



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.04.2022
Pronounced on	01.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7961 of 2015

C.Muthu

...Petitioner

Vs.

1.The Managing Director,
The Tamil Nadu Co-operative Milk
Producers Federation Ltd., Aavin Illam,
Madhavaram Milk Colony,
Chennai-600 051.

2.The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd.,
Nandanam,
Chennai-600 035.

3.The General Manager,
Tamil Nadu Co-operative Milk Producers
Federation Ltd.,
Nandanam,
Chennai-600 035.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the second respondent in proceedings bearing Ref. No.1473/Z2/03 dated 31.10.2014, confirming the order of dismissal passed by the third respondent in proceedings bearing Na.Ka.No.1473/Z2/02 dated 03.12.2003 and to quash the same and direct the respondent to reinstate the petitioner in service with all consequential benefits like arrears of pay and all other consequential benefits.

For Petitioner : Mr.T.Hemalatha

For Respondents : Mr.T.K.Ashok Kumar



O R D E R

Heard the learned counsel for the parties.

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2. The brief facts of the case are as follows:-

The petitioner herein joined the services of the second respondent Federation in the year 1983 as a Depot Volunteer at Adyar Zone and subsequently promoted as Senior Distribution Assistant. On his recommendation, the respondents had appointed one A. Shanmugam as a whole sale agent for Aavin Milk in the Adyar Zone. Owing to the failure on the part of A. Shanmugam in making the payments to the respondents' Federation, the petitioner was imposed with the liability to make payment of the defaulted amount of A. Shanmugam. In this connection, the petitioner was asked to refrain from coming to duty from 03.04.2001 onwards, till the defaulted amount was compensated by him.

3. In this background, a charge memo dated 22.02.2002, was issued by the third respondent to the petitioner, alleging that the petitioner had not reported to duty without prior notice or permission from 03.04.2001 onwards, to which, the petitioner had submitted his explanation. Based on the inquiry report, proving the charges against the petitioner, he was dismissed from services on 03.12.2003. Against the dismissal order, he had preferred an appeal on 11.02.2004, which was summarily rejected by the first respondent on 28.05.2005, the copy of which was intimated to him on 31.10.2014. Aggrieved against the punishment, the present Writ Petition has been filed.

4. The learned counsel for the petitioner submitted that the reason for the petitioner not attending duty from 03.04.2001 was that he was prevented from reporting to duty by one Ganipandi, Assistant Manager and therefore the charge itself that the petitioner had absconded from duty, cannot be sustained and hence the respondents are not justified in taking action against the petitioner for the liability of the third party.

5. The learned counsel for the respondents on the other hand, submitted that during the course of inquiry, the petitioner had admitted that he would indemnify the dues of A. Shanmugam and since he himself had admitted the liability and failed to make the payments, the Enquiry Officer had correctly held that he was responsible for the payments and therefore had absconded from duty without any prior intimation or permission.

6. The charge against the petitioner is not for non payment of the dues of A. Shanmugam, but only for abandonment of



duty from 03.04.2001 onwards. However, the Enquiry Officer seems to have digressed from the nature of the charges and held the enquiry for imposing the liability of the dues of the third party on the petitioner. Such an inquiry without framing specific charges, would disentitle a delinquent from giving an effective explanation to the delinquency, for which he has not been specifically charged. Thus, when no specific charges have been framed against the petitioner for the delinquency of his liability to pay the dues of the third party, the consequential inquiry and the punishment therefrom, would stand vitiated. On this short ground, the petitioner would be entitled to succeed.

7. This apart, it is seen that on 03.04.2001, the Assistant Manager, namely, Ganipandi had specifically asked the petitioner not to report for duty till the dues of A.Shanmugam was recovered. This aspect was brought to the notice of the third respondent on several occasions through petitioner's representations dated 19.09.2001 and 24.01.2002. Subsequently, in his explanation dated 28.03.2002 to the charge memo, he had reiterated the same aspect. So also in his further explanation dated 18.11.2003, to the proposed punishment, he had stated that the Assistant Manager had asked him not to report to duty.

8. During the course of inquiry, the Assistant Manager namely, Ganipandi was enquired and in his statement, he had admitted that he was the person, who asked the petitioner to refrain from reporting for duty. In view of such an admission made during the enquiry, the petitioner's stand in all his representations to the third respondent that he was prevented from attending duty, stands justified. While that being so, I am unable to comprehend as to how the petitioner's absence from 03.04.2001 onwards can be termed as "absconding from duty". Thus, the very basis of the charges that the petitioner had absconded from duty stands negatived in view of the admission of the Assistant Manager that he was responsible for stopping the petitioner from attending duty. In this background, I am not inclined to accept the findings of the Enquiry Officer in holding the charges against the petitioner for having "absconded from duty" in view of the specific admission of the Assistant Manager in the inquiry. On this ground also, the petitioner is entitled to succeed.

9. At this juncture, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of Krushnakant B. Parmar V. Union of India and Another reported in 2012 (3) SCC 178, whereby it was held that when the absence of an employee is owing to compelling reasons, the absence cannot



"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant."

11. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the



employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

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12. For all the foregoing reasons, the impugned orders passed by the second and third respondents dated 31.10.2014 and 03.12.2003 respectively, are quashed. Consequently, there shall be a direction to the third respondent herein to forthwith reinstate the petitioner back in service, together with full back wages and all other consequential service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Managing Director,
The Tamil Nadu Co-operative Milk
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+1cc to Mr.T.K.Ashok Kumar, Advocate SR.No.29050

W.P.No.7961 of 2015

CA(CO)
GN(09/06/2022)