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W.P.No.13805 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.13805 of 2016

O.S.Dilip Menon

...Petitioner

Vs.

1. The Management of Lupin Ltd.,
No.159, C.S.T. Road, Kalima,
Santa Cruz (East), Mumbai – 400 098.

2. The Presiding Officer,
Labour Court, Salem.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the award dated 25.5.2015 (received on 31.8.2015) passed by the 2nd respondent Labour Court, Salem in I.D.No.120 of 2011, and to quash the same as being illegal, arbitrary and contrary to the principles of natural justice and the Industrial Disputes Act, 1947 and for a consequential direction to the 1st respondent management to reinstate the petitioner in service with full back wages, continuity of services and including all other attendant benefits.



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For Petitioner : Mr.N.G.R.Prasad for
M/s. Row & Reddy

For Respondents : Mr.G.Anand for
M/s. T.S.Gopalan & Co, for R1

ORDER

This Writ petition has been filed seeking to quash the award passed by the 2nd respondent dated 25.05.2015 in I.D.No.120 of 2011 and to consequently direct the 1st respondent to reinstate the petitioner into service with full back wages, continuity of service and all other attendant benefits.

2. The case of the petitioner is that he joined the services of the 1st respondent as a medical representative at Salem on 08.08.1994 and he was confirmed in service with effect from 07.02.1995. After becoming the District Secretary of the Tamil Nadu Medical and Sales Representatives union, he used to voice the grievances of several employees in the conferences. Since the said action of the petitioner was not to the liking of the 1st respondent, as an act of victimisation, the 1st respondent issued the transfer order dated 02.06.2010, transferring the petitioner from Salem to Delhi and when the same was objected by the petitioner and as he did not



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join, he was issued with a charge memo dated 08.10.2010 for allegedly disobeying the said transfer order. Being not satisfied with the explanation dated 18.10.2010 submitted by the petitioner stating that his transfer to Delhi was under consideration of the Central Grievance Committee of the 1st respondent, the 1st respondent, by letter dated 18.10.2010, informed the petitioner that the domestic enquiry would be held on 25.10.2010 at Mumbai, for which, the petitioner sent a reply dated 23.10.2010 conveying his inability to attend the enquiry at Mumbai within a short notice. Without considering the above said reply, once again, by letter dated 25.10.2010, the petitioner was informed that the domestic enquiry would be held at Mumbai for three days from 09.11.2010 to 11.11.2010. On receipt of the same, the petitioner once again sent a reply dated 08.11.2010 seeking to adjourn the matter. However, without considering the same, an *ex parte* enquiry was conducted on 11.11.2010 and the petitioner's services were terminated by order dated 12.11.2010. Challenging the said termination, the petitioner initiated conciliation proceedings and as the same ended in failure, the petitioner raised an industrial dispute before the 2nd respondent in I.D.No.120 of 2011. After contest, by the impugned award, the 2nd



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respondent dismissed the dispute raised by the petitioner. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that, the entire disciplinary proceedings initiated as against the petitioner is nothing but an act of victimisation, since the petitioner was elected as District Secretary of an Association and the said action of the management would amount to unfair labour practice and the same is in violation of Section 9A of the Industrial Disputes Act, 1947 (in short 'ID Act'). Though departmental proceedings were initiated as against the petitioner for allegedly disobeying the transfer order, however, for the above said misconduct, imposing a punishment of dismissal from service is wholly unsustainable. Though, the petitioner sent various letters seeking to adjourn the enquiry for his appearance, however, without taking into consideration any of the said letters, the 1st respondent proceeded with the enquiry and drawn an *ex parte* proven minute and the 1st respondent terminated the petitioner from service by order dated 12.11.2010, without affording opportunity to the petitioner to prove his innocence, which is a clear violation of principles of natural justice



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and the termination order passed based on the above said unfair enquiry cannot be sustained. He further submitted that the 2nd respondent had mechanically vouched the findings of the Enquiry Officer and passed the present impugned award which necessarily needs to be interfered with. He furthermore relied upon the various decisions of the Hon'ble Apex Court in which, the procedure to be followed in the domestic enquiry, documents to be marked are stated and also to show that varying the Terms of Employment regarding transfer amounts to 9A violation under the Industrial Disputes Act and that, the employee is entitled for normal relief of reinstatement with back wages and other benefits in case of illegal termination and interfering of the transfer orders if factual/legal victimisation is proved. Accordingly, he prayed for appropriate orders.

4. The learned counsel for the first respondent submits that the 1st respondent is a pharmaceutical company engaged in the manufacture and sale of drugs and medicines and having branches all over India. The petitioner herein was appointed as a Medical Representative by the 1st respondent in the year 1995 and the nature of his job was to call on Doctors



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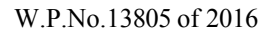
and create a prescription demand for the products of the 1st respondent. One of the terms of his appointment was that being a member of the field force, his services are transferable based on necessity and in order to cater the needs of the 1st respondent and also to promote its business. Therefore, on 02.06.2010, he was transferred from Salem to Delhi. While so, without complying with the transfer order, he remained absent and despite the several reminders sent by the 1st respondent, the petitioner failed to join the duty. Thereby, the 1st respondent initiate disciplinary proceedings by issuing charge sheet for unauthorised absence, and in spite of adjourning the enquiry on several occasions for his appearance, the petitioner had never taken any earnest efforts to participate in the enquiry and to prove his innocence. Upon conclusion of the enquiry proceedings, the petitioner was dismissed from service on 12.11.2010. He further submitted that, the 1st respondent had clearly informed the petitioner that the entire expenses for shifting from Salem to Delhi will be provided by the management and he can also get the reimbursement of Packing, crating, transportation and insurance expenses from the management, despite which, the petitioner failed to obey the transfer order and the said action of the petitioner is illegal and if he is



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left with imposition of small punishment, the same will be set as an example for the other employees and it will highly spoil the working atmosphere.

5. Further, merely because the petitioner was retained in Salem for 16 years, it did not mean that he should be retained at Salem forever and the petitioner had at no point of time challenged the transfer order in the manner known to law. Though the order of transfer was passed on 02.06.2010, the dismissal order came to be passed only on 12.11.2010, after affording sufficient opportunity to the petitioner, which he failed to utilise. Hence, the Labour Court, after considering all the above said facts had arrived a conclusion that, the punishment imposed by the 1st respondent for the misconduct committed by the petitioner does not warrant interference and accordingly, passed the present impugned award, dismissing the dispute raised by the petitioner. He furthermore submitted that, the respondent had reason to believe that he was working as a freelancer in the supply of pharmaceutical and allied products. He further contended that from 2017, the petitioner was carrying on business under the name and style of M/s.Shree Krishna Enterprises and he was gainfully employed during the



petition.

and the learned counsel appearing on behalf of the first respondent.

dismissing the dispute raised by the petitioner.

opportunity was given to him to prove his case, which is a clear violation of



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principles of natural justice.

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9. A perusal of the material documents placed on record reveals that, for alleged non-obeying of the transfer order issued by the management, the petitioner was terminated from service. Though the main case of the petitioner is that he was set *ex parte* and that he was not afforded with an opportunity to present his case, however, it is to be noted, as found from the materials available on record that opportunity was granted to the petitioner, which he failed to utilise by appearing before the enquiry and placing materials to prove his innocence. Therefore, pleading that no opportunity was granted cannot be the basis for this Court to overturn the verdict of the Labour Court.

10. However, leaving aside the issue of opportunity, the whole case hinges on the proportionality of the punishment imposed on the workman as there is no dispute on factual aspects. The imputation against the workman relates to not obeying with the orders of transfer for which punishment of dismissal from service has been imposed on him. Normally, this Court



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would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali Vs. High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.

11. It has been the consistent view of the Courts that, it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as



to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscious of the Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

(Empasis Supplied)

12. In the present case, the charge against the petitioner is that he had not obeyed the orders of transfer, which imputation cannot be said to of such a magnitude as that of corruption or misappropriation. The allegation levelled only relates to unauthorized absence and not obeying the transfer



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order, which charge, though is serious, but not serious enough warranting the punishment of dismissal from service.

13. Though it is the claim of the 1st respondent management that only in order to promote the business and to cater the needs of the company, the petitioner was transferred to Delhi, but the act of not-obeying the transfer order and unauthorised absence of the petitioner is not required to be visited with the punishment of dismissal from service, as the proportionality of the punishment to the charges levelled against the petitioner is on the higher side and definitely it shocks the conscience of this Court and, therefore, the order of dismissal is wholly perverse and disproportionate. This material aspect has not been considered by the Labour Court while dismissing the dispute raised by the petitioner, which requires to be interfered with.

14. In the aforesaid circumstances, while allowing the writ petition, by setting aside the impugned award passed by the 2nd respondent dated 25.05.2015 in I.D.No.120 of 2011, this Court is inclined to pass the following order :-

(i) The 1st respondent is directed to reinstate



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the petitioner back into service with continuity of service and all other attendant benefits within Tamilnadu.

(ii) The petitioner is entitled for 25% backwages from the date of dismissal till the date of reinstatement.

(iii) No costs.

15.09.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Presiding Officer,
Labour Court,
Salem.



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M.DHANDAPANI, J.

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