 1947 before the Labour Commissioner in Na.Ka.No.1925/1993. A failure report was given on 11.02.1994. The Union negotiated with the management to settle the dispute, but the management delayed the issue and there was no such settlement. Thus, the writ petitioner raised ID No.438 of 2000 before the second respondent-Management. The Labour Court dismissed the industrial dispute on 31.03.2003 and consequently, the present writ petition is filed.

5. The learned counsel for the writ petitioner states that the criminal case registered against the writ petitioner was ended with an order of acquittal and therefore, the writ petitioner ought to have been exonerated from the charges. The delay in raising the dispute ought not to have been considered by the Labour Court in view of the fact that the Industrial Disputes Act is a welfare legislation and therefore, the Labour Court ought to have considered the merits.

6. It is contended that the Labour Court has not adjudicated the merits raised by the writ petitioner-workman and contrarily, rejected the dispute mainly based on the delay and accordingly, the award is infirm. It is a clear case of victimisation and the Labour Court also failed to appreciate the grounds raised by the writ petitioner leading to victimisation on the part of the management. It is further contended that the very basis of the charge is an offence under the Indian Penal Code and when the Criminal Court acquitted the writ petitioner, the Disciplinary Authority ought not to have proceeded with the disciplinary proceedings.

7. The learned counsel appearing on behalf of the first respondent-Management disputed the contentions of the learned counsel for the writ petitioner by stating that on account of certain serious allegations of misbehaviour on 02.12.1988, which was subsequently ended with an assault of the

Field Officer of the Estate on 06.12.1988, a criminal case was registered based on the complaint given by the Field Officer. The first respondent-Management issued two charge memorandums separately. A domestic enquiry was conducted by complying with the principle of natural justice and the writ petitioner-workman also had participated in the domestic enquiry. Thus, the first respondent-Management had followed the procedures contemplated and afforded opportunity to the writ petitioner to establish his case before the Enquiry Officer. Based on the proved charges, the writ petitioner-workman was terminated from service on 08.04.1989. The wife of the writ petitioner was also working for the first respondent-Estate as a temporary employee. However, the writ petitioner has not approached the Labour Officer immediately. But approached the Labour Officer for conciliation during the year 1993 and a failure report was submitted during the year 1994. Thereafter, the writ petitioner waited and raised a dispute by filing an application 01.11.2000 before the second respondent Labour Court. Thus, there was an enormous delay even in pursuing the remedy in accordance with the provisions of the Industrial Disputes Act. Such an enormous delay cannot be condoned and the Labour Court also dealt with these aspects and rejected the dispute.

8. In the Award, the Labour Court in paragraph-9 categorically considered even the facts and the details of the domestic enquiry conducted by the management. In paragraph-9 of the award, it is stated that on 02.12.1988, the writ petitioner-workman misbehaved and used unparliamentary language against the Field Officer and a charge memo was issued and an enquiry was ordered. Thereafter on 06.12.1988, the writ petitioner assaulted the Assistant Manager and used abusive languages and the Assistant Manager filed a police complaint and based on that another set of charge memo was issued. Undoubtedly, the criminal case registered against the writ petitioner was ended with an order of acquittal. However, the Labour Court found that the domestic enquiry proceedings, which were marked as documents establishes that the witnesses were examined and cross-examination was also conducted. Based on the examination, cross-examination and considering the documents, the Enquiry Officer submitted his findings. The findings of the Enquiry Officer reveals that the charges against the writ petitioner were proved and accordingly, the writ petitioner was terminated from service.

9. The witnesses produced by the management were cross-examined by the writ petitioner-workman. The deposition of the witnesses categorically enumerates that the allegation against the writ petitioner was proved. The Labour Court ultimately arrived with the conclusion that the initiation of action against the writ petitioner was properly done and the

enquiry was also conducted in compliance with the principles of natural justice and based on the proved charges, the writ petitioner was terminated from service.

10. This apart, the Labour Court further found that the writ petitioner-workman has not approached the Labour Court within the reasonable period of time. The writ petitioner was terminated from service during the year 1989. The writ petitioner was continuing in the quarters allotted by the first respondent-Management as his wife was also a temporary employee in the very same Estate. Considering all these facts and circumstances, the Labour Court arrived a conclusion that the delay in approaching the Labour Court is also a vital factor and therefore the writ petitioner is not entitled for any relief.

11. This Court is of the considered opinion that the allegations against the writ petitioner-workman were undoubtedly serious. A criminal case was registered against the writ petitioner-workman, but the same was ended with an order of acquittal. Mere acquittal in the criminal case would not exonerate the employee from the disciplinary proceedings. The standard of proof required for the criminal case is high in nature and no such strict proof is required as far as the disciplinary proceedings are concerned. Even preponderance of probabilities are enough to punish an employee in the matter of misconducts.

12. However, in the present case, the Domestic Enquiry Officer examined the witnesses and allowed the delinquent worker to cross-examine the witnesses. The writ petitioner-workman had participated in the process of enquiry and deposed himself and availed the opportunities provided to establish his innocence. Thus, there is no violation of any procedures and the principles of natural justice have been complied with. In the domestic enquiry, the charges against the writ petitioner had been proved and based on the proved charges, the writ petitioner was removed from service.

13. Apart from this, the fact remains that the writ petitioner-workman was terminated on 08.04.1989 and he approached the Labour Officer for conciliation in the year 1993 and the failure report was submitted in the year 1994. The writ petitioner-workman had not approached the Labour Court immediately, contrarily he waited for about six years from the date of failure report and moved the Labour Court by way of an application on 01.11.2000 and raised the dispute. Thus, there was a delay of about 11 years from the date of termination to the date of filing an application raising an industrial dispute. Such a huge delay cannot be condoned by this Court. The person, who is aggrieved, must approach the Court of Law within the reasonable period of time. Courts cannot entertain stale claims which all are filed after a lapse of many years. An employee/

workman was left over his right for number of years cannot wake up and knock the doors of the Courts after several years. Such claims cannot be entertained and are to be rejected on the ground of delay and laches.

14. The present case on hand is also a classic case where there is an enormous delay and beyond delay, even on merits, the management has established that the grave charges against the writ petitioner were proved and based on the proved charges, the writ petitioner-workman was terminated from service.

15. This being the factum, this Court is of an opinion that no further enquiries have been called for in view of the fact that the writ petitioner was terminated from service and the order of termination issued was confirmed by the Labour Court, the writ petitioner is not entitled to continue in the quarters allotted by the first respondent-Estate. Accordingly, the writ petitioner has not established any acceptable legal ground for the purpose of considering his case. Accordingly, the award passed by the Labour Court in I.D.No.438 of 2000 and the eviction petition dated 31.03.2003 in Petition No.17 of 1999 are confirmed and consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.Ravichandran, Advocate, S.R.No.78752
+1cc to Mr.T.S.Gopalan, Advocate, S.R.No. 78565

W.P.No.27956 of 2003

MG (CO)
GN (14/10/2019)