



WEB COPY

W.P.No.25336



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2022

DELIVERED ON : 31.10.2022

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.25336 of 2005

D.Damodaran

...Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Vellore.

2.The Management of M/s.Greaves Ltd.,
Light Engine Unit-II,
Plot No.72, Sipcot, Ranipettai – 632 403.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records from the 1st respondent Labour Court, relating to the file of impugned award dated 22.01.2004 in I.D.No.44/2000 and quash the same and direct the 2nd respondent to reinstate the petitioner in service with full back wages, continuity of service and other attendant benefits.

For Petitioner : Mr.R.Rajaram

For Respondents : R1 – Labour Court

Mr.T.M.Mano for R2
for Mr.Sharath Chandran



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ORDER

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This Writ Petition has been filed by the workman being aggrieved against the order of the Labour Court made in I.D.No.44 of 2000 dated 22.01.2004.

2.Heard Mr.R.Rajaram, learned counsel for the petitioner and Mr.T.M.Mano, learned counsel appearing for the second respondent. The appearance of the first respondent is dispensed with as it is an adjudicating authority.

3.Mr.R.Rajaram, learned counsel for the petitioner would submit that the petitioner had joined the services of the second respondent as Operator in the year 1985 and was promoted as Operator II in the year 1988 and subsequently promoted as Operator III in the year 1994. During his entire period of service, there was no complaint against the petitioner. While so, he was not able to go to work from 07.04.1998 due to mental worries and failing health which caused anxiety and depression in him. He had sent a telegram to the second respondent Management on 21.04.1998 requesting leave from 07.04.1998 to 22.04.1998 on various grounds. He had also applied for leave on the basis of the Medical Certificate issued by ESI Hospital. Even thereafter, he was not able to attend the work. When he became fully fit in the month of November 1998, he wrote a letter to the second respondent Management explaining the circumstances which he was not able to come to work,

there was no reply to the said letter from the second respondent Management. He



thereafter learnt that by an order dated 12.09.1998, the services of the petitioner was terminated for his absence from 07.04.1998. Hence, he had raised an industrial dispute on failure of the conciliation proceedings. He had approached the Labour Court and had raised a dispute in I.D.No.44 of 2000 which came to be dismissed by the Labour Court without considering the materials placed by him.

4.He would vehemently contend that he was not served with any of the enquiry proceedings as claimed by the second respondent Management. He would also submits that the evidences shown by the second respondent Management to show that the process of enquiry was sought to be served on the petitioner have all been returned as unserved and therefore, an exparte enquiry is wholly in violation of principles of natural justice and therefore, the Labour Court ought to have set aside the order of the dismissal and ought to have directed the respondent to reinstate the petitioner into service. He would further contend that the Labour Court has not considered neither Medical Certificate produced by him before it nor his letter dated 16.11.1998 explaining the reasons given by him for not attending the work and should have taken a lenient view in view of the medical condition of the petitioner. Therefore, he prayed that this Court may please to set aside the Award and direct reinstatement of the petitioner.

5.In support of his arguments, Mr.R.Rajaram, learned counsel has relied upon various judgments on the issue as to how a case relating to unauthorized absentism

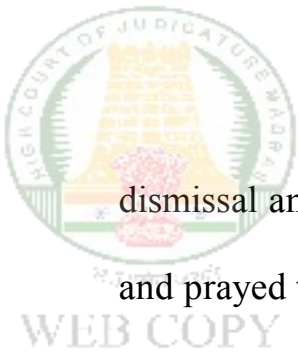


has to be dealt with and as to how the enquiry has to be conducted.

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6. Countering his arguments, Mr. T.M. Mano, learned counsel for the second respondent Management would submit that the petitioner had absented himself from 07.04.1998 without proper leave. All the communications were addressed to the petitioner's address as given by him in the records of the second respondent Management and also to his native place and the said communications were returned as unserved with an endorsement "left without any instructions". He would further contend that the father of the petitioner had addressed a letter referring to a show-cause notice issued to the petitioner and had *inter alia* stated that the petitioner due to heavy debts had gone missing and sought for sometime so that he would find his son and send him back to work. In spite of repeated notices which has not been unserved and the reason of endorsement that the petitioner has left the address, the second respondent Management also effected Paper Publication and only thereafter, an order of dismissal has been passed. Therefore, there is no violation of principles of natural justice as claimed by the petitioner.

7. He would further plead that the conduct of the petitioner is only to enrich himself. Hence, therefore, he pleaded that the second respondent Management had followed all the procedures as prescribed under the law before issuing the order of



dismissal and the Tribunal has rightly refused to interfere with the order of dismissal and prayed this Court may dismiss the Writ Petition as devoid of merits.

8.I have considered the rival submissions made by the learned counsel appearing on either side and has perused the materials available on record.

9.At the outset, the facts are not disputed that the petitioner has absented himself from duty on and from 07.04.1998. Even though, he claims that he had sent a telegram intimating his absence along with Medical Certificate, there was no documentary evidence produced by the petitioner neither before the Labour Court nor before this Court to substantiate the same. A medical certificate dated 20.06.2000 was issued by a Senior Civil Surgeon of the Government Vellore Medical College and Hospital. Even in the said Medical Certificate, the Medical Officer has indicated the period of illness from 07.11.1998 to 15.11.1998 which period is much after the order of dismissal passed by the second respondent Management. Hence, the petitioner had not substantiated by any evidence that he was not medically fit to be absent from 07.04.1998.

10.Further, the second respondent Management has sent intimation and all the enquiry proceedings to the petitioner by registered post which have been returned as unserved with an endorsement either “left” or “left without any instructions”. But surprisingly, the father of the petitioner had addressed a letter which is not disputed



by the petitioner. In fact, the petitioner in his typed set, had produced the said letter.

A reading of the said letter would indicate that the petitioner had run away from his home due to increased pressure from his creditors. This itself would show that the petitioner's family members were residing in the said address and the returned all the notices with an endorsement left which creates a doubt that the petitioner was not residing in the address given above.

11.I am of the view that the second respondent Management has taken all efforts to serve notice upon the petitioner of all the enquiry proceedings. I am also not satisfied with the reasons given by the petitioner that he suffered from anxiety and depression during the relevant period of his absence as he has not produced any medical evidence to support his claim. Further, the Medical Certificate produced before this Court in his typed set also relate to only from 07.11.1998 to 15.11.1998 which is also issued in the year 2000.

12.In light of the above, I find no merits in the Writ Petition and the same deserves to be dismissed. Accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs.



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Index: Yes/No
Speaking Order/Non-Speaking Order
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To

The Presiding Officer,
Labour Court,
Vellore.



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K.KUMARESH BABU, J.

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A pre-delivery order in
W.P.No.25336 of 2005

31.10.2022