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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.9701 OF 2015

AND

M.P.NO.1 OF 2015

Ponds Exports Limited,
Rep. by its Authorised Signatory,
V.Rajangam David S/o.E.J.Victor,
Pondicherry.

... Petitioner

Versus

1. The Presiding Officer,
Labour Court,
Pondicherry.

2. K.Muralidharan

... 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 connected with in I.D.No.11 of 2012 on the file of the 1st respondent i.e., The Presiding Officer, Labour Court, Pondicherry and to quash order dated 11.07.2014.

For Petitioner : Mr.Shivathanu Mohan

For Respondent-2 : Mr.M.Manivasagam

O R D E R

The Award of the Labour Court, Pondicherry directing reinstatement of the second respondent/workman with backwages, continuity of service and other attendant benefits is under challenge before this Court.

2. The second respondent/workman initially applied for leave for a period from 20.12.2007 to 31.01.2008. After the expiry of leave, he submitted a leave letter on 05.02.2008 for extending



the leave for one more month from 01.02.2008 to 28.02.2008. The request of the second respondent was rejected on 26.02.2008 and the second respondent was directed to report for duty immediately, failing which, suitable action will be taken. The said letter sent by Post was returned with an endorsement "NO SUCH ADDRESSEE" and therefore, it was displayed on the Notice Board. The petitioner/Management sent a show cause notice dated 21.03.2008 directing the second respondent/workman to report for duty and to show cause as to why disciplinary action should not be initiated against him. Since the show cause notice could not be served on the second respondent/workman, it was published in the Newspaper.

3. An Enquiry Officer was appointed and one Mahadevan, HR Officer was appointed as Management representative vide letter dated 21.04.2008. After getting information from the co-worker, the second respondent/workman appeared before the Enquiry Officer on 26.04.2008 and the enquiry proceedings were explained to him. The hearing of enquiry was then adjourned to 13.05.2008, on which date, the Management representative was examined as M.W.1 and Exs.M1 to M3 were marked. The letter submitted by the second respondent/workman was also marked as an exhibit. On the side of the second respondent/workman, he examined himself as a witness and submitted a letter dated 13.05.2008 admitting the charges. Based on the admission letter given by the second respondent, the Enquiry Officer has held that the charge of unauthorised absence is proved as specified under Clause 39(1) & (3) of the Certified Standing Orders.

4. Based on the above, a second show cause notice dated 16.09.2008 was issued. The second show cause notice issued through Post was returned with an endorsement "LEFT" and therefore, Newspaper publication has been issued by the petitioner/Management. Again, the second respondent/workman submitted his explanation with a request to pardon him and reinstate him in service.

5. Thereafter, on 13.10.2008, the petitioner/Management has dismissed the second respondent/workman from service. Against which, the second respondent raised an industrial dispute and it was referred to the Labour Court, Pondicherry.

6. The Labour Court, Pondicherry, having found that the admission letter given by the second respondent was not voluntary and he was forced to give that admission letter, held that any letter, which was obtained by force is violative of Article 20(3) of the Constitution of India and that the domestic enquiry conducted by the Management is not fair and proper and allowed the Industrial Dispute in I.D.No.11 of 2012 on 11.07.2014. Challenging the same, the petitioner/Management is



before this Court.

7. The learned counsel for the petitioner/Management would draw the attention of this Court to the materials placed before the Labour Court and contend that even assuming that the admission letter was obtained by force by the Enquiry Officer, the explanation to the enquiry report submitted by the second respondent is self - explanatory and the second respondent has admitted to the misconduct committed by him and sought for pardon and requested reinstatement. The conduct of the second respondent/workman from 26.02.2008 by not joining duty will prove that he was willfully remained absent. The petitioner/Management has given a specific direction for rejecting the request for extension of leave and directed the employee to rejoin duty with immediate effect, which was followed by a show cause notice, wherein, the second respondent was directed to report for duty.

8. Despite the directions to report for duty, the second respondent remained absent till the date of dismissal. Even during the pendency of the enquiry proceedings, the second respondent has not offered to join duty, but, on the other hand, he refused to join duty. Therefore, the conduct of the second respondent by itself prove that he remained unauthorisedly absent and the same will amount to wilful absence. The Labour Court, had failed to consider the documents marked as Exs.R1 to R11 and without recording any reasons, has simply allowed the Industrial Dispute.

9. The learned counsel for the petitioner/Management would further submit that after the order of dismissal, the petitioner/Management had suspended its operation from the year 2008 and announced Voluntary Retirement Scheme (VRS) to the workers, wherein, 97 workers had accepted Voluntary Retirement Scheme and availed the benefits. However, after the order of dismissal, the second respondent offered to submit an application under Voluntary Retirement Scheme. Since it was not applicable to him, the same was also rejected. From the year 2008 onwards, the petitioner had suspended their operations due to industrial unrest. Therefore, according to them, the award of the Labour Court, without considering the scope of reinstatement is illegal and liable to be set aside.

10. Per contra, the learned counsel for the second respondent/workman would contend that the absence was not willful and deliberate. His wife was suffering from illness and therefore, he initially applied for leave from 20.12.2007 to 31.01.2008. Since he was not in a position to rejoin duty, he sent a leave letter for extension of leave for a period of one month from 01.02.2008 to 28.02.2008 through his co-worker. Since



the petitioner/Management refused to receive the leave letter, he sent the same through Registered Post. Even though it was sent as early as on 05.02.2008, leave was rejected on 26.02.2008, after a period of one month. Therefore, he could not rejoin duty, during the period, for which, he sought leave. Thereafter, he offered to rejoin duty, but he was not permitted to enter into the Factory premises. Thereafter, he submitted a letter requesting the petitioner/Management to reinstate him in service. The letter submitted before the Enquiry Officer was not voluntary and it was on the promise that he will be reinstated. Therefore, the findings of the Labour Court is correct and the second respondent/workman is entitled to reinstatement with backwages.

11. I have considered the submissions made on either side and perused the materials available on record.

12. The admitted fact remains that the petitioner/Management suspended its operation from 2008. From the pleadings, it could be inferred that 97 workers had gone on Voluntary Retirement Scheme and others were transferred to other Factory at Pondicherry. Even though the petitioner/Management has let in evidence on this aspect, the Labour Court has not considered the same. Further, the materials produced before this Court would go to show that the second respondent has admitted to the charges and also offered to avail the benefits under Voluntary Retirement Scheme.

13. In such circumstances, even assuming that the unauthorised absence is treated as leave after the closure of the unit, the employee would be entitled to compensation and not reinstatement in a closed unit. The Labour Court has not considered the issue in proper perspective, but simply found that the letter given by the second respondent was self-explanatory and it cannot be taken as admission of guilt and set aside the order of termination. The consequential reliefs were also not at all discussed. Therefore, the award passed by the Labour Court suffers from the vice of non-application of mind and passed in a mechanical manner. The award as such does not stand the scrutiny of law and accordingly, set aside. Now that the order of reinstatement is not enforceable and considering the fact that the second respondent offered to accept the Voluntary Retirement Scheme, in the interest of justice, it is reasonable to provide him compensation, in lieu of reinstatement.

14. The learned counsel appearing for the petitioner/Management would submit that the monetary compensation in lieu of Voluntary Retirement Scheme at that point of time was Rs.3.7 Lakhs. Since the Voluntary Retirement Scheme was announced after



the dismissal of the second respondent, it cannot be applied to him and therefore, they are not in a position to make any payment under the said Scheme.

15. Since the second respondent/workman is aged 48 years and he is left with 10 years of service, this Court is of the considered opinion that the punishment of termination for unauthorised absence is too harsh and it can be modified. However, as discussed above, it can be compensated only by way of providing monetary benefits to the second respondent/workman. Therefore, this Court consider it fit to fix the monetary compensation at Rs.7,00,000/- (Rupees Seven Lakhs Only) as full and final settlement. However, the petitioner/Management is not inclined to accept the same and after discussions, both the learned counsel for the petitioner/Management and the second respondent/workman have agreed at a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) as full and final settlement to give a quietus to this issue.

16. Accordingly, the Award dated 11.07.2014 passed by the Labour Court, Pondicherry in I.D.No.11 of 2012 is modified into one of payment of compensation in lieu of reinstatement.

17. The parties have filed a Joint Memo of Compromise agreeing to pay and receive Rs.6,00,000/- (Rupees Six Lakhs Only) towards full and final settlement. As per the Joint Memo of Compromise, a direction is given to the petitioner/Management to make the payment of Rs.6,00,000/- (Rupees Six Lakhs Only) to the second respondent/workman on or before 20.10.2021. The Joint Memo of Compromise filed by the parties is taken on file. It is made clear that this order will not be set as a precedent to other cases.

18. The Writ Petition is ordered in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

19. Post this matter under the caption "for reporting compliance" on 20.10.2021.

* Xerox Copy of Joint Memo is enclosed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

TK



To

The Presiding Officer,
Labour Court,
Pondicherry.

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SRA (CO)
PBS/01/10/2021