



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**
W.P. (MD)No.2543 of 2012

WEB COPY

S.Abraham

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Group Manager
Singampatti Group
Under B.B.T.C
Manjolai Post,
Tirunelveli.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned award in I.D.No.84/2006 passed on 29.11.2011 by the 1st respondent and quash the same as in valid and illegal and there by direct the second respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits.

For Petitioner : Mr.G.M.Xavier
For R2 : Mr.P.Chandrabose
For R1 : Court

ORDER

This writ petition has been filed challenging the impugned award passed by the second respondent in I.D.No.84/2006 and there by direct the second respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits.

2.The case of the petitioner is that the petitioner was working as a Lab Technician cum Radiographer from 01.09.1978. He rendered 25 years of unblemished service and now the petitioner is 55 years. The petitioner was never punished for any act. The petitioner's sincerity and dutiful service was appreciated by the managerial officials on several occasions. While so, the second respondent issued a show-cause notice, dated 01.02.2006 enclosing the complaint of the Medical Officer. In that complaint, it has been alleged that



the petitioner misbehaved with the Medical Officer. Therefore, the second respondent suspended the petitioner from service, on 02.02.2006, without getting any reply. In such circumstances, the petitioner has suffered serious heart attack and he went to Coimbatore for taking treatment. While so, the petitioner was served with a charge sheet on 11.02.2006, for which, he submitted a reply dated 14.02.2006. The petitioner sought the second respondent to enquire into the charges against the said Medical Officer. Therefore, an enquiry was ordered to be held on 18.02.2006, which was sought to be adjourned by the petitioner, as the petitioner was suffering from hyper tension.

3.Further, the petitioner has averred that on 22.02.2006, the petitioner could not attend the said enquiry and the same was communicated to the second respondent. The second respondent conducted the enquiry by setting the petitioner ex-parte and the petitioner has not received any notice of ex-parte proceedings. The second respondent stated that the petitioner was set exparte on 18.02.2006. On the first day of enquiry, the second respondent sought the petitioner's explanation as to why the petitioner should not be dismissed from service. Thereafter, the petitioner has sent a reply on 08.03.2006. The said reply was not accepted by the second respondent and passed an order of dismissal from service, on 13.03.2006, against which, the petitioner has raised an industrial dispute in I.D.No.884 of 2006 before the first respondent. The said I.D was dismissed by the first respondent. Challenging the same, the present writ petition is filed.

4.On the side of the petitioner/workman no document was marked and no witness was examined. On the side of the respondent/Management, documents Ex.M.1 to Ex.M18 were marked and witnesses M.W.1 to M.W.5 were marked.

5.After analysing the oral and documentary evidence, the Labour Court has decided the charges against the petitioner has been proved and the punishment is also commensurate with the charge proved and dismissed the industrial dispute.

6.The learned counsel appearing for the petitioner submitted that the petitioner did not commit any offence as alleged by the second respondent. The petitioner is a social conscious person. When the Medical Officer/M.W.1 has instructed the petitioner to take a blood sample of a patient, the patient abused the said M.W.1 in filthy language. However, with an ulterior motive, MW.1 had made a false complaint against the petitioner and the same was not supported by any acceptable evidence. The second respondent/Management had even issued a Good Conduct Certificate in favour of the petitioner. The learned counsel for the petitioner further submitted that the Enquiry Officer had rendered his findings



Officer, the petitioner was removed from service, which is *non est* in the eye of law. The Labour Court, without appreciating the petitioner's case, had rejected the industrial dispute, which is unsustainable one. Hence, he prays for allowing the present Writ Petition.

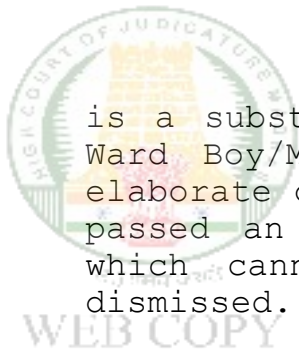
WEB COPY

7. Per contra, the learned counsel appearing for the second respondent submitted that the petitioner was a qualified person having passed Pre-University Course and also obtained Diploma in Laboratory Technology and he joined as a Lab Technician cum Radiographer from 01.09.1978 in the second respondent. The petitioner was assisting the Medical Officer. Though the second respondent has raised so many objections including the fact that the petitioner is not a workman under Section 2(S) of the Industrial Disputes Act, factually, the guilt against the petitioner was well established before the Labour Court by examining M.W.1/Doctor, who is the complainant against the petitioner as well as the Duty Staff Nurse including the Ward Boy. Based on the oral and documentary evidence, the Labour Court rejected the petitioner's claim, which cannot be interfered with and hence, he prays for dismissal of the present writ petition.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the material available on record.

9. Before this Court venture into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court, in catena of decision, has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

10. The facts in the present case are not in dispute. Admittedly, the petitioner was served with a charge memo on the ground that he threatened the Medical Officer on 01.02.2006. In order to prove the said charge, the second respondent/Management, had examined the said Doctor/M.W.1. However, the petitioner was not able to adduce any evidence in his cross-examination in his favour. Apart from his evidence, the second respondent management examined M.W.3-Doctor, M.W.4-Ward Boy. The evidence of the Staff Nurse



is a substantial one and her evidence as well as the evidence of Ward Boy/M.W.4 clearly corroborate the evidence of M.W.1. After elaborate discussion and considering the materials, the Labour Court passed an award rejecting the petition filed by the petitioner, which cannot be interfered with. Hence, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns

To

1.The Presiding Officer,
Labour Court,
Tirunelveli.

W.P. (MD)No.2543 of 2012

18.03.2021

CN(22.06.2021) 4P 2C