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W.P.No.14763 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.14763 of 2012

S.Saravanan

... Petitioner

Vs

1.The III Additional Labour Court
Chennai.

2.The Management,
Brakes India Limited,
Polambakkam,
Kancheepuram District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in Industrial Dispute No.93/2005, on the file of the III Additional Labour Court, Chennai, dated 30.06.2011 and quash the same as illegal, incompetent and unconstitutional and further direct the 2nd respondent to reinstate the petitioner with back wages and continuity of service.

For Petitioner : Ms.V.Srimathi

For R1 : Labour Court

For R2 : No appearance



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ORDER

This Writ Petition had been filed challenging the Award made in the Industrial Dispute affirming the punishment of removal of service of the petitioner.

2. Heard Ms.V.Srimathi, learned counsel for the petitioner. No representation on the side of the respondents.

3. The learned counsel for the petitioner would submit that the petitioner was a Machine Operator employed with the 2nd respondent's Factory. While that being so, his wife had lodged a false police complaint and based upon the complaint, the petitioner was arrested on 03.02.2002 and he was enlarged on bail immediately. However, on 11.02.2002, the 2nd respondent issued a charge memo and the alleged misconduct which had attracted Clause 19.7 of the Service Standing Orders of the 2nd respondent. In spite of his explanation to the charges particularly pointing out that the complaint is false and that during the course of the trial he will be able to honourably acquit himself. The 2nd respondent ordered a domestic violence.



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4. He would further submit that Clause 19.7 of the Standing Orders provides that for a misconduct that if an employee is arrested or convicted by the Court of law for any offences involving moral turpitude then he could be proceeded with. He would contend that the term “arrest” does not mean a preventive arrest but implies an arrest by way of punishment by a Court of law. He would submit that the petitioner was only preventively arrested and therefore, Clause 19.7 will not be applicable to the facts of the case. He would further submit that in spite of the representation, a farce enquiry had been conducted and the same has been reflected in the report of the enquiry officer. The enquiry officer has given a report as if the petitioner had accepted the arrest and therefore, he had held that the charges have been proved. A second show cause notice was served upon the petitioner to which also he had submitted a detailed explanation.

5. He would submit that the disciplinary authority had casually stated that he concurs with the findings of the enquiry officer and imposed an order of punishment of dismissal. The disciplinary authority had also taken into



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consideration the previous warnings that have been given to the petitioner for such order of dismissal. He would submit that Clause 19.7 of the Standing Orders is not a simpliciter of arrest or conviction of Court of law for any offence but such arrest or conviction by the Court of law should be one involving moral turpitude. Neither the charge memo did not specify that the petitioner had involved himself which would create a doubt on his moral turpitude. The enquiry officer has also not given any finding of the conduct of the petitioner affects the moral turpitude and also the disciplinary authority had not discussed anything as to such disregard to the moral turpitude from the conduct of the petitioner.

6. Further, he would submit that even though originally the petitioner had been convicted on appeal, the conviction of the petitioner was set aside by the Additional District and Sessions Judge (FTC-I), Chengalpet in C.A.No.74 of 2003 dated 21.01.2004. Against the same, the wife of the petitioner had filed a Criminal Revision in Cr.R.C.No.1570 of 2004 and by judgment dated 25.04.2007, the learned Judge of this Court had affirmed the acquittal. The petitioner had been unnecessarily drawn into a criminal case



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by his wife in which he had been honourably acquitted by the Appellate Court as confirmed by this Court in the Revision filed by his wife. This itself would show that the petitioner had not involved himself in any conduct which would lead to disregard to the moral turpitude. These aspects were all not seen either by the disciplinary authority or the Industrial Tribunal in coming to the conclusion that this petitioner had violated Clause 19.7 of the certified Standing Order.

7. He would further submit that even the reasons assigned by the 1st respondent/Tribunal that the petitioner even after the criminal case had failed to live with his wife and had obtained a divorce to come to a conclusion that the petitioner does not have any moral turpitude is wholly without any basis and is liable to be interfered with. He would submit that by a competent Court a decree of divorce had been granted to the petitioner which would only mean that the petitioner's wife was at fault and not the petitioner.

8. I have considered the submissions made by the learned counsel for



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the petitioner and perused the materials available on record before this Court.

9. The charge against the petitioner is that his misconduct is in contravention with Clause-19.7 of the Company's Standing Order which reads as hereunder :-

“Clause 19.7: Arrest or conviction by a Court of law for any offence involving moral turpitude”

Based upon which an enquiry has also been conducted. A cryptic enquiry report had been submitted by the enquiry officer. As rightly pointed out by the learned counsel for the petitioner, there is no finding of fact by the enquiry officer as to what conduct of the petitioner had led to believe that he had acted in such a way to affect the moral turpitude. The order of the disciplinary authority imposing a punishment of dismissal is still worse. A disciplinary authority cannot act arbitrarily. It has to assign reasons as to why it is not accepting the explanation submitted by the delinquent officer. A reading of the Clause 19.7 which the petitioner is alleged to have contravened would show that the arrest or the conviction should be for an



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offence which involves the moral turpitude of an employee. As pointed out earlier neither the enquiry officer or a disciplinary authority had given any findings as to what was the moral turpitude which was involved in the arrest of the petitioner. The Tribunal had also not considered these aspects.

10. Further, when the issue was pending with the Tribunal, the petitioner had been acquitted by the Appellate Court and have been confirmed by this Court. The reason assigned by the Tribunal that the petitioner had not joined his wife even after these dispute and had applied for divorce would show that the petitioner does not have any moral turpitude is wholly misplaced. The marital life of an individual cannot be taken into consideration by the employer. There may be many reasons for which a person wants to get divorced. If the petitioner did not have a moral turpitude I doubt that a decree for divorce would have been granted to him as he would be at fault.

11. In such circumstances, I am of the considered view that the invocation of disciplinary proceedings against the petitioner itself is unwarranted or atleast could have awaited the conclusion of the criminal



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case and therefore, orders of dismissal passed by the disciplinary authority as affirmed by the Industrial Tribunal necessarily would have to be interfered with.

12. In fine, this Writ Petition is allowed and the orders impugned herein are set aside. As a sequel, the 2nd respondent is directed to reinstate the petitioner with back wages and continuity of service. However, there shall be no order as to costs.

20.11.2023

gba

Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

To

The III Additional Labour Court
Chennai.



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K.KUMARESH BABU,J.

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