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W.P.No.27521 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**Writ Petition No.27521 of 2011
and M.P.No.1 of 2011**

The Management
Neycer India Limited
Vadalur
Rep.by its Director.

.. Petitioner

-VS-

1.The Presiding Officer
Labour Court
Cuddalore.

2.R.Kakkan
S/o Ramalingam

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.5 of 2006 and quash its award dated 26.05.2011.

For Petitioner : Mr.P.Raghunathan

For Respondents : R1 – Labour Court
R2 – Notice served
No appearance

ORDER



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The Writ Petition had been filed challenging the award passed by the 1st respondent/Labour Court in I.D.No.5 of 2006 dated 26.05.2011, thereby the 2nd was reinstated with continuity of service, without any back wages and other attendant benefits.

2.Heard Mr.P.Raghunathan, learned counsel for the petitioner. The 2nd respondent, inspite of being served with notice, neither chosen to appear before this Court nor represented through his counsel.

3.Mr.P.Raghunathan, learned counsel for the petitioner would submit that the petitioner is engaged in the manufacture of sanitary ware products and the 2nd respondent had joined the service of the petitioner, in the year 1981. He had been regularly in the habit of abusing and threatening his superiors and had been warned time and again. Due to which, he was also awarded with the minor punishment, with a view to correct him. However, on 08.09.2004, when the 2nd respondent was working in the glazing section, he was allotted the job of transport work by one Deputy Manager, for which the 2nd respondent got infuriated and abused him and also warned him with



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dire consequences, including threat to his life. The said act of the 2nd respondent was reported to the higher authorities. Therefore, the petitioner issued a Charge Sheet dated 08.09.2004 and also suspended the 2nd respondent, during the pendency of the enquiry.

4.The Enquiry Officer, after conducting thorough enquiry had held that the charges have been proved and thereafter, the Disciplinary Authority had imposed the punishment of dismissal. During the pendency of the disciplinary proceedings, the 2nd respondent had approached the petitioner for full and final settlement and accordingly, the petitioner had cleared all his dues, for which he had also issued acknowledgment vouchers. However, the 1st respondent by its award dated 26.05.2011 had directed reinstatement of the 2nd respondent with continuity of service, on condition that he should not behave in such an indecent manner in future and also held that the 2nd respondent is not entitled for back wages and other attendant benefits.

5.The learned counsel for the petitioner would submit that the Labour Court had infact held that the 2nd respondent had not challenged the fairness



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of the domestic enquiry, therefore, the Labour Court had not gone into the issue as to whether the domestic enquiry had been conducted in the manner prescribed. He would further submit that the Labour Court had not appreciated the facts of this case in a proper manner, even though there is no finding that the charges were false, the Labour Court also accepted that the 2nd respondent involved in the delinquencies. When such be so, he would submit that the Labour Court had wholly erred and interfered with the punishment given to the 2nd respondent and directed reinstatement of such an employee. Hence, he would pray before this Court to interfere with the award impugned in this Writ Petition.

6.Heard the submissions of the learned counsel for the petitioner and perused the materials on record.

7.On reading of the award, it is seen that the Labour Court had categorically given a finding that the workman had not challenged the fairness of the domestic enquiry and the Labour Court also not held that the charges levelled against the 2nd respondent were false. It had only gone upon



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to decide whether the punishment imposed by the petitioner for the proved misconduct is proportionate or disproportionate. Further, the Labour Court had gone upon by the statement made by the 2nd respondent that he undertakes not to commit any such misconducts in the future. Only on the strength of such statement, the Labour Court had interfered with the punishment and directed reinstatement of the 2nd respondent with continuity of service. The Labour Court wholly failed to look into the previous misconducts of the 2nd respondent on the same delinquencies. It is not the first time by the 2nd respondent is committing such misconducts. From the documents produced by the petitioner, it could be seen that the 2nd respondent had been indulging in a similar misconduct even during his earlier period of service, for which he had also been inflicted with minor punishment and warned to behave properly. A workman is expected to behave himself and not conduct himself arising to such misconduct as complained in the Charge Memo. He had also not denied such conduct, but had only undertook not to commit such mistake in future.

8. Therefore, I am of the considered view that there is no infirmity or



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illegality in the order passed by the petitioner, imposing the punishment of dismissal. However, the Labour Court on improper appreciation of facts had passed the award impugned herein.

For the aforesaid reasons, the award dated 26.05.2011 in I.D.No.5 of 2006 passed by the Labour Court / 1st respondent is set aside and the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

16.11.2023

Speaking/Non speaking order
Neutral citation : Yes/No
Index : Yes/No
Internet : Yes/No
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To
The Presiding Officer
Labour Court
Cuddalore.



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K.KUMARESH BABU, J.,

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