

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4845 of 2010

R.K.Anandan

... Petitioner

Vs.

1.The Management of ABT Maruthi
No.102, Mount Road
Guindy, Chennai - 600 032

2.The Presiding Officer,
1st Additional Labour Court,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in ID (Industrial Disputes) No 216/2004 dated 21.07.2009 on the file of the 2nd respondent and to quash the same and to direct the 1st respondent to pay the back wages and other benefits and do pass such other further orders as it may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : M/s.DR.S.Padma

For Respondents : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co
[For R1]
R2 - Labour Court

O R D E R

The Award dated 21.07.2009 passed in I.D.No.216 of 2004 is under challenge in the present writ petition.

2. The Award passed by the Labour Court is to reinstate the workman without backwages and continuity of service. The writ petitioner is the workman, who challenged the Award in order to claim backwages and other benefits.

3. The learned counsel for the writ petitioner / workman made a submission that the petitioner was working sincerely and to the satisfaction of the Management, he was appreciated

for his achievements in execution on many occasions. The petitioner states that he was suffering from ailments and admitted in ESI and underwent abdominal surgery and he could not attend for duty. The writ petitioner made a request to provide lighter work. However, the Management has not considered his case for providing lighter work.

4. The learned counsel for the petitioner states that the petitioner was not in a position to attend duty for about four days and on account of that disciplinary proceedings were instituted against the writ petitioner and subsequently, he was terminated from service, the petitioner raised an industrial dispute and could able to establish that the actions of the Management was erroneous. The documents filed by the workman were considered by the Labour Court and the Labour Court passed an Award, granting reinstatement, but without back wages.

5. The contention of the writ petitioner is that once, the Labour Court appreciated the documents in favour of the workman and ordered for reinstatement, then the benefit of back wages and other benefits cannot be denied at all. The Labour Court in its finding, held that the Punishment of termination is disproportionate and the workman is able to establish that he is not liable for such a major penalty. Thus, the Labour Court has committed an error in not awarding back wages and other benefits are consequential to the reinstatement. The petitioner admitted that the Management implemented the Award, reinstated the writ petitioner and he is working with the respondent Management.

6. The learned counsel appearing on behalf of the 1st respondent Management disputed the contentions by stating that the writ petitioner workman was a habitual absentee and on several occasions, he remained unauthorizedly absent. Several warnings were issued to him and in spite of that, he has not changed his attitude.

7. The learned counsel for the 1st respondent Management reiterated that from the year 2000 onwards, the petitioner's attendance became irregular. Apart from the Earned Leave and Casual Leave, he was in the habit of taking ESI Leave and leave on Loss of Pay. On 08.01.2000, the petitioner was advised to be regular in his work and he was warned for his unscheduled absenteeism on 04.01.2000 and 05.01.2000. On 25.04.2000, the petitioner was warned for his absence on 03.04.2000, 07.04.2000 and 08.04.2000. On 11.02.2000, the petitioner was issued with a warning memo for his absence from 03.05.2000 to 05.05.2000. He was also cautioned that his sudden unauthorized absence adversely affected the day-to-day functioning of the department and that any repetition by him in future would entail severe disciplinary action.

8. In the year 2002, the petitioner did not report for work for 106 days out of 305 working days. The non-availability of the petitioner for work for the said year is as follows:

Casual leave	..	09 days
Earned leave	..	25 days
ESI Leave	..	43 days
Leave on loss of pay..		23 days
Absent	..	06 days
Total	..	106 days

Similarly, for the year 2003 from January to June, the petitioner was not available for work for 52.5 days out of 152 working days.

9. Citing all these factual aspects, the learned counsel appearing on behalf of the 1st respondent Management said that the previous conduct of the workman prompted the Management to institute the disciplinary proceedings. The previous conduct and warnings issued by way of memo was marked as documents before the Labour Court. The warning letter dated 08.01.2000 was marked as Ex.M9 and other letters marked as Ex.M12, Ex.M13, Ex.M16 & Ex.M17. The Management had established the fact that he was a habitual absentee and remained absent for more than 106 days, which affected the working performance of the 1st respondent Management.

10. It is contended that even after reinstatement, the writ petitioner was continuing the habit of absenteeism. On several occasions and from the year 2010-2018, he was continuously absent on many occasions and in the year 2018 alone, he was absent for about 176 days.

11. Relying on the past conduct before initiation of the disciplinary proceedings and the conduct of the workman after reinstatement, are explained by the Management by stating that he is a habitual absentee and therefore, the Award of the Labour Court, which was implemented, is in consonance with the principles and there is no infirmity.

12. To substantiate the contention, the learned counsel for the 1st respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of J.K.Synthetics Limited Vs. K.P.Agrawal and another, reported in (2007) 2 SCC 433 and Paragraph No.21 is extracted hereunder:

"21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither

automatic nor consequential. In fact, back wages was not warranted at all."

13. As far as the Award of the Labour Court is concerned, the allegations regarding the unauthorised absent was established. The Labour Court equally considered the petitioner in Ex.M4, Enquiry proceedings has admitted the charges levelled against him. In token of his admission, the workman has affixed his signature. Thus, the Enquiry officer, based on the materials produced, held that the charges were proved against the writ petitioner. It is observed by the Labour Court that the petitioner took inconsistent stand in Ex.M2 and Ex.M3 and that itself proved its delinquency. Thus, the Labour Court in clear terms, hold that the charges of unauthorised absent was admitted by the writ petitioner / workman and such documents are established by way of documents and therefore, the charges against the workman were proved beyond doubt. While holding that the charges were proved against the workman, the Labour Court further considered that as per Ex.W1 and Ex.W2, the petitioner was appreciated for his achievements in execution and further, it is contended that the petitioner has applied for the eligible leave and remained absent for the days mentioned in the counter. The Labour Court considered these factors and passed an Award for reinstatement without any back wages. The Labour Court admitted the fact that the respondent establishment is a service organization, where customers' satisfactions is primordial. Any deficiency in service would lead to disastrous consequences. The petitioner workman as a trained manpower. Any unscheduled absenteeism would jeopardize the service. Considering all these factors, the Labour Court ordered for reinstatement without back wages.

14. This Court is of an opinion that the Award of the Labour Court was implemented by the Management and the workman was reinstated long back and he is working even during the pendency of the writ petition and the learned counsel for the writ petitioner also admitted the fact that the workman is continuing in service as of now. Under these circumstances, the workman cannot claim the back wages as a matter of right. The back wages cannot be granted as a consequential benefit to the Award of reinstatement. The benefit of reinstatement was granted by the Labour Court based on certain mitigating factors, more specifically, the appreciation certificate issued by the Management. Equally, the Labour Court has arrived a conclusion that the charges against the workman were proved beyond doubt as he himself admitted the charges and such admissions were in writing and the documents in this regard was also filed before the Labour Court. When the charges are established against the workman and the charges are considered, as the same would affect the effective functioning of the 1st respondent Management, the denial of back wages cannot be construed as preference.

15. This being the facts and circumstances, this Court has no hesitation in coming to the conclusion that there is no infirmity as such in respect of the findings of the Labour Court.

16. Accordingly, the Award dated 21.07.2009 passed in I.D.No.216 of 2004 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Management of ABT Maruthi,
No.102, Mount Road,
Guindy, Chennai - 600 032.
- 2.The Presiding Officer,
Ist Additional Labour Court,
Chennai.

+lcc to M/s.T.S.Gopalan & Co, Advocate Sr.92234

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srg 09/12/2019

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