

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22014 of 2013
and W.P.No.24558 of 2013

W.P.No.22014 of 2013
A.S.Mohan

... Petitioner

-vs-

1.The Management of T.T.K. - LIG Limited,
No.35, Old Trunk Road, Pallavaram,
Chennai-600 045.

2.The Presiding Officer,
II Additional Labour Court,
Chennai 600 104.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, calling for the records of the second respondent in I.D.No.19 of 2004 dated 07.11.2012 and quash the same and consequently to direct the first respondent to reinstate the petitioner into service with full backwages with continuity of service.

For Petitioner : M/s.P.Kavitha Balakrishnan

For Respondents : M/s.Gupta & Ravi for R1
W.P.No.24558 of 2013

M/s. TTK - LIG Limited
35, Old Trunk Road
Pallavaram, Chennai 600 043.

Rep. by its Deputy General Manager - HR
Mr.S.Chandramouli

... Petitioner

-vs-

1.The Presiding Officer
II Additional Labour Court,
Chennai.

2.A.S.Mohan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records and quash the Award dated 07.11.2012 in I.D.19 of 2004 on the file of the 1st respondent, Presiding Officer, II Additional Labour Court, Chennai.

For Petitioner : M/s.Gupta & Ravi

For Respondents: M/s.Kavitha Balakrishnan for R2

C O M M O N O R D E R

Both the Workman and the Management have preferred these writ petitions in W.P.No.22014 of 2013 and W.P.No.24558 of 2013 respectively, challenging the Award dated 07.11.2012 in I.D.No.19 of 2004 passed by the II Additional Labour Court, Chennai.

2. For the sake of convenience, the parties would be referred to as per their original rankings in the Award dated 07.11.2012 of the Labour Court as 'the Workman' and 'the Management'.

3. The Workman had joined the service of the Management on 16.09.1994 and his last drawn pay was Rs.4,685/-. On account of his continuous absence, a charge sheet was issued on 18.05.2001 on the ground that he was unauthorizedly absent from 01.01.2000 to 30.04.2001, for which an explanation was given by him denying all the charges. Subsequently, enquiry was conducted, during which, it was found that the Workman was suffering from Recurrent Staphylococcal Folliculitis of legs with skeptical atrophy skin disease, which is contagious and therefore, it was construed that he was not fit for work in the factory. The Workman admitted the guilt and that the Enquiry Officer rendered a finding against the Workman, taking a lenient view by invoking the retrenchment clause in Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 and the petitioner was terminated from service.

4. Aggrieved by such termination, an Industrial Dispute has been raised and the Labour Court, after taking note of the evidence of the parties came to the conclusion that the termination of the employee is illegal, as the Doctors, who had examined the Workman, were not subjected to cross examination. Therefore, the Labour Court had granted a compensation of Rs.3,00,000/- as per Section 25-F of the Act to the Workman, instead of reinstatement, on account of the fact that the Management had not terminated him for his unauthorized absence and that he was removed from service on account of his ill health in view of the fact that the disease of the Workman was

contagious in service and his services cannot be utilized in the manufacturing unit, as it would definitely affect the quality of the products. Challenging the said Award of the Labour Court, both the Workman and the Management are before this Court.

5. The Labour Court further held that the Management had not complied with the mandatory provisions of Section 25-F of Industrial Disputes Act, 1947 which would entitle the employee to get reinstated, but however granted compensation for the reasons stated supra.

6. According to the Workman, the Labour Court, having concluded that the Management had given up the charge of absentism, had decided to disengage the services of the Workman, by invoking the provisions of the retrenchment without complying with the mandatory provisions of Section 25-F of I.D.Act, 1947 and therefore, the act of the Labour Court, in granting the compensation of Rs.3,00,000/- without reinstatement is unsustainable and on that score, he is entitled to all the benefits.

7. The case of the Management is that the Workman had taken leave on several days as per the tabular column indicated below:-

Name : MOHAN. A.S
Token Number : 00523

Extract of the Attendance Register from January 2000 to December 2000

MONTH	LWP	HDL	PRE	UAA	LOP	ESI	TOTAL
JAN	5.0	6.0	18.0	2.0	0.0	0.0	31
FEB	6.0	4.0	19.0	0.0	0.0	0.0	29
MAR	5.0	4.0	22.0	0.0	0.0	0.0	31
APR	5.0	6.0	17.0	2.0	0.0	0.0	30
MAY	3.0	4.0	14.0	0.0	0.0	10.0	31
JUN	1.0	4.0	22.0	3.0	0.0	0.0	30
JUL	0.0	2.0	6.0	5.0	0.0	18.0	31
AUG	0.0	5.0	19.0	6.0	0.0	1.0	31
SEP	0.0	3.0	15.0	8.0	0.0	4.0	30
OCT	0.0	6.0	21.0	4.0	0.0	0.0	31
NOV	1.0	4.0	19.0	3.0	0.0	3.0	30

MONTH	LWP	HDL	PRE	UAA	LOP	ESI	TOTAL
DEC	0.0	0.0	0.0	1.0	0.0	30.0	31
TOTAL	26.0	48.0	192.0	34.0	0.0	66.0	366

LWP - Leave with pay HDL - Holiday / Weekly off PRE - Present
UAA - Unauthorised Absent LOP - Loss of Pay ESI - ESI Leave

Name : MOHAN. A.S

Token Number : 00523

Extract of the Attendance Register from January 2001 to May 2001

MONTH	LWP	HDL	PRE	UAA	LOP	ESI	TOTAL
JAN	0.0	1.0	0.0	0.0	0.0	31.0	32
FEB	0.0	0.0	0.0	1.0	0.0	27.0	28
MAR	0.0	0.0	0.0	0.0	0.0	31.0	31
APR	0.0	0.0	0.0	2.0	0.0	28.0	30
MAY	0.0	0.0	0.0	31.0	0.0	0.0	31
TOTAL	0.0	1.0	0.0	34.0	0.0	117.0	152

LWP - Leave with pay HDL - Holiday / Weekly off PRE - Present
UAA - Unauthorised Absent LOP - Loss of Pay ESI - ESI Leave

8. Thus, it is the contention of the Management that though the Management had decided to proceed against the Workman departmentally for his absence in the Domestic Enquiry, the Workman himself had admitted the fact that he had availed leave without due intimation and also the fact that he had not taken treatment at ESI hospital at all. Since the Workman had come with unclean hands, the Enquiry Officer had come to the conclusion that charges were established. Even though charges were established, on humanitarian ground he was terminated from service, instead of dismissing him from service, taking note of the statement made by the workman and also based on the documentary evidence, showing that he was suffering from Recurrent Staphylococcal Folliculitis of legs with skeptical atrophy.

9. It is the further contention of the Management that the invocation of the provisions of Section 2(00) (c) of the I.D.Act, 1947 by the Enquiry Officer for termination of the Workman was on account of his continuous illness, as he may not be fit to work in the factory. However, the provisions of Section 25-F, ID Act, 1947 as invoked by the Labour Court have no legs to stand, insofar as the facts of the present case on hand are concerned, for the reason that due to the admission made by the Workman in the enquiry for his guilt of giving wrong information as well as statement, a lenient view of termination from service in lieu of dismissal was taken by the Enquiry Officer on account of his continued ill health, entitling him to claim all the applicable benefits. Hence, it was pleaded that the award of additional compensation of Rs.3,00,000/- in terms of Section 25-F of the Act by the Labour Court is unwarranted and has to be struck down by this Court.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. It is not in dispute that the petitioner has joined the service in the year 1994 and confirmed permanency in the year 1998. He was issued a charge sheet on 18.05.2001 for his unauthorized absent. The workman participated in the enquiry and in the enquiry, he has not only admitted his guilt, but also stated that he has been suffering from illness, due to which he was not in a position to attend the work. Apart from the above, the Workman has further admitted that he had neither intimated his leave nor taken treatment at ESI hospital at all.

12. Further, from the Medical report produced by the Workman before this Court, which was obtained from the Voluntary Health Service, it could be seen that he is suffering from Recurrent Staphylococcal Folliculitis of legs with skeptical atrophy, which would disentitle him from work in any industry, much less the Industry, like that of the Management in the case on hand. The Hon'ble Supreme Court had an occasion to deal with the similar case of continued ill-health in the case of Anand Bihari and others Vs Rajasthan State Road Transport Corporation, Jaipur and another, reported in (1991) 1 SCC 731, wherein, it has been held as follows:

"7. Even otherwise, it can scarcely be disputed that the expression "ill-health" used in sub-clause (c) has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not any illness but that which interferes with the usual orderly functioning of the duties of the post which would be attracted by the sub-clause. Conversely, even if the illness does not affect general health or

general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted, it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged which is relevant and material and should be considered for the purpose. The expression "ill-health" is defined in the new Collins Concise English Dictionary (International Edition) to mean "disordered in physical condition; diseased; unwell; sick"; with disease; with anxiety (of health), unsound; disordered, morally bad", and in Shorter Oxford English Dictionary to mean: "Unsound, disordered; Out of health, not well". Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workman's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worse still in cases such as the present one they will endanger the lives and the property of the consumers. Hence we have to place a realistic and not a technical or pedantic meaning on the said phrase. We are, therefore more than satisfied that the said phrase would include cases of drivers such as the present ones who have developed a defective or sub-normal vision or eyesight which is bound to interfere with their normal working as drivers.

8. In the view we have taken of the said sub-clause, it is obvious that the termination of the services of the workers in the present case being covered by sub-clause (c) of Section 2(00) would not amount to retrenchment within the meaning of Section 2 (oo) of the Act. Hence the termination per se is not illegal because the provisions of Section 25-F have not been followed while effecting it."

13. When there is a categorical evidence to the effect that the Management had taken a humanitarian approach to terminate the petitioner from service, the Labour Court ought not to have granted the compensation of Rs.3,00,000/-, as such Award of

compensation was stated to be contrary to the to the evidence let in by the workman himself and also the decision of the Hon'ble Apex Court (cited supra).

14. When this Court posed a question to Mr.Ravi, learned counsel appearing for the Management as to the possibility of enhancement of compensation, he has readily agreed to enhance it by another Rs.1 lakh. However, the learned counsel appearing for the Workman, on instructions, would submit that the Workman is not willing to accept the compensation and wanted the Award to be interfered with, by extending all the benefits to him.

15. From the facts pleaded herein, it could be visualized that there is a prima facie evidence with regard to the continued ill health of the Workman, which may affect the normal discharge of duties and that there are chances of the consumers being affected. When the Workman himself has admitted that he was suffering from a serious skin disease, which was suppressed by him on earlier occasions, stating that he was taking treatment at ESI hospital, such a misconduct cannot be slightly brushed aside and even though it is a fit case for awarding capital punishment for the misconduct, the Management has just decided to invoke Section 2 (00)(c) of the I.D. Act 1947 for the purpose of his termination, which, in the considered opinion of this Court, cannot be faulted with and absolutely, there are no grounds to interfere with the order of termination.

16. Since the Management has agreed to extend Rs.1 lakh over and above the compensation already awarded by the Labour Court on humanitarian ground, even though the Workman is not entitled to any amount, the Management is directed to pay Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) to the Workman, apart from settling all his terminal benefits, within a period of 45 days from the date of receipt of a copy of this order.

17. With the above observation and direction, the Writ Petition No.24558 of 2013 filed by the Management is disposed of and the Writ Petition No.22014 of 2013 filed by the Workman stands dismissed. No costs.

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Assistant Registrar

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Sub Assistant Registrar

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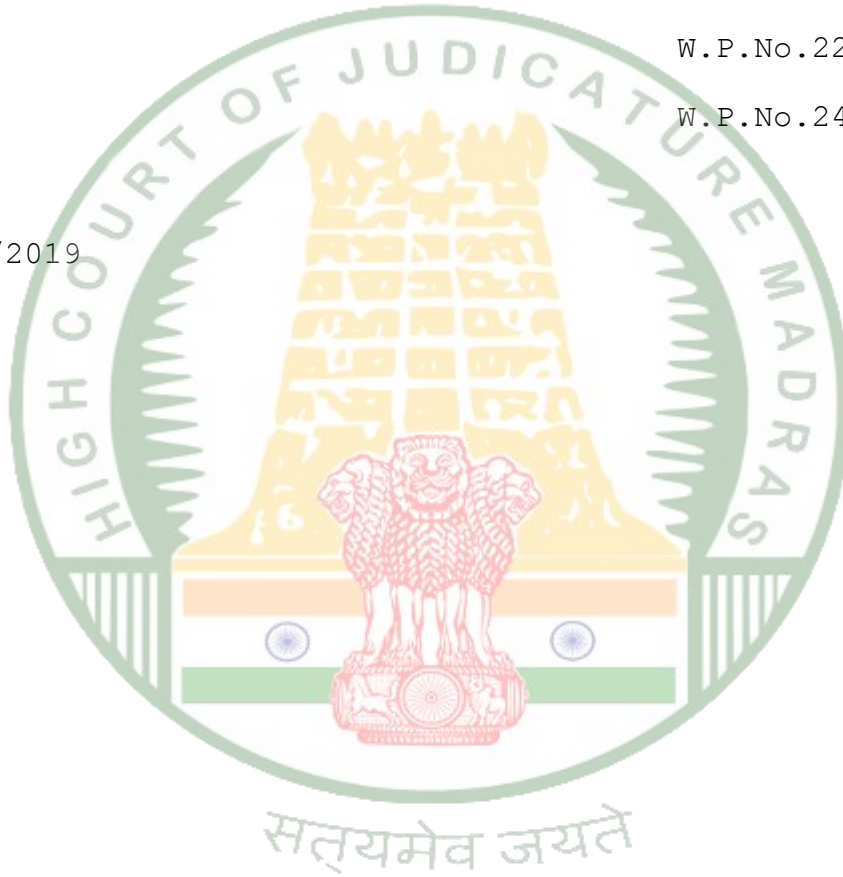
The Presiding Officer,
II Additional Labour Court,
Chennai 600 104.

+lcc to M/s.Gupta & Ravi, Advocate Sr.70928

+lcc to Ms.P.Kavitha Balakrishnan, Advocate Sr.71067

W.P.No.22014 of 2013
and
W.P.No.24558 of 2013

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