



WP.No.13050/2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WP.No.13050/2010

D.Abel Dhanasingh

.. Petitioner

Vs.

1.The Presiding Officer
Principal Labour Court
Vellore.

2.The Medical Superintendent
MS Office, CMC Hospital
Vellore.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the Award of the 1st respondent dated 23.12.2009 in ID.No.54/2008, quash that portion of Award ordering compensation alone and consequently direct the 2nd respondent to reinstate the petitioner in service with continuity of service and with back wages and other attendant benefits.



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For Petitioner : Mr.S.T.Varadharajulu
R1 : Court
For R2 : Mr.S.Shivathanu Mohan for
M/s.S.Ramasubramaniam
Associates

ORDER

- (1) This writ petition is filed by the workman as against the Award of Labour Court denying reinstatement in ID.No.54/2008.
- (2) Brief facts that are necessary for the disposal of this writ petition are as follows. The petitioner was working as a Computer Programmer in SCHELL Eye Hospital, a unit of the 2nd respondent Organization. He joined in service on 22.08.1998. The petitioner was terminated from service on 17.09.2007 after finding him guilty of serious charges. It was found that the entire computer network at SCHELL Eye Hospital had failed on 23.01.2007 and the same resulted in stoppage of all computer linked services in the said Eye Hospital. The petitioner was the person who was in-charge and control of the server room and the switches. Therefore, specific charges were framed against the petitioner. On 23.01.2007, there was network problem in SCHELL Eye Hospital due to electrical



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problem. When a technical person was deputed to attend the problem, the petitioner questioned the person for entering into the premises without the permission of petitioner. The person who was deputed to attend the problem found that the network switch was looped back and reported everything to the Management. Thereafter, a domestic enquiry was conducted. The Enquiry Officer conducted a detailed enquiry and submitted a Report finding the petitioner guilty of charges. Thereafter, the petitioner was terminated from service after getting his explanation to the 2nd show cause notice. Challenging the order of termination, the petitioner raised an Industrial Dispute in ID.No.54/2008 before the Labour Court and the Labour court, though held that the petitioner is entitled to get a compensation of Rs.1,03,545/-, has rejected the claim of the petitioner for reinstatement with backwages. Aggrieved by the same, the above writ petition is filed.

- (3) The learned counsel for the petitioner, while assailing the Award of the Labour Court, submitted that the Labour Court has failed to appreciate the evidence in a proper perspective and the Award of



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the Labour Court is capricious and suffers from errors apparent on the face of the record. He further submitted that the findings of the Labour Court are not sustainable especially having regard to the nature of charges and the fact that there is no direct evidence finding the petitioner guilty of the charges. The learned counsel then submitted that the findings of the Enquiry Officer are based on assumption and therefore, the Labour Court ought to have independently considered every charge and should have held that the charges are not established by the Management. The learned counsel then pointed out that the Management proceeded against the petitioner for having sabotaged the server and that the said charge being a serious one, cannot be held to be proved merely because there are possibilities especially when the failure of system may be due to an electrical or technical error. The learned counsel also submitted that such failure of system due to electrical or technical defects, had happened on several occasions and that the petitioner cannot be blamed without there being any evidence available as against the petitioner to prove such serious charge. The



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learned counsel further submitted that the standard of proof may not be as necessary or required in criminal cases for proving the charges. But, there must be evidence which are legal and acceptable before coming to the conclusion that the petitioner is guilty of the serious charges. He also contended that the petitioner is struggling for livelihood and that the Labour Court ought to have held that denial of employment would be against Article 21 of the Constitution of India.

- (4) ***Per contra***, the learned counsel appearing for the 2nd respondent reiterated the stand taken by them in the counter affidavit. He also relied upon a few precedents to reiterate that a disciplinary authority is expected to prove the charges leveled against the delinquent only on the preponderance of probabilities and not on proof beyond reasonable doubt. He also pointed out from the counter affidavit that the petitioner is gainfully employed elsewhere after the order of termination and therefore, no serious prejudice is likely to be caused to the petitioner on account of denial of employment. It is further stated that the petitioner is currently



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working as a Professor in the Computer Department of Voorhees College at Vellore and earning substantial income.

- (5) This Court has considered the rival submissions and also perused the materials placed.
- (6) The Labour Court has given a specific finding that the enquiry against the petitioner was conducted in accordance with law and in compliance of principles of natural justice. It is an admitted fact that on 23.01.2007, the entire computer network at SCHELL Eye Hospital had failed and it had resulted in stoppage of all computer link services affecting the functioning of the said hospital. It is also an admitted position that in Eye Hospitals, computerised system for tracking every patient is provided to enhance the efficiency of the service by the medically trained staffs in Eye Hospitals. In the present case, it is admitted that the computer operations are controlled by the Computerised Hospital Information Processing Service [CHIPS] Department. Following the breakdown in the computer network, a Programmer Trainee visited the Eye Hospital and obtained keys of the computer room and inspected the control



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switches. It is on record that a report is available which paved way for framing charges against the petitioner. The person who was asked to attend the work after the breakdown, has given a Report that he was scolded by the petitioner for attending the work. It is on record that the defect was actually found by him that the network switch was looped back which had created the entire system to go off. This basic fact was projected by the Management before the Enquiry Officer to show how the petitioner was not only careless while being in-charge of entire server room and switches, but also did not allow the person who was called upon to attend the technical problem. The conduct of the petitioner scolding the person who came to restore the system has been viewed seriously. The Enquiry Officer has given specific finding that the charges are proved after an assessment of the statements given by all the witnesses particularly the statement given by the petitioner himself.

- (7) The learned counsel appearing for the petitioner though pointed out that there is no direct evidence against the petitioner to prove



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sabotage, the fact that the petitioner was in-charge and control of the server room and network system is not disputed. It was found, as a matter of fact, that the switches have been looped back leading to the problem. The petitioner who was the only person who had access to the room, did not attend the work. Not only that, he also scolded the person who was deputed to do the repair work. In the said circumstances, the Management has lost faith in the petitioner and the Management has serious apprehension against the petitioner as he might have done something to sabotage the whole system. The Labour Court has found that the statements of witnesses against the petitioner are acceptable and that the petitioner has not alleged any motive against any of the witnesses. As a part of domestic enquiry, few doctors of the hospital were also examined to speak about the inconvenience caused in the Out-Patient Department on the day of incident. Taking note of several aspects, particularly, the apprehension that the petitioner might have done something to cause disrepute to the Institution/Management, the petitioner was given compensation of



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Rs.1,03,545/- and that the Labour Court has given sufficient reasons for not directing reinstatement.

- (8) The learned counsel for the 2nd respondent/Management has relied upon a judgment of the Hon'ble Supreme Court in the case of ***The General Manager [Operations], State Bank of India and Another Vs. R.Periyasami*** reported in ***2015 [3] SCC 101***, wherein it has been held as follows:-

"10. It is not really necessary to deal with the judgment [R. Periyasamy v. SBI, 1999 SCC OnLine Mad 658 : (2000) 1 LLN 404] of the learned Single Judge since that has merged with the judgment of the Division Bench [SBI v. R. Periyasamy, Writ Appeal No. 2375 of 1999, decided on 30-8-2007 (Mad)] . However, some observations are necessary. The learned Single Judge committed an error in approaching the issue by asking whether the findings have been arrived at on acceptable evidence or not and coming to the conclusion that there was no acceptable evidence, and that in any case the evidence was not sufficient. In doing so, the learned Single Judge lost sight of the fact that the permissible



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enquiry was whether there is no evidence on which the enquiry officer could have arrived at the findings or whether there was any perversity in the findings. Whether the evidence was acceptable or not, was a wrong question, unless it raised a question of admissibility. Also, the learned Single Judge was not entitled to go into the question of the adequacy of evidence and come to the conclusion that the evidence was not sufficient to hold the respondent guilty.

11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] , this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable



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doubt. This view was upheld by this Court in SBI v. Ramesh Dinkar Punde [(2006) 7 SCC 212 : 2006 SCC (L&S) 1573] . More recently, in SBI v. Narendra Kumar Pandey [(2013) 2 SCC 740 : (2013) 1 SCC (L&S) 459] , this Court observed that a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

- (9) Therefore, the findings of the Labour Court on the factual issues are unassailable and this Court, sitting in Article 226 of the Constitution of India, would not interfere with the same unless there are any irregularity or illegality in the decision making process. The counter affidavit was filed in the year 2018 specifically referring to the fact that the petitioner is currently working as Professor in the Computer Department in Voorhees College, Vellore, and earning substantial income. No reply or rejoinder is filed by the petitioner denying the same.
- (10) In view of the specific findings of the Labour Court and that the said findings are supported by reasons, this Court is unable to find



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(11) In the result, the writ petition stands **dismissed**. No costs.

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AP

Internet : Yes

Neutral Citation: Yes/ No

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S.S.SUNDAR, J.,

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