



W.P.No.20363 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20363 of 2013

M.Irusappan

... Petitioner

Vs.

1.Presiding Officer,
Labour Cour,
Puducherry

2.The President,
Kanuvapettai Co-operative Milk Producers Society,
Kanuvpet,
Puducherry

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the portion of the award, passed by the first respondent herein made in ID.No.3 of 2010 dated 19.03.2012 insofar as non-granting of back wages and imposed the punishment of one increment cut with cumulative effect and quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents

R1 : Labour Court

For R2 : M/s.G.Sumithra

ORDER

This writ petition has been filed challenging the award passed by the first respondent in ID.No.3 of 2010 dated 19.03.2012,



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thereby ordered to reinstate the petitioner into service without backwages and also imposed punishment to cut one increment with cumulative effect.

2. The petitioner was appointed as Milk Measurer in the second respondent Society during the year 1989. In the second respondent, beside the petitioner, Secretary and Clerk were working. The petitioner made several representations for non payment of any bonus Uniform and Education-aided fund. Therefore, he made representation on 21.01.2009 to the second respondent and the second respondent did not take any steps to consider his request. Therefore, in inimical terms, the second respondent Society started harassing the petitioner on many occasions. Finally on the complaints from the members of the Society, the petitioner was suspended from service on 25.02.2009. Thereafter, he was served with charge memo dated 18.03.2009 and 03.04.2009. On the basis of the charge memo, a domestic enquiry was conducted, in which milk vendors were examined. However, enquiry officer found charges were proved and on the strength of the enquiry report, he was terminated



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from service on 23.05.2009. Therefore, the petitioner raised industrial dispute before the first respondent and the first respondent found that the petitioner being employee of the second respondent, failed to discharge his duty properly due to overload, which he had intimated to the second respondent which was marked as Ex.P1. Therefore, misconduct committed by the petitioner is not such grave in nature that does not warrant punishment of dismissal awarded by the respondent Company which is disproportionate one and hence, the petitioner can be reinstated without any backwages. Further concluded that the petitioner had violated the allocation of work of cleaning, which is given to him and as such, Labour Court awarded punishment to cut one increment with cumulative effect.

3. The learned counsel for the petitioner would submit that once the Labour Court found that the punishment imposed by the second respondent is disproportionate one, the Labour Court ought to have awarded reinstatement along with backwages.



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4. The learned counsel for the second respondent submitted that immediately after passing the award, the petitioner was reinstated into service and now he got retired. That apart, all the charges framed against the petitioner were proved and the Labour Court rightly held that the punishment of termination was disproportionate to the proven charges and as such, provided punishment to cut off one increment with cumulative effect. However, the petitioner was admittedly not working from the date of his termination till the reinstatement. Therefore, he is not entitled for any backwages.

5. Heard, the learned counsel appearing on either side.

6. The only point for consideration in this writ petition is that whether the petitioner is entitled for backwages during the period of termination or not?. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Rama Kant Misra Vs. The State of UP and others*** rendered in Civil Appeal No.1531 of 1980 dated 21.10.1982. The workman was



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removed from service and upto High Court his order of removal was confirmed. Aggrieved by the same, the workman preferred appeal before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India held that the alleged misconduct consisting of use of indiscreet or abusive or threatening language occurred on November 1971, meaning thereby that he had put in 14 years of service. The respondent Management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years' service he rendered prior to the date of misconduct and the misconduct consists of language, indiscreet, improper or disclosing a threatening posture. Therefore, the Hon'ble Supreme Court of India set aside the punishment of removal from service and imposed punishment of withholding of two increments with future effect and management was directed to reinstate the workman with all the benefits including backwages.

7. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Colour Chem Ltd Vs. A.L.Alaspurkar and Others*** reported in ***(1998) 3 SCC 192***, in which the Hon'ble Supreme



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Court of India after confirming the order of reinstatement and ordered backwages of 40% till reinstatement in respect of one workman and 50% backwages in respect of another workman. In fact, before the first respondent, the workman cited the very same judgment of the Hon'ble Supreme Court of India wherein it is held that the punishment of dismissal imposed would be shockingly disproportionate if inflicted for minor misconduct and after considering past record. In the case on hand also, the petitioner was joined as Milk Measurer in the year 1989. After period of twenty years, he was served with charges. On perusal of the charges, they are also very flimsy such as he failed to wash the vessels properly, misbehaved with superior officers. In fact, the petitioner marked Ex.P1 before the first respondent requesting the second respondent that he may be relieved from the work of cleaning the office premises and to make alternative arrangement for cleaning the office premises and permit him to do the work of measurement of milk only.

8. Admittedly, the petitioner was appointed as Milk Measurer.

Therefore, the Labour Court rightly held that the punishment imposed on



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the petitioner was disproportionate and ordered for reinstatement. Insofar as the backwages, till his twenty years of service, there was no complaint against the petitioner with regards to misconduct or any charge. Therefore, for very flimsy charges, capital punishment of dismissal from service was imposed and as such, the petitioner is entitled for 50% of backwages for the period from the date of his removal from service i.e. 23.05.2009 till his reinstatement into service.

9. With the above direction, this writ petition is disposed of.

There shall be no order as to costs.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.Presiding Officer,
Labour Cour,
Puducherry
- 2.The President,
Kanuvapettai Co-operative Milk Producers Society,
Kanuvpet,
Puducherry
3. The Public Prosecutor,
High Court, Madras.

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