

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.32937 of 2019

And

W.M.P.Nos.33361 and 33362 of 2019

M.Velumurugan

.. Petitioner

-vs-

The Managing Director,
Tamil Nadu Zari Limited,
Industrial Estate,
Orikkai,
Kancheepuram-631 502.

.. Respondent

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the respondent in No.2013-14/Labours dated 03.02.2014 and the subsequent order dated 05.04.2019, rejecting the reinstatement into employment and quash the same and consequentially, directing the respondent to reinstate the petitioner into employment with all attendant benefits, including monetary and service benefits.

For Petitioner : Mr.J.Nagarajan

ORDER

The order of termination, terminating the services of the writ petitioner by the respondent in proceedings dated 03.02.2014, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the writ petitioner was placed under suspension on 23.07.2012 and the allegations against the writ petitioner was about the theft of zari. A domestic enquiry was conducted and based on the findings of the Enquiry Officer, the writ petitioner was terminated from service by the respondent in proceedings dated 03.02.2014. In the year 2015, conciliation proceedings were initiated and a failure report was submitted on 31.08.2015.

3. The learned counsel for the writ petitioner made a submission that in a criminal case registered against the writ petitioner for the alleged offence of theft of zari, the competent Judicial Magistrate passed an order of acquittal and therefore, the order of termination is also to be set aside.

4. Based on the failure report dated 31.08.2015, the writ petitioner has not raised any industrial dispute. The time limit for raising an industrial dispute, as of now, is 3 years. Instead of raising a dispute, now after a lapse of more than 5 years from the date of termination i.e., on 03.02.2014, the writ petitioner has chosen to file the present writ petition.

5. Pendency of the criminal case, cannot be a bar for an employee to approach the Labour Court to challenge the order of termination. Even in case of acquittal, the same would not be a bar for the employer to continue the disciplinary proceedings. The standard of proof required for a criminal case is strict in nature. However, no such strict proof is required in the disciplinary proceedings.

6. Preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. This being the distinct and different procedures to be adopted both for the criminal case as well as the disciplinary proceedings, mere pendency of a criminal case is not a bar for an employee to approach the Labour Court. Challenging the order of termination or pendency of a criminal case, is not a bar for an employer to continue the disciplinary proceedings. This being the legal principles, the contention of the writ petitioner that he waited for the final disposal of the criminal case, is mis-conceived and cannot be accepted.

7. This Court is of the considered opinion that the writ petitioner was terminated from service during the year 2014 and mere acquittal in a criminal case would be a ground to grant exoneration from the disciplinary proceedings. The disciplinary proceedings were concluded in the year 2014 itself. The writ petitioner was terminated from service and subsequently, the writ petitioner has submitted an application on 14.03.2019 and 01.04.2019, based on which another reply was given by the respondent on 05.04.2010. This order dated 05.04.2019 would not provide a fresh cause of action in respect of the order of termination, which was issued on 03.02.2014.

8. Merely by submitting an application after application or receiving subsequent reply, would not provide a fresh cause of action in respect of the original punishment

imposed during the year 2014. The writ petitioner cannot restore the cause of action, which arose on 03.02.2014, when the order of termination was issued.

9. This being the factum established, this Court is of an opinion that the writ petition cannot be entertained and further more, the order of termination, now challenged, without raising an industrial dispute under the provisions of the Industrial Disputes Act, 1947, cannot be entertained at all.

10. Accordingly, the writ petition is devoid of merits and the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

Svn

To

The Managing Director,
Tamil Nadu Zari Limited,
Industrial Estate,
Orikkai,
Kancheepuram-631 502.

+lcc to Mr.J.Nagarajan, Advocate SR.98696

W.P.No.32937 of 2019

KJ(CO)
CB(17/12/2019)

सत्यमेव जयते

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