



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.10712 of 2009

WEB COPY

M.Arivazhakan

... Petitioner

Vs.

1.The Management,
Hitech Arai Ltd.,
No.2, V.P.Rathinasamy Nadar Road,
North Chokkikulam,
Madurai.

2.The Presiding Officer,
Labour Court, Madurai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in I.D.No. 18 of 1998 dated 19.03.2008, quash the same and directing the first respondent to cancel the dismissal order, reinstate the petitioner and pay wages and allowances for the dismissal period.

For Petitioner : Mr.N.Tamilmani

For Respondents : Mr.K.Saravanan
for R.1
: R.2 Court

* * * * *

ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second respondent in I.D.No. 18 of 1998 dated 19.03.2008, quash the same and directing the first respondent to cancel the dismissal order, reinstate the petitioner and pay wages and allowances for the dismissal period.

2. The case of the petitioner is that the petitioner was appointed as store assistant in the first respondent Company in the year 1991 and his last drawn salary was Rs.1,720/- While so, he was placed under suspension on 07.02.1997 for the untenable grounds that the petitioner had stolen 192 oil seals of the first respondent Company. Based on the said allegation, a domestic enquiry was conducted and an order was passed without providing any opportunity

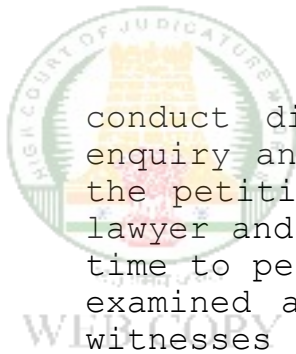


to the petitioner and the said enquiry was conducted in a clear violation of principles of natural justice and based on the ex-parte evidence and for the ex-parte proven minutes, the petitioner's services were terminated.

3. Challenging the said order of termination, the petitioner raised an industrial dispute in I.D.No.18 of 1998 before the second respondent. However, the second respondent, without considering the facts and circumstances of the petitioner's case, had erroneously arrived at conclusion that the punishment imposed by the first respondent Company was valid. Aggrieved by the said order of the second respondent Labour Court, by confirming the punishment imposed by the first respondent against the petitioner, the present writ petition has been filed.

4. Learned Counsel appearing for the petitioner would submit that the order of dismissal passed by the first respondent was, on the basis of domestic enquiry, which was conducted against the principles of natural justice and further, repeatedly, the petitioner made a request to the Enquiry Officer for production of vital documents and permit the petitioner to engage a lawyer to defence his case and the same was rejected and hurriedly, all the witnesses were examined before the Enquiry Officer, without providing opportunity for cross-examination and the Enquiry Officer has drawn a proven minute against the petitioner, based on the exparte evidence, which is unsustainable one. Further, the entire proceedings conducted by the Enquiry Officer and the disciplinary authority, is non-est in law and it is in clear violation of the principles of natural justice and hence, this Court has to necessarily interfere with the order of the first respondent as well as the Labour Court. Accordingly, the learned Counsel would pray for appropriate orders.

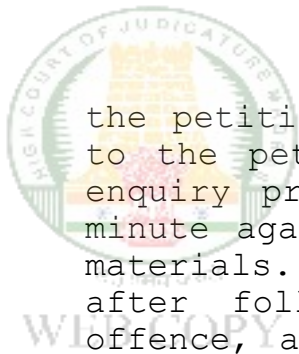
5. Per contra, the learned Counsel appearing for the first respondent would submit that the allegation against the petitioner is that on 06.02.1997, at about 06.35 p.m., when he went out of the factory after completion of his working hours, he was checked by the gate watchman in a routine manner and found that the petitioner was having HTA 1062 oil seals belonging to the first respondent Company in his bag. The gate watchman immediately called the other watchman and informed that the materials were belonged to the company and further, the gate watchman informed the Superintendent and he came to the gate and in the presence of the petitioner, oil seals were counted and it was found that 192 oil seals were kept in his bag. Thereafter, the petitioner was placed under suspension and after suspension, a detailed charge memo was issued on 22.02.1997 alleging that the petitioner attempted to steal the materials belonging to the Company and the said action was against the Rules of the Company. The petitioner submitted his explanation on 07.03.1997 and the explanation was carefully considered and the same was not found



conduct disciplinary enquiry. The Enquiry Officer conducted an enquiry and filed a report on 10.03.1997 and the same was served on the petitioner. The petitioner wanted 15 days time to consult his lawyer and the same was granted and repeatedly the petitioner wanted time to peruse the documents and in his presence, the evidences were examined and further, the petitioner refused to cross-examine the witnesses and even thereafter his request was considered and proper time was granted. However, the petitioner drag on the proceedings by filing repeated petitions for engagement of lawyer and he has to consult with the lawyer and with untenable grounds, the petitioner sent repeated representations. Even though, the Enquiry Officer considered his representations and gave ample time to the petitioner for his defence, the petitioner walked out the enquiry proceedings and even thereafter, the Enquiry Officer sent a detailed letter on 25.04.1997 by affording another opportunity, however, the petitioner did not attend the enquiry proceedings and except no other option, the Enquiry Officer has drawn the proven minute against the petitioner based on the available evidences and materials. Thereafter, the second show cause notice was issued, after following the procedure and considering the gravity of offence, a major punishment was imposed and it was properly appreciated by the Labour Court and the first respondent adduced the entire evidences before the Labour Court and after perusing the entire evidences, the Labour Court confirmed the order passed by the first respondent. Therefore, the learned Counsel appearing for the first respondent would pray for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the first respondent and perused the materials placed on record.

7. The facts in the present case are not in dispute. Admittedly the petitioner entered into service in the year 1991. While so, on 06.02.1997, at about 06.35 p.m., when he went out of the factory after completion of his working hours, he was checked by the gate watchman in a routine manner and found that the petitioner was having HTA 1062 oil seals belonging to the first respondent Company in his bag. The gate watchman immediately called the other watchman and informed that the materials belong to the company and further, the gate watchman informed the Superintendent and he came to the gate and in the presence of the petitioner, oil seals were counted and it was found that 192 oil seals were kept in his bag. Thereafter, the petitioner was placed under suspension and after suspension, a detailed charge memo was issued on 22.02.1997 alleging that the petitioner attempted to steal the materials belonging to the Company and the said action against the Rules of the Company. The petitioner submitted his explanation on 07.03.1997 and the explanation was carefully considered and the same was not found satisfactory and thereafter, the Enquiry Officer was appointed to conduct disciplinary enquiry. The Enquiry Officer conducted an enquiry and filed a report on 10.03.1997 and the same was served on



the petitioner. Even though, the Enquiry Officer gave ample time to the petitioner for his defence, the petitioner walked out the enquiry proceedings and the Enquiry Officer has drawn the proven minute against the petitioner based on the available evidences and materials. Thereafter, the second show cause notice was issued, after following the procedure and considering the gravity of offence, a major punishment was imposed. Hence, the Labour Court arrived at conclusion that the enquiry was conducted in a proper manner and therefore, it cannot be interfered with. Further, the Labour Court decided the preliminary issue and held that the enquiry was conducted in a proper and perspective manner.

8. On a perusal of the evidences, it would reveal that the petitioner when came out from the factory premises, he was checked by the watchman in a routine manner and during the check, it was found that the petitioner was having oil seals and immediately the said watchman called another watchman and confirmed that the materials were belonging to the company and thereafter the Superintendent came to the gate and in their presence, the oil seals were counted and confirmed that the oil seals are in the petitioner's bag. In order to prove the said offence, two witnesses were examined by the Enquiry Officer and apart from that, other four witnesses, who were employed along with the petitioner were examined. The statements of the witnesses and the enquiry proceedings were marked as Ex.M.27. Further, the complaint made by the Superintendent of the Company and the watchman are also marked as Exs.M.1 to M.6. However, in order to disprove the said allegation, the petitioner did not mark any documents, except marking some letters, which were sent by the petitioner to the Enquiry Officer. The Enquiry Officer, after providing ample opportunity to the petitioner, conducted the enquiry and has drawn the proven minute against the petitioner and based on the enquiry report, the first respondent has imposed the punishment, The Labour Court, after thorough consideration of the material evidences, has arrived at conclusion that the punishment imposed by the first respondent was in order and the same does not need any interference.

9. For the reasons stated above, this Court does not find any merit to interfere with the order of the Labour Court. Accordingly, the Writ Petition is liable to be dismissed and accordingly, the same is dismissed. No costs.

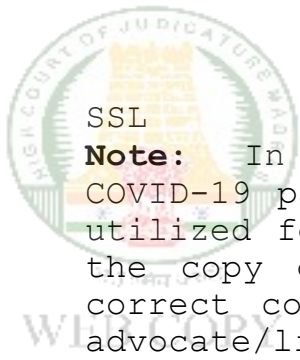
Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.K.JAYARAMAN, Advocate (SR-13198[F] dated 24/03/2021)
+1 CC to M/s.N.TAMILMANI, Advocate (SR-13218[F] dated 24/03/2021)

W.P (MD) No.10712 of 2009
23.03.2021

RK (21.04.2021) 5P 4C