

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.01.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26079 of 2005

S.Gopalsamy

.. Petitioner

vs

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management
Pankaja Mills,
A Unit of NTC (Tn & P) Ltd.,
Coimbatore - 641 045

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent made in I.D.No.144 of 2002 dated 28.04.2005 and quash the same and further direct the 2nd respondent to reinstate the petitioner in service with continuity of service and all attendant benefits.

For Petitioner : Mr.V.Ashok Kumar
for Su.Srinivasan

For Respondents: Mr.R.Parthiban for R2.
R1-Court

ORDER

This writ petition is filed challenging the award of the Labour Court made in I.D.No.144 of 2002 dated 28.04.2005, dismissing the petition filed under Section 2A(2) of the Industrial Disputes Act.

2. The case of the petitioner before this Court is as follows:

He was employed by the 2nd respondent Management as a permanent worker in 1988. His liver was damaged so badly and hence, he applied for E.S.I. leave. The petitioner was admitted as an inpatient in Vedanayakam Hospital from 28.01.1999 onwards and finally on 30.08.2000, an operation was performed to the petitioner and he was discharged on 10.09.2000. In the meantime, the petitioner was issued with a show cause notice dated 27.03.2000 for his unauthorised absence. The petitioner gave reply on 31.03.2000. The 2nd respondent not being satisfied with the explanation, ordered

for domestic enquiry. In the domestic enquiry, instead of following the fair procedure in compliance with principles of natural justice, the petitioner was brainwashed to give an answer admitting the absence, thereby luring that he will be pardoned for his misconduct. Though the petitioner had the benefit of keeping another assistant with him, he also informed the petitioner to give such answer admitting the absence. The petitioner, without understanding the consequence had given the answer admitting his absence. The Enquiry Officer, without going into any other aspects, concluded the enquiry and had given his findings, based on the answer given by the petitioner. The 2nd respondent accepted the report of the Enquiry Officer and terminated the service of the petitioner. The Labour Court did not interfere with the punishment. Hence, the present Writ Petition.

3. Learned counsel for the petitioner submitted that even though it is true that the petitioner has admitted before the Enquiry Officer that he was unauthorisedly absent, such statement was given only at the instance of the Management with an assurance that the petitioner would be pardoned, if he gives such statement. Therefore, he contended that the Labour Court ought to have considered those aspects, while deciding the Industrial Disputes.

4. On the other hand, the learned counsel appearing for the 2nd respondent Management submitted that once the petitioner had admitted the guilt before the Enquiry Officer, the Management is not required to adduce any other evidence to prove the delinquency. He further pointed that the petitioner did not raise the point before the Labour Court as raised in this writ petition as though the Management has insisted the petitioner to admit the guilt. Therefore, he submitted that a new point which was not raised before the Labour Court cannot be permitted to be raised in this Writ Petition. Learned counsel further contended that the petitioner having admitted the charge for unauthorised absence before the Enquiry Officer, that too, for a continuous period from 25.12.1999 onwards, the Management is left with no other option except to pass the order of termination in order to maintain discipline among the workers. Thus, he submitted that the award of the Labour Court in dismissing the I.D. need not be interfered with by this Court while exercising discretionary jurisdiction.

5. Heard both sides. Perused the materials placed before this Court.

6. It is seen that the petitioner was issued with a show cause notice on 27.03.2000 stating that he is unauthorisedly absent from 25.12.1999 onwards and therefore, as to why he should not be proceeded with departmental enquiry. The petitioner gave a reply on 31.03.2000 stating that he was unwell and taking treatment in the Hospital. It is the

specific case of the petitioner before this Court that he was admitted as inpatient in a private hospital from 28.01.1999 onwards and he was discharged only on 10.09.2000. However, perusal of the enquiry report would show that he has participated in the enquiry on 12.07.2000. Therefore, it is seen that the above statement made by the petitioner before this Court as if he was hospitalised even on the date of enquiry is factually incorrect. It is an admitted case of the petitioner that he participated in the enquiry and admitted the guilt of the unauthorised absence. The Enquiry Officer, after noting the admission made by the petitioner, has submitted the Enquiry Report, finding the petitioner guilty of the charges. Thereafter, the order of termination was passed against the petitioner. When the petitioner has chosen to challenge the said order of termination before the Labour Court, he has not stated anywhere in the petition that he was forced or induced by the Management to give statement before the Enquiry Officer admitting the guilt. On the other hand, a careful perusal of the Petition filed before the Labour Court in the I.D. does not indicate any such contention as raised in this writ petition, except to state that the Enquiry Officer conducted the enquiry without marking the documents. Perusal of the Enquiry Report would show that Exs. M1 to M3 were marked, out of which, Ex.M3 is the reply given by the petitioner. Even though the petitioner was not in a position to disprove the Enquiry Officer's report, at least he should have made a specific averment in the petition and let in evidence before the Labour Court in support of his claim and contentions. It is seen that the petitioner neither examined himself as a witness nor any third party as an independent witness. He has not marked any document as well in support of his claim before the Labour Court. The Labour Court, after elaborately considering the facts and circumstances, more particularly, the admission made by the petitioner for the unauthorised absence, has passed the award, rejecting the petition.

7. Going by the above stated facts and circumstances and the detailed order passed by the Labour Court and in view of the stand taken by the petitioner before the Enquiry Officer as well as before the Labour Court, I find that the petitioner is not entitled to take a different stand before this Court, that too, by raising a new ground, which was not raised either before the Enquiry Officer or before the Labour Court. Hence, based on such new ground the petitioner is not entitled to succeed. Accordingly, I find that the present writ petition does not merit for consideration. Therefore, the Writ Petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

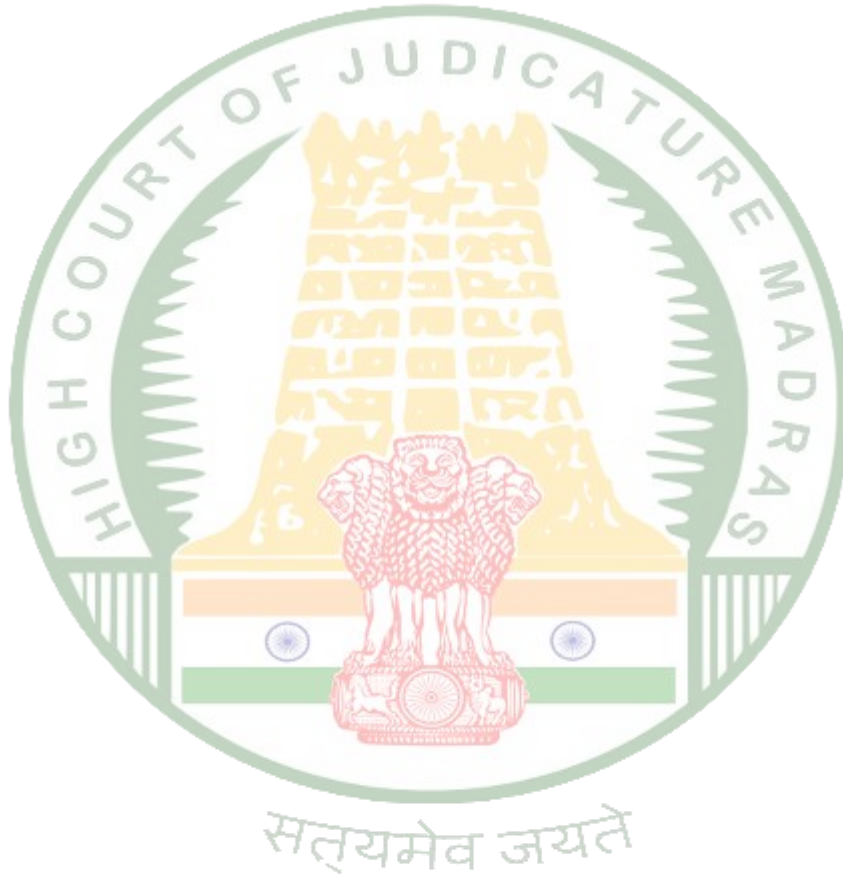
1. The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.R.Parthiban , Advocate SR.No. 3757

+1cc to Mr.Su.Srinivasan , Advocate SR.No. 4065

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A.SK(19/02/2020)



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