



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30/04/2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.20499 OF 2008

The Corporation of Chennai
Rep. by its Commissioner
Ripon Buildings,
Chennai - 3.

... Petitioner/Petitioner

Vs.

1. R.Nagaraj

2. The Presiding Officer,
II Additional Labour Court,
Chennai - 104

... Respondents/Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records in I.D.No.900 of 2001 on the file of II Additional Labour Court, Chennai, order dated 28.02.2007 and quash the same.

For Petitioner	:	Ms.Karthikaa Ashok
For Respondent-1	:	Mr.D.Nagasaila
For Respondent-2	:	Labour Court

ORDER

The Award of the Labour Court is under challenge in the present writ petition.

2.The brief facts are as follows:-

The first respondent was appointed as a Desilting employee on 05.05.1989 on a monthly salary of Rs.2,350/-. He absented himself from duty from 15.01.1995 till 28.08.1998. Therefore, the petitioner/Corporation issued a charge memo on 19.05.1999 and the first respondent submitted his explanation on 25.05.1999. The Enquiry Officer has held that charge Nos.1 and 2 are not proved and charge Nos.3 and 5 are proved. The petitioner / Corporation issued a second show cause notice and the first respondent submitted his explanation on 25.10.1999. Not being satisfied with the reply, the first respondent was terminated



from service on 13.01.2000. The appeal filed against the order of termination was also dismissed. Thereafter, the first respondent approached the Labour Court, wherein, the Labour Court has found that the findings of the Enquiry Officer is erroneous in respect of charge Nos.3 to 5. Since charge Nos.1 and 2 were held not proved, the Enquiry Officer should have held the consequential charges also not proved. Basing it reliance on the exhibits marked by parties, it awarded reinstatement with backwages with continuity of service continuity of service and treat the period of absence as leave on medical grounds. Against which, the petitioner is before this Court.

3.Even though various grounds were raised, the main focus of the petitioner is on granting backwages for the period during which the first respondent was unauthorisedly absent.

4.It is relevant to note that a charge memo was issued to the first respondent for absenting himself from 15.01.1995 unauthorisedly. The first respondent submitted his explanation, which was marked as Ex.A4, wherein it was stated that due to the injury caused by fire and mental illness, he could not attend to work. Therefore, he was not in a position to submit the leave letter in person, but sent it through his wife. Before the Enquiry Officer also, a statement was made and therefore, the Enquiry Officer has found that the first respondent had submitted leave letters and therefore, it cannot be held as unauthorised absence. Further, in respect of non submission of explanation to the charge memo, the Enquiry Officer has found that it was issued after a period of three years and therefore, it was not legal.

5.Now that, it has to be ascertain as to whether the Labour Court has rightly arrived at the conclusion or not?

6.The Labour Court lays its decision based on Exs.W11 and W12. Ex.W11 is the medical certificate and Ex.W12 is the fitness certificate. Ex.W11 - medical certificate issued by the Regional Medical Board, Government General Hospital, Madras - 3, reads as under:

"patient is reportedly have been working in Malaria Distilling Unit in Corporation of Madras. He is absent from 15/1/95. He was given medical leave for 1498 days from 15/1/95 to 26/4/98. One by name Dr.Nagaraj, Asst. Surgeon, Chenglepet Medical College Hospital, diagnosed as case of Depression. Now patient is referred to OP for detailed examination and examined at Psychiatry Ward and then send him to GH with a report."



7. Thereafter, a fitness certificate was issued vide Ex.W12 which reads as under:

"The illness noted in the medical certificate was found to be not genuine on examination and the leave availed so far shall not be regularised on medical grounds"

A reading of the fitness certificate goes to show that the illness noted in the medical certificate was found to be not genuine on examination and the leave shall not be regularised on medical grounds.

8. Curiously, the finding of the Labour Court was that the leave shall be regularised on medical grounds contrary to the fitness certificate issued by the competent Regional Medical Board. The Labour Court has failed to apply its mind and appreciate the documents in proper perspective. Therefore, the finding is contrary to evidence and not sustainable.

9. In a similar circumstance, the Hon'ble Supreme Court in STATE OF ODISHA AND OTHERS VS. GANESH CHANDRA SAHOO [CIVIL APPEAL NO.9514 OF 2019 DATED 10.01.2010] has held that the certificate issued by the Doctor, who has not treated the patient, shall not be relied on.

10. In yet another judgment in NEW INDIA ASSURANCE CO. LTD., VS. VIPIN BEHARI LAL SRIVASTAVA [CIVIL APPEAL NO.5213 OF 2006 DATED 21.02.2008] the Hon'ble Supreme Court has held as under:-

"18. Mere sending of an application for grant of leave much after the period of leave was over as also the date of resuming duties cannot be said to be a bona fide act on the part of the workman. The Bank, as noticed hereinbefore, in response to the lawyer's notice categorically stated that the workman had been carrying on some business elsewhere.

19. We cannot accept the submission of Mr. Mathur that only because on a later date an application for grant of medical leave was filed, the same ipso facto would put an embargo on the exercise of the jurisdiction of the Bank from invoking clause 2 of the bipartite settlement.



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20.It may be true that in a case of this nature, the principles of natural justice were required to be complied with the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance of the requirements of the principles of natural justice."

11.The case of the first respondent is that he was treated in the Institute of Mental Health, Kilpauk, Chennai, whereas, the fitness certificate which he relied on was issued by the Assistant Surgeon of Chenglepet Medical College and Hospital, dated 27.04.1998, certifying him as fit to join duty, whereas he continued to get treatment till August 1998. The certificate marked as Ex.W11 is dated 28.08.1998 and the fitness certificate issued by the Regional Medical Board was dated 06.11.1998, which means the first respondent could have continued to be under treatment or under observation till 06.11.1998 and therefore, the certificate obtained from the Assistant Surgeon of Chenglepet Medical College and Hospital does not appear to be genuine.

12.It is relevant to note that only because an employee submits the leave letters continuously, he is entitled to medical leave. As per the leave rules, the medical leave shall be sanctioned on production of medical certificate. The leave letter on medical grounds shall accompany a medical certificate.

13.In the instant case, it is stated that the first respondent has submitted leave letters, but none of the leave letters were marked nor the records were called for, by the Court, but simply a reference was taken from Ex.M6. As discussed above, the leave letters, which were not accompanied by the medical certificate and which was not sanctioned, will not automatically entitle the employee to medical leave. In so far as this issue is concerned, the finding of the Labour Court is based on no evidence and also contrary to evidence. Therefore, the finding of the Labour Court that the first respondent is entitled to reinstatement with continuity of service with backwages is perverse.

14.Even though the award of the Labour Court can be set aside in its entirety, a perusal of the records placed before the Court goes to show that the enquiry proceedings were not



conducted in a fair and proper manner. The enquiry report is not based on any material, and only as per the explanation submitted by the first respondent. The Enquiry Officer has not discussed the reasons, based on the evidence, he has expressed his personal opinion. Above all, the disciplinary authority has issued a show cause notice as to why the findings of the Enquiry Officer need not be accepted and he can differ the same before passing the final orders. But strangely, the show cause notice contained the proposed punishment which means the Authority has pre-determined the issue. Therefore, on these grounds, the order of dismissal has to be set aside. Even though the Labour Court has arrived at a conclusion on different reasons, without considering the relevant materials, the order of dismissal imposed on the first respondent is liable to be set aside, on other grounds.

15. Accordingly, the Award dated 28.02.2007 passed in I.D.No.900 of 2001 by the II Additional Labour Court, Chennai is modified into one of reinstatement without continuity of service and the first respondent is entitled to be reinstated as fresh entrant. The Writ Petition is partly allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

TK

To

The Presiding Officer
II Additional Labour Court
Chennai - 104 .

+1 cc to Mr.N.Beulah John Selvaraj, Advocate Sr. No.26479

WP NO.20499 OF 2008

PVS(CO)
TE (26/08/2021)