



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10396 of 2014 and  
MP No.1 of 2014

Chengalvarayan Cooperative Sugar Factory,  
rep. by the Managing Director,  
Periyasevalai, Ulundurpet Taluk,  
Villupuram District.

... Petitioner

Vs.

1. The Presiding Officer,  
Labour Court, Cuddalore District.

2. E. Govindan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari Mandamus to call for the records of the first respondent culminating in the award dated 09.12.2013 made in I.D.No.177 of 2005 and quash the same and pass orders.

For petitioner : Ms.A.Shahana Fathima for  
Mr.R.Gopinath

For respondents : Mr.K.Arunagiri for R2

ORDER

This writ petition has been filed to quash the Award dated 09.12.2013 passed in I.D.No.177 of 2005 by the Presiding Officer, Labour Court, Cuddalore District.

2. The case of the petitioner in brief:

The petitioner is the Chengalvarayan Cooperative Sugar Factory, represented by its Managing Director. The second respondent E.Govindan was employed as a Pump Attender in the petitioner company and while he was working as Crane Operator, the petitioner company issued charge memo dated 23.01.1999 for his unauthorized absence from 02.01.1999 to 16.01.1999. Since the second respondent did not give explanation, on 12.05.1999 Domestic Enquiry was conducted and the Enquiry Officer gave his report on 11.06.1999.

2.1. According to the petitioner, they revoked the suspension order on 27.07.1999, subject to the result of



enquiry. Thereafter, second show cause notice was issued on 28.04.2001. Then, the second respondent was afforded hearing and thereafter, after considering the report of the Domestic enquiry officer, the petitioner had issued order dated 31.05.2001, removing him from service. As against the order of removal from service, the second respondent had filed a petition before the Labour Court in I.D.No.177 of 2005.

2.2. Before Labour Court, the petitioner management examined one witness and marked Ex.M1 to Ex.M12. The second respondent examined one witness, however, no document was marked. After perusing the records oral and documentary evidence, the Labour Court has set aside the order of removal from service of the petitioner and ordered stoppage of three increments with cumulative effect. Further, the petitioner management was directed to reinstate the second petitioner with continuity of service and pay 50% of back wages from the date of dismissal to the date of reinstatement. As against the Award passed by the Labour Court, the petitioner management has filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that without getting any prior sanction, the second respondent had absented from duty from 02.01.1999 to 16.01.1999. Earlier, on so many occasions, the second respondent was punished with minimum punishments for his unauthorised absence, however, he has not corrected himself. Therefore, considering the conduct of the second respondent, major punishment was ordered.

4. He further submitted that without considering the documents and the evidences relied upon by the petitioner, the first respondent/Labour Court has set aside the order of dismissal, by exceeding its jurisdiction and there is no error in the order passed by the petitioner, removing the second respondent from service. Therefore, the order passed by the first respondent is liable to be set aside.

5. The learned counsel appearing for the second respondent submitted that the second respondent was absent from 02.01.1999 to 16.01.1999, since he was suffered from Typhoid and he had submitted his leave application to the petitioner management on 10.01.1999, however, the above leave letter has not been placed before the Labour Court by the petitioner. He further submitted that the above contention of the second respondent was accepted by the Labour Court and it has held that " the petitioner / second respondent herein was absent only for 15 days; and he has submitted his leave application on the 9th day of the leave period; the respondent/ petitioner herein has not explained what happened to that leave application; the respondent/ petitioner herein, who had placed the petitioner under suspension before the domestic inquiry revoked the suspension and reinstated him after conclusion of enquiry; and the respondent/ petitioner



herein did not take any action of the report of the enquiry officer for the next one and half years." Therefore, the Labour Court has passed the order, setting aside the dismissal order, by modifying the major punishment into stoppage of three increments with cumulative effect and has also given direction to the petitioner to reinstate the second respondent with 50% of back wages.

6. It is his contention that, even though the petitioner management relied upon the earlier punishments inflicted on the second respondent, the above punishments were only minor in nature. The second respondent had served in the petitioner management for more than 21 years and except few punishments, as indicated by the petitioner, he has not committed any act of misconduct during his working period. Therefore, considering the above aspects, the punishment of stoppage of three increments, ordered by the Labour Court may be modified in favour of the second respondent and the writ petition may be dismissed.

7. Heard the rival submissions made by the learned counsels appearing for both sides and I have perused the materials on record.

8. The point for consideration is whether the order passed by the Labour Court is valid or not?

9. According to the petitioner management, the second respondent was absent for a period from 02.01.1999 to 16.01.1999, without getting prior permission from the management. Hence charge memo was issued 23.01.1999, suspending the second respondent. The second respondent did not give any explanation for the charge memo, however, he had accepted the charge of unauthorised leave. Thereafter, Domestic Enquiry was conducted and based on the enquiry report, major punishment was awarded by the petitioner, removing the second respondent from service on 31.05.2001. The second respondent had filed a Revision Petition before the Commissioner, but it was dismissed on 14.12.2001. Thereafter, the second respondent had approached the Labour Court challenging the order of dismissal and the Labour Court has set aside the order of dismissal by modifying the same into stoppage of increments for three years with cumulative effect and also ordered for reinstatement of service with 50% of backwages. The contention of the petitioner is that the Labour Court has exceeded its limit and passed such order.

10. The contention of the petitioner management is that earlier, on many occasions, for his unauthorised absence, the second respondent was punished by the management with fine; warning; and stopping of increment, however, he has not corrected himself and hence, considering the enquiry report and also taking into account the conduct of the second respondent, major punishment was awarded and he was removed



from service.

11. The above said contentions of the management was considered by the Labour Court and has given reasons for interfering with the dismissal order, which is extracted hereunder.

- i. The petitioner was absent only for 15 days.
- ii. The petitioner submitted application for leave during the period of absence i.e. on the 9th day.
- iii. The respondent has suppressed the application.
- iv. The respondent has not explained what happened to that leave application;
- v. the respondent, who had placed the petitioner under suspension before the domestic inquiry revoked the suspension and reinstated him after conclusion of enquiry;
- vi. the respondent did not take any action of the report of the enquiry officer for the next one and half years."

However, having regard to the fact that the petitioner had been punished in the past also, for absence from duty on a few occasions, I am of the opinion that the petitioner deserves to be punished, but not with dismissal.

According to the labour court, prima facie, the petitioner management had considered the second respondent and reinstated him in the service. However, for the unauthorised absent of the employee, imposing such major punishment is disproportionate.

12. At this juncture, it is necessary to rely upon the decision of the Hon'ble Supreme Court in Chairman cum Managing Director, Coal India Ltd., and another vs. Mukul Kumar Choudhuri and others reported in (2009) 8 MLJ 460 (SC)], wherein, it is held as under:

'26. .... Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation



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which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.''

Following the above decision, this court by an order dated 27.02.2020 in W.P.No.26118 of 2005 has quashed the order of removal and directed the respondents to reinstate the petitioner in service.

13. Here in this case, considering the facts and circumstances of the case and also taking into account the fact that such major punishment of dismissal from service of the employee is not proper on the part of the management, the Labour Court has rightly accepted the case of the employee and modified the punishment of dismissal from service into stoppage of three increment with 50% back wages. Hence, this court do not find any fault on it.

14. However, the learned counsel appearing for the petitioner management submitted that the petitioner Mill has already suffered financial crises and therefore, payment of 50% back wages, during non working period of the employee is very high and hence, the same may be considered by this court and may be modified into 25% back wages, without any interest. He further submitted that insofar as the other attendant benefits are concerned, the employee is entitled to get the same, as per the Rules and Bye-laws.

15. The learned counsel appearing for the second respondent agreed for 25% back wages, without any interest for the non working period of the second respondent.

16. Accordingly, it is ordered as follows.

i. As far as the punishment is concerned, the order passed by the Labour Court is confirmed.

ii. As far as the Back Wages is concerned, the order passed by the Labour Court is modified from 50% to 25%, without any interest, from the date of dismissal till the date of Superannuation of the second respondent.

iii. All the dues, shall be settled by the petitioner management to the second respondent, within a period of three months from the date of receipt of a copy of this order.



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17. With the above directions, this writ petition is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

mst

To

The Presiding Officer,  
Labour Court, Cuddalore District.

+1cc to Mr.R.Gopinath, Advocate SR.No.64927

+2ccs to Mr.K.Arunagiri, Advocate SR.No.65385

W.P.No.10396 of 2014  
M.P.No.1 of 2014

PVS (CO)  
GMY (27/01/2022)