



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.8230 of 2018
and
W.M.P.No.10198 of 2018

1. The General Manager (Marketing),
The Tamil Nadu Co-operative
Milk Producers Federation Ltd,
3-A, Chamiers Road,
Nandanam, Chennai - 600 035.
2. The Managing Director,
The Tamil Nadu Co-operative Milk
Producers Federation Ltd.,
Madhavaram Milk Colony,
Chennai - 600 051.

...Petitioners

-Vs-

1. A.M.L.Alikhan
2. The Presiding Officer,
IInd Additional Labour Court,
High Court Campus,
Chennai - 600 104.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the order dated 26.04.2017 passed in I.D.No.110 of 1999 on the file of the II Additional Labour Court, Chennai and quash the same.

For Petitioners : Mr.R.Bala Ramesh
For R1 : Mr.Akhil Akbar Ali
for M/s Akhil Akbar Ali Associates

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The first respo herein herein, while working as a Selection Grade Assistant in the Tamil Nadu Co-operative Milk Producers' Federation Limited, after putting up a total service of 22 years and above, had applied for Privilege Leave from 10.10.1995 to 27.10.1995, which was sanctioned by the first respondent on 17.10.1995. Thereafter, he had sought for extension of the leave, which ultimately resulted in framing of two sets of charges against him. There were two enquiries conducted with regard to his absence, which was termed as unauthorised. The charges were held to be proved and ultimately, he was removed from the service on 20.10.1998.

3. The Labour Court had relied on a decision of the Hon'ble Supreme Court of India in the case of Krishnakant B.Parmar Vs Union of India reported in (2012) 3 SCC 178, wherein it was held that in a department proceeding, when the charges are for unauthorised absence, the disciplinary authority is required to prove that the absence is wilful in nature and in the absence of the same, such absence cannot be termed to be a misconduct. The Labour Court had also placed reliance on two exhibits filed by the management in Ex.M.17 and Ex.M18, wherein there were discrepancies in the passport numbers, which were vital documents and thereby came to the conclusion that the same cannot be relied upon for concluding that the first respondent was out of the country during the relevant point of time.

4. The learned counsel for the petitioners placed reliance on Ex.M.14, which is a letter given by the petitioner to the Superintendent of Police, wherein it is stated that the first respondent was outside the country from 17.10.1995 to 08.04.1997.

5. The scope of interference to an award of the Labour Court by this Court exercising its power under Article 226 of the Constitution of India is very limited. One of such limitations would be that this Court would not reappraise the evidences adduced before the Labour Court. As such, analysing the evidences filed by the management once again would amount to reappraisal of such an evidence.

6. The Hon'ble Supreme Court, in the case of Madurantakam Co-op. Sugar Mills Ltd., Vs. S.Viswanathan reported in (2005) 3 SCC 193, had reiterated this proposition in the following manner:

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a



WEB COPY

power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

13. The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as by the learned Single Judge and disagreed with the finding of the learned Single Judge.

.....

16. We note that the Labour Court has taken into consideration the fact that the complainant had stated that on the day when he went to meet the workman he was greeted with an abuse, but this piece of evidence was not accepted by the Labour Court



WEB COPY

rightly because it is rather difficult to accept that any normal person who meets another person for the first time in his life would straight away abuse him without any rhyme or reason. In this background, we cannot conclude that the finding of the Labour Court on this question is perverse. The other argument of the learned counsel for the appellant is that there was evidence to show that the demand of Rs.10/- was made as illegal gratification in the guise of donation and that case ought to have been accepted. We must state that even this question was considered by the Labour Court and was rejected on the ground that the mere statement of the complainant in this regard without there being any corroborative material was insufficient to hold the workman guilty. Even this finding in our opinion cannot be held to be perverse taking into consideration the over all facts of the case. In regard to the third charge of not allowing the complainant to enter the godown also, it cannot be said that the finding of the Labour Court is perverse. In such a background it is not possible for this court to accept the contention of the Management that the Labour Courts findings are unsustainable in law. It may be possible for another person to take a different view, but certainly it is not possible to give a finding that the conclusion of the Labour Court was either perverse or not based on evidence."

7. Even otherwise, the predominant ground on which the Labour Court had ordered for reinstatement is that the unauthorised absence alleged by the management was not wilful in nature. For such a proposition, the Labour Court had placed reliance on Krishnakant B.Parmar's case (supra).

8. The learned counsel for the petitioner has not relied upon any decision to either distinguish the aforesaid decision of the Hon'ble Supreme Court or to substantiate that an unauthorised absence, without any intention or the absence of compelling circumstances, would amount to a misconduct.



9. Thus, the reasoning adopted by the Labour Court that the disciplinary authority should establish in the departmental enquiry that a mere unauthorised absence would not amount to a misconduct, unless and until it is wilful in nature, seems acceptable. When the Labour Court had come to the conclusion based on this ratio, this Court does not find any reason to take a different view. The discrepancies between Ex.M.17 and Ex.M.18 pointed out by the Labour Court for the purpose of not placing reliance on the passport, is also not under dispute.

10. Thus, I do not find any merits in the present writ petition that would warrant interference to the award. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. In view of the dismissal of this writ petition, the first respondent herein would be entitled to seek for the back wages from the management, as well as for refund of the back wages already deposited by the management before the Labour Court.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

hvk/ata

To

1. The Presiding Officer,
IInd Additional Labour Court,
High Court Campus,
Chennai - 600 104.

+1CC to M/s.Akhil Akbar Ali Associates, Advocate, Sr.No.55986
+1CC to Mr.R.Bala Ramesh, Advocate, Sr.No.55759

W.P.No.8230 of 2018
and
W.M.P.No.10198 of 2018

RSI (CO)
K.RK. (02.11.2021)