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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/4/2022

C O R A M

The Hon'ble Mr. Justice S.VAIDYANATHAN
a n d
The Hon'ble Mrs. Justice N.MALA

Writ Appeal No.267 of 2015 against W.P.No.42597 of 2002

1. The General Manager (Drilling)
Oil and National Gas Corporation Ltd
Cauvery Project
Neravy
Karaikkal.
2. The Group General Manager
Oil and Natural Gas Corporation Ltd
Cauvery Project
Neravy
Karaikkal.
3. The Deputy General Manager
Oil and Natural Gas Corporation Ltd
Cauvery Project
Neravy
Karaikkal.

... Appellants

Vs

- R. Senthilkumar (died)
2. Sathya Priya
3. S.Sudanshanth
4. S. Dilip

... Respondents

(R.R.2 to 4 brought on record as Lrs of the deceased first respondent, viz., (R.Senthilkumar) vide, Court, dated 24/2/2022, made in C.M.P.No.2944 of 2022 in W.A.No.267 of 2015 (SVNJ & MSQJ).



PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 19/9/2014, made in W.P.No.42597 of 2002.

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Prayer in W.P.No.42597 of 2002:

Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the proceedings No.SRBC/MAS/1(15)/89, dated 12.08.2002, on the file of the 2nd respondent, confirming the order of dismissal of the petitioner from service in proceedings No.KKL/CR/Estt/RM(D)/99/215, dated 31.08.2000, on the file of the 1st respondent, quash the same and direct the respondents to allow him to join duty and sanction consequential service benefits, including payment of arrears of salary.

For Appellants ... Mr.Singaravelan
for M/s. Mohamed Fayaz

For Respondents ... Mr.S.Sadasharam

J U D G M E N T

S.VAIDYANATHAN, J
A N D
N.MALA, J

The present appeal has been preferred by the appellant/Oil and Natural Gas Corporation Ltd., Karaikkal, challenging the order of the learned Single Judge in allowing W.P.No.42597 of 2002, dated 19/9/2014, wherein, this Court has held that there is no evidence to establish the charges of enquiry and that the Enquiry Officer has verified the record on his own and came to the conclusion that charges are proved without anybody letting in evidence or production of documents. When no documents have furnished, the Enquiry Officer, who is expected to act independently, ought not to have gone into perusing the records of the delinquent employee and found him guilty of the charges.

2. It is no doubt true that when an employee is faced with charges, the principles of natural justice have to be complied with and it is mandatory on the part of the employer to establish the charges in the domestic enquiry. From the Enquiry report of the enquiry Officer, it appears that no evidence was let in to establish the charges. However, the petitioner has preferred an appeal before the appellate authority, questioning



the action of the disciplinary authority in imposing the punishment, more so, when there are violations of the principles of natural justice committed by the Enquiry Officer.

3. Though it has been contended by the writ petitioner that when there is a violation of principles of natural justice, more so, the conduct of disciplinary rules have been violated, the appellate authority ought to have interfered with the order of the disciplinary authority, remitted the matter to the Enquiry Officer and conducted enquiry afresh. Without being so, the appellate authority has imposed the punishment which needs to be set aside. The writ petitioner would further contend that the writ petitioner was mentally ill and that was the reason he was not in a position to attend the enquiry for which several telegrams and letters have been issued.

4. The appellants, who are the respondents before the writ Court would contend that the petitioner/respondent was a habitual absentee and that from 1998 onwards, he was never reported to work. The charge sheet was issued. Enquiry Officer was appointed and there was no response from the employee. Perusing the file produced before the Enquiry Officer, the Enquiry Officer came to the conclusion that the charges are proved after setting the employee ex parte. That apart, a request has been considered by the appellate authority and the appellate authority has gone into the files and asked the employee Senthil Kumar, to appear for personal hearing on 12/8/2002. Though no documents have been produced as could be seen from the enquiry proceedings and that on account of absence before the Enquiry Officer, the Enquiry Officer came to the conclusion that the charges have been proved. Based on the records, the appellate authority gave an opportunity to the writ petitioner to put forth his submissions and in the personal hearing, he has admitted the guilt before the appellate authority and the relevant paragraph Nos.4 and 5.2 are extracted below.

"4. At the outset, the undersigned enquired from Shri.Senthilkumar about his prolonged absence from duty from 27/11/1998 to 31/8/2000 (i.e., 642 days) without proper intimation/leave application to the department concerned. Shri Senthil Kumar admitted of his remaining absent from duty from 27/11/1998 without proper intimation whatsoever. On the one hand, he has informed that because of his mental depression he was



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not aware what was happening around him during the above period and on the other hand, he was sending telegrams (i) dated 19/1/1999 requesting for leave upto 25/1/1999 on medical grounds (ii). dated 27/1/1999 requesting for extension of leave upto 29/1/1999 (iii). dated 2/2/1999 requesting extension of leave for two days (iv) dated 9/2/1999 requesting extension of leave for three days (v). On 17/2/1999 requesting extension of leave for two days for eye operation (vi) dated 5/5/1999 requesting extension of leave for three days. He was acknowledging all the communications sent by ONGC, which proves that he was mentally sound.

5.2. As regards para 3.2 above, he had applied for two days leave on 25/11/1998 and a telegram was sent on 27/11/1998 requesting to extend leave for a week. Thereafter, neither he had sent any proper intimation/application nor did he join duty. Since he was absenting from duty unauthorisedly, a telegram dated 18/1/1999, was sent to him asking him to report for duty immediately failing which action would be taken against him. On receipt of this office telegram dated 18/1/999, he sent a telegram on 19/1/1999, intimating that he was under treatment and hence requested leave upto 25/1/1999. Thereafter, he had sent telegrams dated 27/1/1999, requesting extension of leave upto 29/1/1999, by the did not turn up for duty and continued to remain absent. Again, on 2/2/1999, 9/2/1999, 17/2/1999 and 5/5/1999 telegrams were sent requesting for extension of leave for 2/3 days. Thereafter, he stopped sending telegrams/leave application nor did he join duty and continued to remain absent unauthorisedly. The period for which he had been requesting for leave did not cover his entire period of absence. Hence, his contention that he was under the bonafide impression that the leave had been sanctioned and extended is incorrect and not justifiable."



5. Detailed enquiry is mandatory, provided if the charges are not admitted. If the charges are admitted, there is no need for further enquiry. There is no need for time consuming process, when the employee is going to admit his guilt either before the Enquiry Officer or disciplinary authority or before the appellate authority. In this case, absence for several years have been admitted and the reason is that the writ petitioner was suffering from mental illness. Firstly, the employee who is alleged to be suffering from mental illness in a concern cannot be said to be a distress only to the employee but equally to the employer as well. That apart the absence for a long period of time is not in dispute which has been admitted. Though on technicalities it appears that the writ petitioner has a case, but on the ground of admission of guilt by the delinquent employee, no relief could be granted to the writ petitioner. During the pendency of the proceeding, the writ petitioner passed away and legal heirs have been brought on record, pursuant to the order, dated 24/2/2022, made in C.M.P.No.2944 of 2022 in W.A.No.267 of 2015. Hence, we are of the view that the order of the learned Single Judge needs to be interfered with.

6. In the result, the instant writ appeal is allowed. For the actual services rendered by the employee, if any terminal benefits was due that has got to be paid, within a period of four months, from the date of receipt of a copy of this order. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mvs.

To

1. The General Manager (Drilling,
Oil and National Gas Corporation Ltd.,
Cauvery Project,
Neravy,
Karaikkal.



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3. The Deputy General Manager,
Oil and Natural Gas Corporation Ltd,
Cauvery Project,
Neravy,
Karaikkal.

+1cc to Mr.Mohamed Fayaz Ali, Advocate Sr.24949

+1cc to Mr.S.Sadasharam, Advocate Sr.24755

Writ Appeal No.267 of 2015

spd[col]
srg 05/05/2022