

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18629 of 2014

and

M.P.No.1 of 2014

M.Kasthuri

.. Petitioner

-vs-

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan, Chennai-600 006.

2.The Chairman,
Madras Port Trust,
Rajaji Salai, Chennai-600 001.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records from the file of the first respondent herein namely the Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Shastri Bhavan, Chennai and quash the award dated 11.03.2014 in I.D.No.74 of 2012.

For Petitioner : Mr.A.Meenakshi Sundaram
For Respondents : R1 - Tribunal
: R2 - Ms.Babitha Sunil

ORDER

The award dated 11.03.2014, passed by the 1st respondent in I.D.No.74 of 2012 is under challenge in the present writ petition.

2.The writ petitioner states that she was appointed as peon in the Finance Department of the 2nd respondent with effect from 01.02.1990. She was promoted as Attender on 01.02.1998. The petitioner was suffering from illness, more specifically, Acute Osteo Arthritis and other diseases from 23rd March, 2004 onwards. Her health condition was deteriorated and the Doctor advised her to take rest. The petitioner applied for medical

leave by sending leave letters. However, the 2nd respondent had not replied to the letters, nor sanctioned leave in favour of the writ petitioner.

3.A show cause notice was issued on 07.07.2004 and the learned counsel for the petitioner states that the show cause notice was not served on the writ petitioner. Thereafter, a charge memo was issued with an allegation of unauthorised absence. A public notice was also issued through the local newspaper "Dina Thanthi" and the learned counsel for the writ petitioner states that the contents were published in English and an enquiry was also conducted and based on the findings of the Enquiry Officer holding that the charges are proved, the petitioner was dismissed from service.

4.The petitioner raised an industrial dispute and initially, the Labour Tribunal passed an ex parte award, which was published in the Government Gazette. Thereafter, an application to set aside the ex parte award was filed and the said application was allowed by the Tribunal and trial was conducted. The writ petitioner was deprived of an opportunity in the domestic enquiry proceedings. This apart, once the award of the Labour Court was published in the Government Gazette, then the Labour Court became functus officio and no petition can be entertained.

5.This Court is of the considered opinion that the said legal position has been reversed by the Supreme Court of India and as of now, mere publication of the award is not a ground to set aside the ex parte award. Even after publication of the award in the Government Gazette, the Labour Court did not become functus officio and the Labour Court is empowered to entertain the petition filed by the parties to set aside the ex parte award. Thus, the legal position, in this regard, is reversed and thus, the contention of the petitioner cannot be accepted.

6.The learned counsel for the petitioner reiterated that based on the improper enquiry, the petitioner was terminated from services. The fair procedures were not followed by the 2nd respondent Management. In this regard, the learned counsel for the petitioner cited an order of the Central Administrative Tribunal, Principal Bench, Delhi in the case of Sahilender Kumar vs. Union of India and Anr. in O.A.No.2805 of 2013 dated 13.05.2015, wherein the following observations are made in paragraph 12, which is extracted hereunder:-

"12.We have heard the learned counsel for the Applicant Shri Amit Anand and the learned counsel for the Respondents Shri S.K.Dubey. At the outset,

we shall say that the slipshod manner in which the Enquiry Officer conducted himself during the course of the enquiry and the way in which the Disciplinary and Appellate Authorities have considered the report submitted by him and passed their respective orders are quite shocking. There is not even a semblance of any departmental enquiry as prescribed under CC (CCA) Rules, 1965, in this case. Even then the Disciplinary Authority, Appellate Authority and Reviewing Authority arbitrarily held that the enquiry was held in accordance with the rules and agreed with the Enquiry Officer that the charges against the Applicant was proved. Interestingly, the Disciplinary Authority is the Registrar of the Appellate Tribunal for Forfeited Property (ATFP for short) and the Appellate Authority is its Chairman. The Reviewing Authority is none other than Revenue Secretary. It cannot be considered that they were ignorant of the procedure for holding the enquiry and their duties and responsibilities as Disciplinary/Appellate/Reviewing Authorities prescribed in the CCS (CCA) Rules, 1965. The Apex Court in its judgment in State of U.P. & Others Vs. Saroj Kumar Sinha 2010 (2) AISLJ 59 has held that the departmental enquiry cannot be treated as a casual exercise. The relevant part of the said judgment reads as under:-

8. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Inquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of *Shaughnessy v. United States*, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

7.Undoubtedly, the employer is bound to conduct an enquiry in a fair and proper manner. In this regard, this Court has to consider the findings of the Labour Court. The Labour Court found that a charge sheet was issued to the writ petitioner and the petitioner failed to appear in the enquiry proceedings and based on the findings of the Enquiry Officer, the petitioner was dismissed from service.

8.With reference to the documents filed before the Labour Court, it was found that the petitioner was unauthorizedly absenting herself from duty and was going on sending leave applications, though such leave applications were not sanctioned by the competent authorities. Ex.M2, a communication was sent to the petitioner by the Superior officer stating that she was unauthorizedly absent from 23.03.2004 and three telegrams were also sent to the writ petitioner. In spite of that, the petitioner had not reported for duty. Contrarily, the petitioner submitted an undated letter, Ex.M3, asking for sanctioning of leave from 01.08.2004 to 30.09.2004, even her earlier leave applications were not sanctioned. Several such undated applications requesting for sanctioning of leave were submitted by the writ petitioner. However, the fact remains that she had not reported for duty, which resulted institution of disciplinary proceedings and issuance of charge sheet.

9.Perusal of the findings in the enquiry report shows that several opportunities were granted to the writ petitioner by the competent authorities of the 2nd respondent and in spite of such proceedings, the petitioner remained unauthorizedly absent and going on sending undated leave applications for sanctioning of leave. Thus, the petitioner was dismissed from service on 22.03.2006, based on the findings in the enquiry report. Though the petitioner was dismissed from service on 22.03.2006, the industrial dispute was raised after a lapse of about four years from the date of dismissal from service. The Labour Court found that there is no bar of any law for raising the dispute after a lapse of four years. There is no case for the petitioner that during these years, she was incapacitated on account of illness or any other reason for raising the dispute. Thus, the Labour Court arrived at a conclusion that the delay of 4 years is enormous and such a huge delay was not explained by the writ petitioner.

10.The Labour Court in its finding observed that it is clear even from the admission of the writ petitioner that she was absenting herself from duty without any valid reason. In Ex.M22, the letter sent by the petitioner to the 2nd respondent

Management, she has stated that she did a lot of mistake and took a lot of leave and she said sorry for this conduct. Though this letter has come more than four years after the date of dismissal order, this shows that she was absenting herself from duty without any valid reason. It was a case of unauthorized and wilful absence. The writ petitioner had not participated in the enquiry proceedings and she had not shown any interest to know about the result of the leave applications submitted by her. The writ petitioner could not go on expecting that she could continue to be absent for any number of days from work at her whims and fancy without inviting any action. Thus, the Labour Court found that the Enquiry Officer has rightfully found that the petitioner was unauthorizedly absent from duty. The Labour Court finally concluded that the petitioner had exhibited adamant attitude in not responding to the communications from the employer while she was unauthorizedly absent.

11. In the case of Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T.Murali Babu, Civil Appeal No.1941 of 2014 dated 10.02.2014, the Hon'ble Supreme Court considered a case, where the employee was dismissed for unauthorized absence of almost one year and seven months, in which the Apex Court found that no interference is required in the order of dismissal. The Supreme Court held that the plea of absence of "habitual absenteeism" is absolutely unacceptable.

12. By citing the above judgment, the Labour Court concluded that a person, who is on employment, is expected to be regular in his duty and work for the employer with devotion and sincerity. A person, who has not cared to find out what happened to her job for almost six years, is not entitled to any compensation. If such a compensation, if shown, will only be a misguided one. Accordingly, the industrial dispute was rejected.

13. This Court is of the considered opinion that the findings of the Labour Court are well considered one and based on the documents filed by the respective parties. The misconduct of unauthorized absent was established against the writ petitioner. Beyond the allegations, there was a huge delay of more than 4 years in raising an industrial dispute. This being the reason for not entertaining the industrial dispute by the Tribunal, this Court has no hesitation in coming to the conclusion that there is no perversity or infirmity as such in respect of the award passed by the Labour Court.

14. Accordingly, the award dated 11.03.2014, passed by the 1st respondent in I.D.No.74 of 2012 is confirmed and

consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan, Chennai-600 006.

2.The Chairman,
Madras Port Trust,
Rajaji Salai, Chennai-600 001.

+1 cc to M/s.A.Meenakshi Sundaram, Advocate Sr.No. 89595

+1 cc to M/s.Babitha Sunil, Advocate Sr.No. 88384

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W.P.No.18629 of 2014

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