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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.09.2021
PRONOUNCED ON : 06.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28837 of 2015
and M.P.No.1 of 2015

The Correspondent,
St. Gabriel Higher Secondary School,
Chennai-600 108.

...Petitioner

Vs.

1.S.Jalamma

2.S.Visnuvarthan

3.A.Aparna (minor)
rep. by her mother & natural
guardian S.Jalamma
[LRs of the deceased Mohanbabu-
claimant in I.D.No.782 of 2010]

4.The Presiding Officer,
II Additional Labour Court,
Chennai-600 104.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned award of the Hon'ble Tribunal made in I.D.No.782 of 2010 dated 20.04.2015, by the fourth respondent and to quash the same.

For Petitioner : Mr.Joseph Thatheus Jerome
For Respondent : M/s.N.Beulah John Selvaraj
Nos.1 to 3

O R D E R

The present Writ Petition is heard through Video Conferencing on 01.09.2021.

2. The writ petitioner is a Minority Aided School recognized by the Government of Tamil Nadu. One Mr.Mohan Babu was appointed as a Sweeper (hereinafter referred to as "workman") in



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a sanctioned and approved post in the petitioner Management School with effect from 01.10.1990. To a charge of unauthorized absence from 05.06.2007 till 21.08.2007, the workman tendered his apology, through his letter dated 03.09.2007 and sought for condonation of the absence. However, a charge memo dated 18.09.2007 came to be issued, for charges of unauthorized absence. The workman participated in the enquiry and once again tendered his apologies for the charges. Based on the enquiry report, the Management had proposed a punishment of 'termination of service' through a show cause notice dated 31.10.2007. In the said show cause notice, the workman was offered to go on voluntary retirement also. In his reply dated 09.11.2007, the workman had once again tendered his apologies and undertook to maintain good conduct in future. However, by an order dated 28.11.2007, the workman was removed from the services. As against the same, he had raised a dispute in I.D.No.782 of 2010 before the Labour Court, Chennai. Pending the dispute, the workman died on 04.07.2013 and the respondents 1 to 3 herein, who were his legal heirs were substituted in his place. On 20.04.2015, the Labour Court had passed the impugned award by directing notional reinstatement of the workman together with continuity of service, backwages and all other monetary benefits.

3. The learned counsel for the petitioner/Management would submit that the deceased workman was an habitual unauthorized absentee and that on several previous occasions, he had unauthorizedly absented himself, which misconducts were condoned by the Management based on his letters of apologies and undertakings to maintain a good conduct in future. It is also his submission that even after the charges were proved in the enquiry, the deceased workman had not availed the opportunity to opt for voluntary retirement and therefore, there is no infirmity in the punishment imposed by the disciplinary authority. In this background, the learned counsel drew the attention of this Court to the impugned award passed in I.D.No.782 of 2010 by the Labour Court and submit that the award itself is a non speaking order, since there was no justification as to how the Labour Court came to the conclusion that the deceased workman was entitled for notional reinstatement with benefits.

4. The short question that arises for consideration in the present Writ Petition is as to whether the Management were justified in imposing the major punishment of termination from service and whether the award of the Labour Court granting notional reinstatement with benefits requires interference?

5. It is not in dispute that the deceased workman, was appointed on 01.10.1990 as a Sweeper and had put in about 17 years of experience till his termination. It is also not in



dispute that prior to the impugned disciplinary action, the deceased workman had unauthorizedly absented himself on three occasions. In the present impugned departmental action, the deceased workman had replied to the show cause notice on 03.09.2007, wherein he had stated that his absence was due to the serious illness of his wife and that he had to take her to Andhra Pradesh for medical care. In the same reply, he had tendered his apologies and undertaken to maintain good conduct in future. Likewise, when the second show cause notice based on the enquiry report was issued, the deceased workman, in his reply dated 09.11.2007, admitted his unauthorized absence and tendered his apologies and sought for an excuse. The Management had, as a matter of fact, taken a lenient view and though had proposed the punishment of termination from service, gave an alternate to him to opt for voluntary retirement so as to enable him to get the monetary benefits. Till this juncture, this Court does not find any infirmity on the part of the Management in extending ample opportunities to the deceased workman. However, in the impugned order of termination, the Management was of the view that the workman had refused to go on voluntary retirement. Such a reasoning does not seem to be acceptable to this Court. When the deceased workman had tendered his apology and undertook to maintain good conduct in future, the question of opting to go on voluntary retirement would not arise. As a matter of fact, opting for voluntary retirement would be contradictory to his request to continue his services.

6. In this background, the legal issue that arises for consideration would be as to whether the punishment of termination from the services could be termed as "proportionate" to the charges or not?

7. In order to determine the proportionate of the punishment, it would be pertinent to determine as to whether the charges of unauthorized absence was wilful or not? In the case of Krushnakant B. Parmar Vs. Union of India & Another reported in 2012 (2) SLJ 19, the Hon'ble Supreme Court had held that the question as to whether the unauthorized absence from duty would amount to failure of devotion to duty cannot be decided without deciding the question as to whether such an absence was wilful or because of compelling circumstances. In the present case, the deceased workman assigned reasons for the charges of his unauthorized absence by stating that his wife was seriously sick and that he had to take her to Andhra Pradesh for medical treatment. He had also admitted the charges of unauthorized absence and tendered his apologies together with an undertaking of good conduct in future. In this background, it cannot be said that the unauthorized absence was wilful. On the other hand, the replies given to the show cause notices issued by the Management, can be construed to the effect that such an absence



was owing to compelling circumstances. The disciplinary authority had not gone into this aspect and rendered a finding to the effect that the absence on the part of the deceased workman was wilful, which aspect is opposed to the ratio laid down by the Hon'ble Supreme Court in Krushnakant B. Parmar's case (supra).

8. This apart, this Court has also taken into account the decision of the disciplinary authority in imposing the ultimate punishment of dismissal, inspite of the deceased workman having given certain explanations for his unauthorized absence, apologizing for the same and giving an undertaking for good conduct in future.

9. The Hon'ble Supreme Court in the case of Charanjit Lamba Vs. Commanding Officer, Army Southern Command and Others reported in 2020 (11) SCC 314, had held that in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed the punishment, the Writ Court would be justified in interfering with the same. By applying this ratio, this Court is able to infer that though the disciplinary authority was appraised of the reasons for the unauthorized absence of the deceased workman and who had also tendered his apologies together with an undertaking for good behaviour, they had chosen to impose major punishment of dismissal. Moreover, when the authority himself had earlier given an option to the deceased workman to opt for voluntary retirement, nothing prevented them from imposing an alternate lesser punishment of a compulsory retirement, which would have been more reasonable and proportionate to the gravity of the charges. In this background, this Court is of the view that a punishment of compulsory retirement to the deceased workman would be much appropriate and proportionate to the given circumstances of the case. However, in view of the earlier misconducts of unauthorized absence, it would not be appropriate to order for the entire backwages, but on the other hand, if the award of the Labour Court is modified to the effect that the legal heirs of the deceased workman would be entitled to receive the death cum retirement benefits, the ends of justice could be secured.

10. In the light of the above observations, the impugned award passed in I.D.No.782 of 2010 dated 20.04.2015, on the file of the learned II Additional Judge, Labour Court, is partially set aside and modified as follows:

The punishment of dismissal dated 28.11.2007 is modified into one of compulsory retirement, enabling the legal heirs of the deceased workman to receive the death cum retirement



benefits of the deceased workman. Such monetary benefits shall be disbursed to the respondents 1 to 3 herein, who are the legal heirs of Late Mohan Babu, within a period of six weeks from the date of receipt of a copy of this order. The deceased workman shall not be entitled for backwages. The Writ Petition stands ordered accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Presiding Officer,
II Additional Labour Court,
Chennai-600 104.

+1cc to M/s.N.Beulah John Selvaraj, Advocate, S.R.No.64114
+1cc to M/s.M.Joseph Thatheus Jerome, Advocate, S.R.No.63852

ORDER MADE IN
W.P.No.28837 of 2015
and
M.P.No.1 of 2015

SPD(CO)
KKV/10/12/2021