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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.1224 of 2018

V.Munusamy

... Appellant/Petitioner

Vs

1.The Executive Engineer,
Mettur Power Distribution Circle,
Mettur Dam - 1.

2.The Presiding Officer,
Labour Court, Salem.

... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 06.02.2018 made in W.P.No.2552 of 2018.

Prayer in W.P.No.2552 of 2018:

Praying to issue a Writ of certiorarified Mandamus calling for records pertaining to the Order dated 7.12.2015 passed by the 2nd respondent herein in I.D. 36/2014 on the file of the 2nd respondent herein and quash the same and further direct the 1st respondent herein to reinstate the petitioner together with backwages.

For Appellant : Mr.Sundaravadhanan
for Mr.G.Mohana Krishnan

For Respondents : Mr.P.Subramanian for R1
R2 - Court

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal is filed by the appellant, being aggrieved against the order of the learned single Judge, who in turn confirmed the award passed by the Labour Court.



2.The appellant was an employee of the first respondent. Charges have been framed against the appellant on 02.05.2006 to the effect that he was continuously absent unauthorisedly from 20.01.2005 to 13.09.2005 running about 237 days. Incidentally, he was informed that on various other occasions viz., eight occasions between the year 2000 and 2004, he was unauthorisedly absent as similar to the charges framed and accordingly punished. The last time when he was absent was from 01.11.2004 to 29.12.2004.

3.Not satisfied with the explanation given by the appellant, a domestic enquiry was conducted and the report inducts the appellant inter alia holding that the charges are proved. Taking note of the aforesaid report of the enquiry officer, a show cause notice was issued. On considering his reply, an order of dismissal was passed on 08.03.2007 rejecting his representation.

4.The appellant raised a dispute under Section 2A(2) of the Industrial Disputes Act. In the claim petition, the appellant stated that he was absent from 03.03.2007 to 11.03.2007 due to ill health and during the aforesaid period of hospitalisation, the order of dismissal dated 08.03.2007 has been issued to him. It has been further stated that the first wife left him with the child and thereafter he remarried and living with the second wife with three children.

5.The Labour Court found that the enquiry was conducted in a free and fair manner and the appellant has not produced any adequate materials to substantiate his case. No oral evidence has been let in as against Exs.P1 to P4. On behalf of the first respondent, Exs.M1 to M15 have been marked including the attendance register pertaining to the appellant. The Labour Court by way of speaking order dismissed the claim petition. The learned single Judge concurred with the view of the Labour Court. Challenging the aforesaid order, the present appeal has been filed.

6.Learned counsel appearing for the appellant raised two contentions viz., previous punishment ought not to have been taken into consideration as they have been concluded and the fact that the appellant was suffering due to desertion of the wife has not been taken into consideration. Incidentally, it has been submitted that the case as projected by the appellant that he was hospitalised between 03.03.2007 and 11.03.2007 was also taken note of while passing the order of dismissal on 08.03.2007.



7.Mr.P.Subramanian, learned counsel appearing for the first respondent submitted that though the charge is for the period between 20.01.2005 to 13.09.2005, even thereafter, the appellant has not chosen to report for duty. There is no bar in law to take into consideration the previous conduct of the appellant. Hence the writ appeal will have to be dismissed.

8.We do not find absolutely any merit in this appeal. Due procedure has been followed in conducting the domestic enquiry. The appellant was furnished with the details of the earlier punishment imposed against him. On a perusal, we find that on eight previous occasions the appellant was given punishment for similar unauthorised absence. The last one was between 01.11.2004 and 29.12.2004. On the next month, he once again adopted the same practice. Though the appellant has contended that he was sufficiently sick not to attend the work, there is absolutely no material to substantiate it. Law does not prohibits consideration of previous conduct of the delinquent employee when it comes to the quantum of punishment. The appellant has also not placed proper facts before the Labour Court. The averment was only to the effect that he was hospitalised between 03.03.2007 and 11.03.2007 and all of a sudden, the order of dismissal was passed against him on 08.03.2007. In fact, the charges have been framed, sufficient opportunities were given to the appellant and thereafter only, the order of dismissal was passed. Though the learned counsel appearing for the appellant contended that the appellant was mentally affected due to the desertion of the first wife, the said story cannot be accepted in the teeth of the submission made in the claim petition that he remarried and had three children.

9.In such view of the matters we do not find any error in the order passed by the learned single Judge warranting interference. Accordingly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



mmi/ssm

To

WEB COPY

1.The Executive Engineer,
Mettur Power Distribution Circle,
Mettur Dam - 1.

2.The Presiding Officer,
Labour Court,Salem.

+2cc to Mr.G.Mohanakrishnan, Advocate Sr.34659, 34729

+1cc to Mr.P.Subramanian, Advocate Sr.34823

W.A.No.1224 of 2018

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