



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.4006 of 2019

and

W.M.P. (MD)No.3095 of 2019

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Y.Sundarrajan

... Petitioner

vs.

The Divisional Manager, I/C.,
Arasu Rubber Corporation Limited,
A Government of Tamil Nadu Undertaking,
Keeriparai,
Kanyakumari District - 629 851.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records regarding the impugned order in Na.Ka.No.499/18 L, dated 11.10.2018, issued by the respondent herein, quash the same and consequently, direct the respondent to reinstate the petitioner in the employment of M/s.Arasu Rubber Corporation Limited with retrospective monetary benefits and service benefits and other benefits to the petitioner, unliquidated compensation of money benefits from the respondent.

For Petitioner : Mr.Y.Sundarrajan
Party-in-Person

For Respondent : Mr.T.Ravichandran
Government Advocate

ORDER

The petitioner is challenging the order of the respondent dated 11.10.2018, suspending him from service and calling for explanation for the charges mentioned therein.

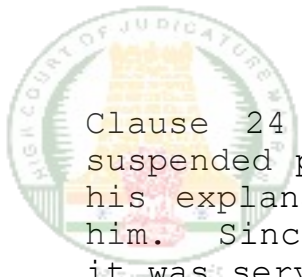
2.The petitioner appeared in person. According to the petitioner, he was working as a Tapper in the respondent Corporation. As per the customary practice of the respondent Corporation, the employees after attaining the age of superannuation i.e., after attaining the age of 58 years, their services will be extended upto 60 years and the respondent will be paid pensionary benefits and salary between the age of 58 and 60 years. The petitioner attained the age of 58 years on 15.04.2018. He made an application on 10.10.2018 to the Commissioner of Provident Fund, Nagercoil, Kanyakumari District, requesting him to take steps for getting pension from 16.05.2018, the date of attainment of his superannuation, along with a copy marked to the Managing Director of Arasu Rubber Corporation Limited, Nagercoil, Kanyakumari District.



3. Thereafter, on 13.10.2018, when he went for work at 06.00 a.m., one Muniyappan, Field Assistant of the respondent Corporation insisted the petitioner to give an undertaking to him stating that the petitioner will not take any action on his application dated 10.10.2018, which was sent to the Commissioner of Provident Fund and the Managing Director of Arasu Rubber Corporation. The petitioner refused to do so. Therefore, the said Muniyappan orally denied work to the petitioner on 13.10.2018. Hence, the petitioner sent an application dated 13.10.2018 to the respondent, enclosing the application dated 10.10.2018, to permit him to work in the Corporation. While so, he received the impugned order dated 11.10.2018, which was served on him on 24.10.2018, suspending him from service and calling for explanation for the charges mentioned therein. The petitioner filed the present Writ Petition challenging the said order.

4. The Petitioner/Party-in-Person contended that the impugned order dated 11.10.2018 and the impugned notice of domestic enquiry are arbitrary and contrary to Clause 25 of the Standing Order. The impugned order and notice for enquiry are issued by the respondent by abusing his power and position as Divisional Manager (In-charge). The petitioner received the domestic enquiry notice dated 20.10.2018, informing him about the domestic enquiry to be held on 22.10.2018 only on 24.10.2018. According to the petitioner, the first show cause notice dated 11.10.2018 was served on him on 24.10.2018. He sent a reply to the same on 26.10.2018. Before receipt of his explanation, the respondent has sent another domestic enquiry notice dated 20.10.2018, which was received by him on 27.10.2018, to appear for enquiry to be held on 02.11.2018. Both the notices were prepared before the receipt of his explanation. Further, the respondent is not having jurisdiction to issue the impugned order and the notices for domestic enquiry, as complaint was given against him to the Commissioner of Provident Fund and prayed that to quash the impugned order dated 11.10.2018 and a consequential direction to the respondent to reinstate him into service with all monetary benefits.

5. The respondent filed counter affidavit and denied all the averments made in the affidavit filed by the petitioner. The learned counsel appearing for the respondent contended that when the petitioner was on duty on 10.10.2018 at 06.45 a.m., he abused one Muniappan, Field Assistant and Justinraj, Field Assistant (In-charge) in filthy language and threatened to stab them with tapping knife, when they went for inspection to the place where the petitioner was working. The workers, who witnessed the incident interfered and separated them. The said Muniappan and Justinraj gave complaint to the Management. On their complaint, after enquiry, the Field Officer sent a report on 11.10.2018, recommending disciplinary action to be initiated against the petitioner. As per



Clause 24 of the Certified Standing Orders, the petitioner was suspended pending enquiry for 10 days and was called upon to submit his explanation within three days for the charges leveled against him. Since the petitioner refused to receive the said order, when it was served to him in person, the same was pasted on 13.10.2018 in the door of his house. Further, the said notice was sent to the petitioner through RPAD also. The petitioner has not submitted any explanation. Hence, domestic enquiry was ordered and the date of enquiry was fixed as 22.10.2018 through the notice dated 20.10.2018. The petitioner did not appear for enquiry on the said date. The enquiry was adjourned to 02.11.2018 and the notice of enquiry dated 24.10.2018 was sent to the petitioner. On 02.11.2018 also, the petitioner did not appear for enquiry. Again, the enquiry was adjourned to 07.12.2018 and the notice dated 26.11.2018 was sent to the petitioner. The petitioner did not appear for enquiry. In such circumstances, the petitioner was set *ex parte*, as he was avoiding the enquiry. The domestic enquiry was held and the charges leveled against the petitioner were proved by examining the victims and other eyewitnesses. Based on the enquiry report dated 08.01.2019, the petitioner was dismissed from service by order dated 23.01.2019 with effect from 11.10.2018, the date of suspension. The order was pasted on the door of the petitioner's house on 30.01.2019 and the signatures of the witnesses were obtained for affixing the said order on the door of the petitioner's house. Further, the order of dismissal was also sent to the petitioner by RPAD with acknowledgment due and therefore, the relief sought for by the petitioner challenging the order dated 11.10.2018, has become infructuous. The petitioner, being a worker has to raise an Industrial Dispute as per the provisions of the Industrial Disputes Act, 1947. As per the Certified Standing Orders, disciplinary action can be taken against the worker and the respondent has jurisdiction to issue the impugned order. The petitioner has suppressed the fact that after the impugned order, enquiry has been held, statements of victims and eyewitnesses were recorded and finally, he was dismissed from service. All the notices and the order of dismissal were pasted on the door of the petitioner's house and also sent by registered post with acknowledgment due. In view of the order of dismissal, the relief sought for in the Writ Petition has become infructuous and prayed for dismissal of the Writ Petition.

6.I have heard the Petitioner/Party-in-Person and the learned counsel appearing for the respondent and perused the materials on record.

7.The petitioner is challenging the order of the respondent dated 11.10.2018, suspending him from service and the show cause notice was issued to him to appear for enquiry by the respondent. The ground of challenge is that the respondent is disqualified from issuing the impugned order dated 11.10.2018 and the subsequent



enquiry notices, as the petitioner has given a complaint to the Commissioner of Provident Fund, Nagercoil and also sent a copy of the same to the Managing Director, Arasu Rubber Corporation. In view of the complaint given by the petitioner against respondent and others, the respondent is not having jurisdiction or power to suspend the petitioner from service. The impugned order suspending the petitioner from service and also leveling charges against him are based on the complaint given by Muniappan, Field Assistant and Justinraj, Field Assistant (In-charge). The petitioner has given a petition to the Commissioner of Provident Fund about the non-payment of his terminal benefits by the Management. This will not disentitle the respondent from initiating the disciplinary proceedings for the misconduct alleged to have been committed by the petitioner based on the complaint given by the Field Assistant. The respondent has given opportunity to the petitioner to participate in the domestic enquiry to put forth his case. Only after the petitioner failed to participate in the enquiry, the enquiry was proceeded ex parte by examining the witnesses. Based on the report of the Enquiry Officer, the petitioner was dismissed from service. In the view of the fact that the respondent is not disqualified to initiate disciplinary proceedings against the petitioner, for the reasons alleged by the petitioner and that the petitioner was dismissed from service after completion of domestic enquiry, the relief sought for in the Writ Petition has become infructuous. Hence, this Writ Petition is dismissed as infructuous. No costs. It is open to the petitioner to challenge the order of dismissal before the appropriate forum, if he is so advised. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

To

The Divisional Manager, I/C.,
Arasu Rubber Corporation Limited,
A Government of Tamil Nadu Undertaking,
Keeriparai,
Kanyakumari District - 629 851.

+1 CC to Mr.Y.SUNDARAJAN, Party-in-Person(SR-90429[F] dated 30/09/2019)

W.P.(MD)No.4006 of 201930.09.2019

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