



WP.No. 33291 of 2004

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 02.02.2023**

**Coram:**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P. No. 33291 of 2004  
and W.M.P.No. 40241 of 2004**

The Management of Kallakurichi  
Co-Op. Sugar Mills Ltd.,  
represented by its special officer

... Petitioner

**Vs.**

1.L.Sounder (Deceased)

2.The Presiding officer,  
Labour Court, Cuddalore

3.S.Jayalakshmi

4. S.Aravinth

5. L.Archana

(R3 to R5 Substituted as LR's of deceased first respondent)

Respondents

...

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the second

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respondent relating to Impugned Award dated 16.08.2004 made in I.D No. 41 of 2003 and quash the same.

For Petitioner : Mr.A.S.Thambuswamy  
For Respondents : Mr.T. Dhanyakumar for R1  
R2-Court

### ORDER

Order of the 2<sup>nd</sup> respondent dated 16.08.2004 passed in I.D.No.41 of 2003 is under challenge, in this Writ Petition.

2.Petitioner herein is the Management of Kallakurichi Co-Operative Sugar Mills Limited and the 1<sup>st</sup> respondent was working as Junior Assistant in the Office of the petitioner. During the crushing season in March 2002, while the crushing of sugar cane was continuously going, the 1<sup>st</sup> respondent was directed to report for duty on 17.03.2004 at 3.30 am.,. He also reported for duty and at about 10.25 am., he left the work place, without obtaining permission of the Section Head and also without signing the movement register. Therefore, on the complaint of the employee in the Time Office, domestic enquiry was conducted. Pending enquiry, services of the 1<sup>st</sup>



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respondent was suspended vide order dated 21.03.2002. In the enquiry proceedings, 1<sup>st</sup> respondent was dismissed from service by an order dated 23.04.2002.

3.Since the conciliation proceedings ended in vain, 1<sup>st</sup> respondent preferred a Industrial Dispute before the 2<sup>nd</sup> respondent in I.D.No.41 of 2003 and the same was ordered in favour of the 1<sup>st</sup> respondent, by setting aside the order of dismissal and further ordered for reinstatement with continuity of service and backwages. However, the 2<sup>nd</sup> respondent imposed the punishment of stoppage of one increment with cumulative effect for the above stated misconduct. Questioning the said award, the petitioner Management approached this Court, invoking [Article 226](#) of the Constitution of India.

4.The learned counsel for the petitioner Management would submit that the 1<sup>st</sup> respondent left the work place, during peak crushing time, that too, without obtaining permission and without making entry in the



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movement register. The 2<sup>nd</sup> respondent on erroneous consideration of facts and law, passed an order, holding that the domestic enquiry conducted by the petitioner was vitiated as the same was not conducted in a fair and proper manner. The 1<sup>st</sup> respondent was given ample opportunity and at no point of time the principles of natural justice was violated. Further the petitioner has let in cogent evidence both oral and documentary to substantiate the charges levelled against the 1<sup>st</sup> respondent and order of dismissal. Further the 2<sup>nd</sup> respondent failed to consider the fact that even if the order of dismissal is set aside, order of reinstatement and back wages are not automatic.

5.It is well settled law that back wages need not be granted, in all cases and no work no pay is the prevailing principle as settled by various judicial pronouncements of this Court and the Hon'ble Supreme Court. Therefore, once it is concluded that the enquiry was properly conducted, after affording proper opportunity to the 1<sup>st</sup> respondent, it is out of question for the Labour Court, to interfere with the quantum of punishment without



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any concrete evidence.

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6.The learned counsel for the 1<sup>st</sup> respondent would submit that the Labour Court, on the basis of appreciation of the facts, came to the conclusion that the petitioner Management ought to have accepted the explanation offered by the 1<sup>st</sup> respondent. For the minor misconduct on the part of the 1<sup>st</sup> respondent that leaving the work place without permission, the 2<sup>nd</sup> respondent ought not to have imposed the major punishment of dismissal from service.

7.He would further submit that the findings of the enquiry officer is on the basis of assumptions and presumptions. The enquiry officer had also not conducted a full fledged domestic enquiry or departmental enquiry. No third party witness adduced, no opportunity was given on his side to contest the doestic enquiry. The enquiry was conducted in a hurried manner and enquiry officer has predetermined the issue. The Labour Court after

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elaborately discussing the evidence and the documents has finally come to the conclusion that the dismissal order is liable to be set aside along with reinstatement with continuity of service and backwages. Holding so, the Labour Court ultimately, by exercising its discretion under of [Section 11A](#) the Industrial Disputes Act, modified the punishment into one of reinstatement with continuity of service and backwages. However, the 2<sup>nd</sup> respondent imposed the punishment of stoppage of one increment with cumulative effect.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the records, this Court is of the view that the employee had joined the petitioner management as Junior Assistant and he put 28 years of service. On 17.03.2002, he was directed to report for duty at 3.30 am., and on the same day, he left the work place at 10.25 am., for having breakfast. This is not a grave offence, to impose the punishment of dismissal from service. The 1<sup>st</sup> respondent's absence at the relevant time was due to genuine reason and therefore the petitioner Management is not justified in dismissing the



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petitioner from service. In the instant case, no independent witness was examined. The employee had not committed theft, fraud or been dishonest and therefore the highest punishment imposed on the employee i.e., dismissal from service is not sustainable under law. Hence, the labour Court had rightly granted relief to the employee as prayed by him and the award passed by the Labour Court does not warrant interference by this Court.

9. In view of the above findings, this Writ Petition stands dismissed.

No costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

The Presiding officer,  
Labour Court, Cuddalore

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**J.NISHA BANU, J.,**

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