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W.P.No.13271 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.13271 of 2013
and MP No.1 of 2013

Hindustan Unilever Limited
Detergent Factory,
Puducherry
Rep by its Senior Legal Executive

..Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2. M. Mohan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records of the first respondent in I.D.No.9 of 2011 and quash its award dated 30.11.2012.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondents : R1 – Court
Not Ready – for R2



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ORDER

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This Writ petition challenges the award of the Labour Court in ID No. 9 of 2011 dated 30.11.2012.

2. The case of the workman is that he joined as a permanent employee with the Management on and from 25.09.1997. He was dismissed from service for absence a period from 01.05.2008 to 15.09.2008. The charge is he did not report to duty in order to take approval from the Management.

3. According to the Management/Writ Petitioner, an enquiry was conducted on the basis of the issuance of charge memo. Show cause notice was issued and thereafter an enquiry was conducted. After the enquiry was conducted, the respondent was dismissed from service. Workman would state on the date of termination, two conciliation proceedings were pending and therefore, the respondent Management ought to have taken permission under Section 33(2)(b) of the Industrial Disputes Act.



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4. The Management took a stand that the workman was a chronic absentee. It is admitted that he was working for more than a decade with the Management. A detailed charge sheet has been given, but no reply was given by the employee. The Enquiry Officer submitted a report on 24.11.2008, finding the workman guilty of charges. The second show cause notice was issued and on 11.07.2009, the workman was dismissed from service.

5. Challenging the same, an Industrial Dispute was raised in ID No.9 of 2011. By the said award, the Labour Court found that the enquiry was proper and the dismissal was fair. Therefore, it refused to reinstate the workman in service, but took a view that in lieu of the same the sum of Rs.2,00,000/- be paid as a lump sum compensation. Challenging the same, the present Writ Petition has been filed.

6. I have heard Mr.Anand Gopalan, learned counsel for M/s.T.S.Gopalan and Co. appearing for the petitioner and the second respondent, though served had not entered appearance.



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7. I have carefully gone through the records and the award of the Labour Court. The Labour Court had correctly come to the conclusion that the workman having kept away from work without any authority, action has to be taken against him. Dismissal from service is disproportionate and excessive. Discretion has to be exercised taking into consideration the social status of the petitioner. While sitting under Article 226 of the Constitution, unless the discretion exercised is perverse, this Court should not interfere with the order of the Labour Court. This is a case where more than a decade of service put in by the writ petitioner, he had absented himself only for a short period of time. Therefore, dismissing him without any compensation would not be in the interest of justice. The labour court has correctly exercised its jurisdiction and discretion.

8. Therefore, I am dismissing the Writ Petition. The respondent is directed to comply with the directions of the Labour Court 1. No costs. Consequently the connected miscellaneous petition is closed.

07.06.2023

jv



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Index: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

To:-

The Presiding Officer,
Labour Court,
Pondicherry.



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V.LAKSHMINARAYANAN, J.

jv

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