

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

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

W.P.No.23532 of 2012

and

MP.No.1 of 2012

The Management of
M/s. Neycer India Limited
Vadalur, Cuddalore District
rep. by its Manager (HR &Admin.)

..Petitioner

Vs.

1.The Presiding Officer
The Labour Court
Cuddalore.

2. M.Jeyaraman (T.Np.817)
S/o. Mr.Marimuthu Padayachi
Periya Kovilkuppam, Kizhur Post,
Panruti Taluk, Cuddalore District.

..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 ID No.37 of 2010, and quash its award dated 30.05.2012, in so far it directs reinstatement of the 2nd respondent with continuity of service and 15% back wages to the 2nd respondent.

For Petitioner : Mr.S.Haroon Al Rasheed
for M/s.T.S.Gopalan & Co.

For Respondents : Labour Court (for R1)
No Appearance (for R2)

O R D E R

The award dated 30.05.2012 passed by the first respondent in I.D.No.37 of 2010, is under challenge in the present writ petition.

2. The writ petitioner is the management of M/s. Neycer India Limited. The writ petitioner states that they are having a factory at vadalur in Cuddalore district, wherein, it manufactures ceramic products. The writ petitioner is having 425 workmen on its rolls. The writ petitioner states that they

provide liberal leave benefits to the workmen, viz., one weekly holiday, 18 days earned leave, 15 days casual leave, 10 days sick leave and 10 days National and festival holidays per year. There is no engagement of casuals or temporary workmen.

3. The 2nd respondent was employed as General worker in the petitioner's factory since 1994. He became chronic absentee from the year 1994. The absenteeism and punishment awarded to the 2nd respondent from 1994 to June 2008 is as follows:-

Year	No. of days absented	Punishment awarded
1994	48.5 ddays	30 days suspended
1995	108 days	30 days suspended
1996	201.5 days	30 days suspended
1997	141 days	
1998	41 days	
1999	32 days	
2000	100 days	
2001	54 days	
2002	62.5 days	
2003	70 days	
2004	147 days	
2005	103 days	
2006	273 days	
2007	291 days	
6/2008	155 days	

4. The learned counsel appearing on behalf of the writ petitioner states that the 2nd respondent was time and again suspended, counseled and warned, which had no impact on him. Consequently, the disciplinary proceedings were initiated and a charge sheet was issued on 08.03.2008 for his unauthorized absence of 273 days in the year 2006, 291 days in the year 2007 and for 67 days till 07.03.2008. The 2nd respondent had not submitted any explanation nor participated in the enquiry. Thus, the enquiry was held on various dates on 27.03.2008, 03.04.2008, 12.04.2008 and on 30.04.2008. The 2nd respondent was set ex-parte. On 30.05.2012, the enquiry officer submitted his findings holding that the charges leveled against the 2nd respondent are held proved. The second show-cause notice was issued on 14.05.2008 and thereafter an order of dismissal was issued on 05.06.2008.

5. The 2nd respondent raised an industrial dispute in 1.12.2010. The writ petitioner examined

Mr.G.R.Anandakrishnan, Personnel Officer in proof of the charges leveled against the 2nd respondent. Exhibits M1 to M10 were marked on behalf of the petitioner management. Exhibits M2 to M5 were granted in proof of past record of absenteeism of the 2nd respondent. The Labour Court without considering any of these documents passed the award on 30.05.2012. The findings of the Labour Court reveals that the 2nd respondent had committed only misconduct of absenteeism and therefore, he has entitled for relief on the ground that the punishment of dismissal from service is disproportionate to the gravity of the proved charges. Challenging the said award, the learned counsel for the writ petitioner contended that the findings of the Labour Court is perverse and contrary to the facts and circumstances established by the writ petitioner management with document and evidences.

6. The past records of the 2nd respondent were proved and marked as a document. On several occasion, he was punished and placed under suspension. The unauthorized absence was for a longer period and therefore the misconduct committed is grave as per the Standing Orders. In spite of the fact that the unauthorized absence is for a very long period and the writ petitioner management conducted the domestic enquiry in a fair and proper manner, there is no reason for the Labour Court to exercise the discretionary powers for the purpose of modifying the punishment by setting aside the order of dismissal from service. The Labour Court in its findings held that, the industrial dispute is allowed in part and granted reinstatement with continuity of service with a cut in increment for one year with cumulative effect and further granted 15% of back wages.

7. The learned counsel for the writ petitioner management reiterated that the award is perverse on the ground that exercise of discretionary power by the Labour Court under Section 11(A) of the I.D.Act is improper. The gravity of the misconduct as proved by way of document has not been considered by the Labour Court. The 2nd respondent employee was a chronic absentee and on several occasions, he was imposed with the punishment and placed under suspension. This being the continuous conduct of the 2nd respondent, there is no reason whatsoever to take a lenient view of and modify the punishment imposed by the petitioner management.

8. The Labour Court mainly allowed the industrial dispute in part on the ground that, the past records of the 2nd respondent were not considered. In this regard, it is contended that Exhibits-M2 to M5 are the past records of the 2nd respondent establishing that he was a chronic absentee and on several occasions, he was imposed with the punishment and placed under suspension. Despite the fact that the writ petitioner management submitted documents to establish that the 2nd respondent was a chronic absentee on earlier occasions also and the past records were also produced before the Labour

Court, the findings of the Labour Court in its award is perverse and contrary to the documents produced by the writ petitioner management.

9. The charge sheet itself was issued for the unauthorized absence of 273 days in the year 2006 and 291 days in 2007 and for 67 days till 07.03.2008. Therefore, this Court is of an opinion that taking a lenient view by the Labour Court for the purpose of holding the relief is improper. The power under Section 11(A) of the I.D.Act, is to be exercised discreetly in order to mitigate the injustice if any caused. Undoubtedly, the Labour Court has got powers to modify or cancel the punishment or impose any other punishment by invoking the discretionary power. However, the discretionary powers are to be exercised only on recording reasons. It is insufficient if the reasons are recorded, the reasons for modification or cancellation of punishment must be candid and convincing. Thus, the discretionary powers cannot be exercised in a callous manner or by extending leniency or misplaced sympathy. Once the grave misconduct is proved beyond doubt and the procedures for conducting the domestic enquiry was followed or otherwise the enquiry is held as just and proper, there is no reason for invoking the discretionary powers under Section 11(A) of the I.D.Act. Thus, mere usage of word proportionate or disproportionate for the purpose of exercise of discretionary power under Section 11(A) of the I.D.Act, is insufficient. The Labour Court must records its reasons and reasons cannot be candid.

10. This being the scope of Section 11(A) of the I.D.Act, the Labour Court cannot modify or cancel the punishment by extending some leniency or misplaced sympathy. If such leniency or misplaced sympathy is taken as a ground for cancellation of punishment, then the very purpose and object of the disciplinary proceedings will be defeated and the industrial discipline and peace cannot be maintained. This being the principles to be followed, the modification of punishment by the Labour Court despite the fact that the continuous unauthorized absent was proved by the writ petitioner is improper. Accordingly, the award dated 30.05.2012, passed in I.D.No.37 of 2010 is quashed and the writ petition stands allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Chennai.

+1cc to Mr.T.S,.Gopalan and co , Advocate SR.No. 96888
W.P.No.23532 of 2012
A.SK(27/12/2019)



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