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W.P.(MD)Nos.14997 of 2012 & 1498 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.01.2022

DELIVERED ON : 21.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.14997 of 2012 & 1498 of 2014
and
M.P.(Md)Nos.1 of 2012 & 1 of 2014

W.P.(MD)No.14997 of 2012

M/S.Nanjil Benefit Fund Private Ltd.,
Ramasubramaniam complex,
Veppamoodu Junction,
Nagerkoil, Kanyakumari District,
represented by its Director.

... Petitioner

VS

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. M.Ramesh

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned (Preliminary Award dated 01.11.2011) and the Final Award, dated 13.08.2012 passed by the first respondent in I.D.No.29 of 2010 and quash the same as illegal.

For Petitioner : Mr.Jerin Mathew
for Mr.M.E.Ilango

For Respondents : Labour Court- R1
Mr.Mr.M.Gnanagurunathan for R2

W.P.(MD)No.1498 of 2014

M.Ramesh

... Petitioner

VS

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. M/S.Nanjil Benefit Fund Private Ltd.,
Ramasubramaniam complex,
Veppamoodu Junction,
Nagercovil, Kanyakumari District,
represented by its Executive Director.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the



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impugned award passed in I.D.No.29 of 2010, dated 13.08.2012 passed by the first respondent in so far as it relates to the finding of guilty of petitioner in respect of fourth charge and refusal of grant of full back wages and quash the same and consequently, direct the second respondent herein to grant full back wages to the petitioner till the date of re-instatement of the petitioner.

For Petitioner : Mr.Mr.M.Gnanagurunathan

For Respondents : Labour Court- R1

Mr.Jerin Mathew for R2
for Mr.M.E.Ilango

ORDER

Two writ petitions are filed, one by delinquent / employee and other by the employer / Nanjil Benefit Fund Private Ltd. The delinquent has preferred the writ petition in W.P.(MD)No.1498 of 2014 aggrieved over by the order passed in I.D.No.29 of 2010, where it has declined to grant full back wages. The employer has preferred writ petition in W.P.(MD)Nos.14997 of 2012, wherein the employer is aggrieved by the said I.D. in entirety.



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2. The brief facts of the case as narrated by the delinquent is that the petitioner has entered the service in the year 1997 as Clerk cum Cashier and was regularized after two years. The Management has issued a show cause notice, dated 13.01.2009. Thereafter on 07.02.2009, a charge Memo was issued leveling four charges against the petitioner. The first charge against the petitioner is that he has abused the Branch Manager, the second charge is that the petitioner refused to attend the phone call, the third charge is when an explanation was called for charges the petitioner threatened the Management and the fourth charge is that the petitioner refused to receive the suspension order and refused to hand over the key to the person directed by the Management. The contention of the delinquent is that, as far as the first charge is concerned no such incidents had occurred and there is no written complaint by the Branch Manager who has alleged that the petitioner has abused him and there is contradiction in mentioning the dates and correction of records in respect the dates and months. The petitioner also alleges that the enquiry officer is the relative of the Branch Manager. The Management produced the witness, namely, Narayanan and has deposed that the petitioner has abused the Branch Manager. In order to prove the same, the



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petitioner sought copy of the counter foil filed to prove the presence of the said Narayanan but the Management has refused to give the same. Even after the Chief examination of witnesses and at the time of cross examination, the Management had marked bunch of documents and the same was objected by way of application and the application was dismissed. The petitioner alleged partiality in the enquiry, thereafter objected and quit the enquiry proceedings.

3. Then Management tried to pass an order, but the delinquent has preferred a suit in O.S.No.455 of 2009 challenging the enquiry proceedings as null and void. Even after the receipt of summons, the Management has imposed the punishment of dismissal from service on 20.07.2009. Hence the suit has become infructuous. The said punishment was imposed without issuing second show cause notice and which is violation of principles of natural justice. Thereafter, the petitioner has preferred a claim petition in I.D.No.29 of 2010 and the Labour Court has passed the preliminary order that the principles of natural justice was not followed. The Management sought for permission to prove the



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charges by permitting them to examine the witness and by marking the documents and the same was allowed. Thereafter, the Labour Court has passed an order by holding that charges 1 to 3 were not proved and in respect of fourth charge, it was held to be proved. Thereafter, the first respondent was imposed of punishment of Rs.500/- (Rupees Five Hundred only) for the same and for the main prayer the Labour Court has awarded to reinstate the petitioner with continuity of service and with 50% of back wages. The delinquent is aggrieved by the order granting 50% backwages only. The contention the petitioner is that he has not refused to receive the suspension order. The petitioner contended that after the receipt of the suspension order immediately the charge was handed over and the key was handed over to the Executive Officer. Therefore, there is no charge against the petitioner. Hence the delinquent prayed to grant full backwages.

4. The contention of the Management as stated in W.P.(MD)No.14997 of 2012 is that, while the delinquent was working at Veppamoodu Branch, the delinquent abused the Branch Manager in presence of other employees and



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customers and intimidated the Branch Manager. The Branch manager, namely, Mrs. M. Geethamani, has preferred a complaint, dated 25.08.2008 to the management about his riotous and disorderly behavior. In the meanwhile, the delinquent was transferred to Thittuvilai Branch on 01.09.2008. While he was working in Thittuvilai Branch on 12.01.2009, the Executive Director called the Branch over phone and asked the delinquent to come on line. But the delinquent refused to attend the call and thus disobeyed the reasonable orders of the Superior which amounted to insubordination. Further the delinquent was orally asked to explain about his behavior, he confronted the management and threatened to initiate legal action against the Administrative staff. As the delinquent's conduct was unbecoming, the management placed the second respondent under suspension, vide order dated 21.01.2009. Even the delinquent refused to receive the copy of the order of suspension and also further refused to hand over the keys to the substitute. Hence, a Charge Memo, dated 07.02.2009 was issued framing four charges. The delinquent submitted an explanation on 03.03.2009, thereafter an enquiry was conducted and the enquiry officer is a practicing independent advocate. Initially the delinquent participated in the enquiry, later on making



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untenable demands, the delinquent walked out of the enquiry. Hence the enquiry was proceeded with after setting the delinquent ex-parte. The enquiry officer submitted his findings on 05.07.2009, in which it has been held that charges 1, 2 and 4 were proved. Thereafter, the Executive Committee decided to terminate the delinquent in its meeting held on 19.07.2009 and the delinquent was dismissed on 20.07.2009. In the meanwhile, the delinquent has filed a suit in O.S.No.455 of 2009, but the same has become infructuous. Aggrieved over the dismissal order, the delinquent has filed I.D.No.29 of 2010. In the preliminary issue, the labour Court award dated 01.11.2011 has held that the domestic enquiry was not conducted in accordance to the principles of natural justice and provisions of law. Therefore, the Labour Court has come to the conclusion that it is a violation of principles of natural justice.

5. The Management had submitted that the delinquent alleges vagueness of the charges, but the Management submitted that vagueness or otherwise of the charges could not be a factor for deciding the fairness of the domestic enquiry.



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Then the delinquent alleged that the second show cause notice was not issued by the Management and the same vitiate the disciplinary proceedings. The Management submitted that it is not mandatory to issue the second show cause notice for imposing the punishment. Hence the preliminary award passed by the Labour Court is not sustainable in law. For the issue whether the second show cause notice is mandatory, the Management relied on Supreme Court Judgment in ***Associated Cements Company Limited vs T.C.Shrivastava and others reported in CDJ 1984 SC 293***, wherein the Hon'ble Court has held that,

“As regards the modification requiring a second show cause notice, neither the ordinary law of the land nor the Industrial law requires an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals, such second show cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary or arising under Article 311. Even that has now been removed by the recent amendment of that Article. To import such a requirement from Article 311 in Industrial matters does not appear to be either necessary or proper and would be equating industrial employees with Civil servants. In our view, there is no justification or any principle for such equation.”



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The Hon'ble Supreme Court has distinguished between the Industrial employees and the Civil employees and has held that the second show cause notice is not necessary.

6. The contention of the delinquent is that the enquiry report was not available, hence, the refusal of copy of enquiry report by the management employer would amount to violation of principles of natural justice. Where the management have taken a stand that non supply of enquiry report to the delinquent employee would not deviate disciplinary proceedings and the same would depend upon the facts and circumstances of the case and the employee has to establish that it is really prejudice his cause by not furnishing the enquiry report. For this the Management employee relied on ***Union of India & others vs Bishamber Das Dogra reported in CDJ 2009 SC 1194***. The relevant portion is extracted hereunder:

8. We have considered the rival submission made by the learned counsel for the parties and perused the record. In view of the



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submission made by learned counsel for the parties, only two questions arise for our consideration:

(1) Whether the delinquent employee is not supposed to establish de-facto prejudice in case the enquiry report is not supplied to him before awarding punishment?

(2) Whether the order of punishment would be vitiated if the Disciplinary Authority takes into consideration the past conduct of the delinquent employee for the purpose of punishment?

9....

16. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had not been made available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him.

7. Hence the relying on the above judgment this Court is of the considered opinion that not serving the enquiry report would not ipso facto vitiate the disciplinary proceedings and it has to be proved that it has caused prejudice and in the present case the delinquent has not established any such real prejudice.



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8. The contention of the delinquent is that the Management has not challenged the preliminary award of the I.D., now has challenged belatedly. But the Management submitted that the preliminary report cannot be challenged before the High Court under Article 226 and there are several of judgments which prevented from filing or challenging the preliminary award of the Industrial Dispute. Hence, he has challenged both the preliminary award as well as the final award simultaneously.

9. The allegation against the delinquent is disobedience, moreover only 4th charge is proved and if so the punishment of dismissal from service is disproportionate. Hence the Labour Court has rightly interfered with the punishment. The delinquent has exhibited the attitude of disobedience in Veppamoodu Branch with the Branch manager and then transferred to Thittuvilai Branch on 01.09.2008 again in this Branch he has not attended the calls of Executive Director and exhibited disobedience. Therefore, the petitioner is liable for some punishment. Moreover on the principles of “No work No Pay” the



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Labour Court has rightly come to the conclusion to deny 50% backwages and the same is legally valid.

10. Hence from the above discussion, both the Management and the delinquent have not put forth any valid points to interfere with the impugned order. Hence this Court confirms the order of the Labour Court and dismiss both the writ petitions.

11. Hence, the W.P.(MD)Nos.14997 of 2012 filed by the Management is dismissed and the W.P.(MD)No.1498 of 2014 filed by the delinquent is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.07.2022

Index : Yes / No
Internet : Yes

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S.SRIMATHY, J

jbr

To

1. The Presiding Officer,
Labour Court,
Tirunelveli.

Pre-delivery Order made in
W.P.(MD)Nos.14997 of 2012 & 1498 of 2014

21.07.2022