

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.8824 of 2011
and
M.P.Nos.1 & 2 of 2011

M/s.Royal Enfield
A Unit of Eicher Motors Limited,
(Formerly known as The Enfield India Ltd)
Tiruvottiyur, Chennai - 600 019.
Represented by its Chief Executive. .. Petitioner

Vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai.
2. S.Sivan .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari calling for the records of the first respondent in I.D.No.104 of 1996 and quash its Award dated 13.10.2010.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For R2 : Mr.S.Shanmuga Sundaram
for Mr.S.Senthilnathan

R1 : Court

O R D E R

Writ Petition is filed for issuance of writ of Certiorari to call for the records of the first respondent in I.D.No.104 of 1996 and quash the award dated 13.10.2010.

2. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

3. The second respondent joined as a trainee in the Machine Shop of the petitioner on 01.09.1968 and thereafter with effect

from 01.09.1969, he was engaged as Junior Operator Grade-B, on probation for a period of six months. Subsequently by the order dated 05.09.1969, he was absorbed as Junior Operator Grade-B with effect from 01.09.1969. By the order dated 20.10.1973, the second respondent was promoted as Operator C&T in Grade C. The petitioner has issued number of memos to the second respondent for unauthorized absenteeism and for less production and imposed punishment of suspension for two days on 29.09.1990 and 30.09.1990 in one occasion. The second respondent has absented himself during January 1988 to October 1991 for a total period of 330 days on loss of pay. The petitioner issued charge memo dated 20.11.1991 to the second respondent and the second respondent submitted his explanation dated 22.11.1991. Not being satisfied with the explanation submitted by the second respondent, the petitioner conducted a domestic enquiry. The Enquiry Officer gave a finding that charges leveled against the second respondent were proved. The petitioner issued second show cause notice to the second respondent and after considering the explanation submitted by the second respondent, by the order dated 10.11.1992, the second respondent was dismissed from service.

4. The second respondent after four years of dismissal from service, raised Industrial Dispute in I.D.No.104 of 1996 on the file of the first respondent. The second respondent raised various contentions in the claim statement and petitioner denied the same and raised various contentions in the counter statement. Before the first respondent, the second respondent examined himself as W.W.1 and marked 11 documents as Exs.W1 to W11. The petitioner examined one Thiyagarajan as M.W.1 and marked 16 documents as Exs.M1 to M16. The first respondent extracting the rival contentions, held that the contentions of the second respondent are acceptable and the petitioner failed to prove their contention. The second respondent attained the age of superannuation in the year 2005. In view of the same, the first respondent ordered payment of back wages, continuity of service and attendant benefits to the second respondent. Against the said Award, the petitioner has come out with the present writ petition.

5. The learned counsel appearing for the petitioner contended that the first respondent extracting the rival contentions of the petitioner as well as the second respondent, without giving any reason for not considering the oral and documentary evidence let in by the petitioner, accepted the claim of the second respondent. The first respondent failed to consider the evidence let in before the Enquiry Officer wherein it was proved that the second respondent was chronic absentee, erred in granting back wages, continuity of service and attendant benefits. The first respondent without there being any basis, has held that in the domestic enquiry the second

respondent was not given opportunity. On the other hand, the second respondent participated in the domestic enquiry, examined himself before the Enquiry Officer, marked documents and cross-examined the witnesses examined by the petitioner. The first respondent failed to consider the documents filed by the petitioner and various memos issued to the second respondent with regard to discharging his duties and absenteeism. The learned counsel for the petitioner produced the details of the leave and absence of the second respondent for the period from 1988 to 1991 and the same is recorded as follows:

Leave and Absence details of respondent workmen for the period 1988 to 1991

Year	Exhibi t No.	Earned Leave	Sick Leave with Pay	Special Leave	Absen ce due to sickn ess	Unauthori zed absence	Total days of absen ce	Total days respond ent worked	Total worki ng days
1988	M13	9	10	2	2	79.5	102.5	202.5	305
1989	M14	3	9	6	9	57	86.5	216.5	303
1990	M15	11	9	4	27	46.5	97.5	206.5	304
1991	M16		9	6	55	61.5	133.5	169.5	303

6. Per contra, the learned counsel appearing for the second respondent contended that there was a fire accident in the factory of the petitioner in the year 1975 and the second respondent while putting off the fire, suffered injuries. Due to the same, the second respondent was taking treatment and underwent three surgeries in Stanley Hospital during the period from 1985 to 1990. The second respondent sought medical assistance and monetary assistance to meet out the treatment taken, but the petitioner refused. The first respondent took note of the injuries suffered by the second respondent, accepted the contentions of the second respondent and rejected the contentions of the petitioner. There is no error in the reasoning of the first respondent and prayed for dismissal of the writ petition.

7. From the materials available on record, it is seen that the second respondent had absented himself for number of days. According to learned counsel appearing for the petitioner, the second respondent has absented himself for number of days and due to that he could not give necessary production. Various memos were given and punishments were imposed on the second respondent for less production. The second respondent assured that he will improve himself. In spite of the same, the second

respondent absented himself unauthorizedly. The second respondent absented for 330 days as follows:

Year	No.of days on loss of pay
1988	81.1/2 days
1989	68.1/2 days
1990	70.1/2 days
1991	109.1/2 days
(upto October)	

7(a). The petitioner issued charge memo and conducted enquiry. From the report of the Enquiry Officer, it is seen that the second respondent participated in the enquiry, examined himself, filed documents and cross-examined the witnesses examined by the petitioner. There is nothing on record to show that the second respondent complained to the Enquiry Officer or to the petitioner that he was not given sufficient opportunity to put forth his case. Even before the first respondent, no material was produced to show that domestic enquiry was conducted in violation of principles of natural justice and without giving sufficient opportunity to the second respondent.

7(b). The first respondent without any basis, has held that the second respondent was not given sufficient opportunity in the domestic enquiry. The said conclusion is erroneous. The explanation of the second respondent for his long absenteeism is that due to the injuries sustained by him in the fire accident that occurred in the year 1975 in petitioner's factory, he was taking treatment and could not report for duty regularly. The accident is of the year 1975. The charge memo issued to the second respondent for absenteeism was during January 1988 to October 1991. The second respondent, except contending that he underwent surgeries and taking treatment had not produced any medical records either before the Enquiry Officer or before the first respondent to prove his claim.

7(c). The first respondent, after extracting the rival contentions in the claim statement and counter statement, gave a finding that the contentions of the second respondent is acceptable and the petitioner failed to prove his contention. The first respondent has not given any reason for the said conclusion except stating, considering the materials on record and arguments, the contention of the second respondent is acceptable and the petitioner has not proved his contention and the judgment relied on by the petitioner are not applicable to the facts and circumstances of the present case. The first respondent also failed to take into consideration that the second respondent raised Industrial Dispute after a period of four years of dismissal from service. The second respondent raised Industrial Dispute in the year 1996 and award was passed in the year 2010. The learned counsel for the petitioner

contended that the Industrial Dispute was dismissed for default and subsequently it was restored to file and after restoration, the second respondent took number of adjournments and dragged on the matter. The said contention of the learned counsel for the petitioner was not denied by the learned counsel for the second respondent.

8. In view of the above materials, the reasoning of the first respondent for granting back wages, continuity of service and attendant benefits is erroneous and the same is liable to be set aside and it is hereby set aside. The first respondent in the award has stated that the second respondent has suffered injuries and scars and the same can be seen. Considering this fact and that the second respondent had attained the age of superannuation, it will be in the interest of justice, if a sum of Rs.2,00,000/- is granted to the second respondent. The petitioner is directed to pay the said sum to the second respondent within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb/krk

To

The Presiding Officer,
II Additional Labour Court,
Chennai.

+lcc to Mr.S.Senthilnathan, Advocate SR.69677

+lcc to M/s.T.S.Gopalan and Co, Advocate SR.69665

VG II(CO)
CB(06/11/2019)

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and
M.P.Nos.1 & 2 of 2011