

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32960 of 2013

M/s.Hindustan Unilever Ltd.,
Detergent Factory,
Pondicherry
Rep.by its Authorized Signatory.

...Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Pondicherry.

2. Marie Lucien.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with I.D.No.22 of 2011 and Award dated 15.02.2013 passed therein by the 1st respondent i.e., The Presiding Officer, Labour Court, Puducherry and quash the same.

For Petitioner : Mr.Sanjai Mohan
for M/s.S.Ramasubramaniam

For Respondents : R1-Labour Court
M/s.P.R.Thiruneelakandan
for R2.

ORDER

The award dated 15.02.2013 passed in I.D.No.22 of 2011 is sought to be quashed in the present writ petition.

2. This writ petition is filed by M/s.Hindustan Unilever Limited(HUL), having 3 manufacturing units in Puducherry-Two units at Vadhamangalam Village, manufacturing Soaps, Detergents and Personal Care Products.

3. The 2nd respondent workman was employed as unskilled worker from 01.09.1996. It is contended that the workman always exhibited aggressive, subversive and temperamental character and would pick up un-necessary quarrels and duel with his shift supervisors, plant in-charge and other officers of the company. The allegations against the second respondent/workman was that on 7.04.2007, he abused one Mr.Vijaykumar, the then HR-Officer and threatened him in very obnoxious and filthy language. Consequently, charge sheet was issued on 17.04.2007 for a serious misconduct of resorting to stay-in-strike from 04.04.2007 and abusing the HR officer. The intemperate language used and exact behavior of workman was extracted in the charge sheet. Domestic enquiry was conducted on the said charges and the workman was given full opportunity to defend himself, by permitting him to let in oral evidence. However, he was found guilty of misconduct leveled against him by the Enquiry Officer after thorough enquiry. Before imposing punishment, the second respondent/workman admitted his misconduct and expressed regret for the same and assured good conduct in future. Considering the undertaking given by the second respondent, the respondent entered into an 18(1) settlement with the workman on 25.08.2008 wherein his punishment was reduced to suspension for 10 working days and keeping him in probation for the next one year. Thereafter, he was reinstated in duty on 01.09.2008.

4. Once again, similar misconduct was done by the second respondent/workman and again a detailed charge sheet was issued on 17.11.2008. The workman submitted his explanation to the charge sheet on 04.12.2008 and an independent enquiry officer was appointed by the respondent, who commenced the enquiry on 02.01.2009 and the enquiry proceedings were concluded by complying with the principles of natural justice and by providing an opportunity to the workman to defend his case. Thereafter, established procedure for conducting the enquiry had been followed by the enquiry officer and finally, an order of termination was issued on 09.11.2010, after taking into consideration, the findings of the enquiry officer as well as the seriousness of the allegations raised against the second respondent/workman. A dispute was raised and the Labour Court found that there was a heated altercation between the victim and the workman. Thereafter, the Labour Court proceeded to hold that the charges were not made out.

5. The learned counsel for the writ petitioner submitted that the findings of the Labour Court is perverse and not in consonance with the established principles to be followed in the matter of disciplinary proceedings of this nature. The Labour Court did not agree with the grounds raised by the writ petitioner/Management and ultimately, passed an award, directing reinstatement with back wages. The said award is under challenge

in the present writ petition and it need interference by this Court.

6. The learned counsel appearing on behalf of the second respondent/workman disputed the contentions raised on behalf of the writ petitioner by stating that the temperamental behaviour of the workman was not established beyond doubt. Under these circumstances, the award passed by the labour Court is very much sustainable. The labour Court has considered the fact that the charges levelled against the second respondent/workman were not established. The labour Court found that the workman was an active member in the Hindustan Unilever Limited and the said Union raised issues in respect of service conditions of the petitioner's employees and another issue in respect of National and Festival Holidays and the same were pending before the Conciliation Officer. During the Conciliation proceedings, the respondent was terminated from service on 09.11.2010 and therefore, the tribunal had not followed the procedure prescribed under Section 33(2)(b) of Industrial Disputes Act, 1947. It is contended that the employer may pass an order of dismissal or discharge and at the same time, make an application for approval of the action taken by him and if the approval is not granted under Section 33(2)(B) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date on which it was passed and failure to make an application under the said section would render the order of dismissal inoperative.

7. A reading on the award clearly shows that the workman was an active member of the employees union and that no approval was obtained under Section 33(2)(B) of the Industrial Disputes Act, 1947. The Labour Court arrived at a conclusion that the charges are flimsy and the imposition of the punishment of termination was excessive and accordingly, ordered reinstatement with continuity of service with back wages and other attendant benefits.

8. On a careful reading of the findings of the Labour Court, this Court is of the considered opinion that the allegations against the respondent are not so severe warranting major penalty of termination. This apart, the charges were not proved beyond doubt and various other issues were also considered by the Court before passing an award. The findings of the Labour court are certainly candid and convincing and there is no perversity.

9. Under these circumstances, this Court is not inclined to interfere with the award passed by the Labour Court dated 15.02.2013 passed in I.D.No.22 of 2011. Accordingly, the writ petitioner/Management has failed to establish any acceptable

legal ground for the purpose of assailing the award passed by the Labour Court. Thus, the award dated 15.02.2013 in I.D.No.22 of 2011 is confirmed. Consequently, the writ petition stands dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

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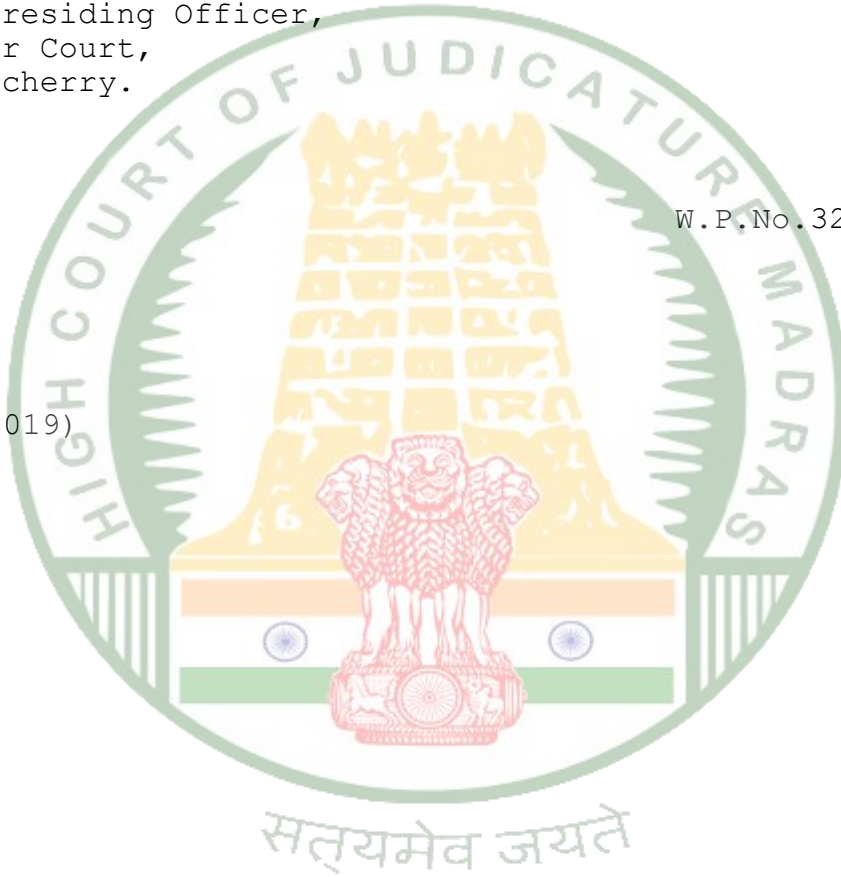
Sub-Assistant Registrar

To

The Presiding Officer,
Labour Court,
Pondicherry.

W.P.No.32960 of 2013

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