



W.P.No.30629 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

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The Management of
TTK Prestige Limited,
Plot No.82 & 85 SIPCOT Indl. Complex,
Hosur 635 126, rep. by its
Director & Secretary. ... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Salem.

2.M.Satishkumar ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, calling for the records of the 1st
respondent in I.D.No.106 of 2007 and quash its award dated 03.07.2012.

For Petitioner : Mr.P.Raghunathan for
M/s.T.S.Gopalan and Co.

For R1 : Court

For R2 : Mr.K.V.Shanmuganathan

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ORDER

This Writ Petition is filed to call for the records of the 1st
respondent in I.D.No.106 of 2007 and quash the award dated 03.07.2012.



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2.The petitioner, the Management will be referred to as the petitioner and the employee as the employee.

3.The petitioner is the manufacturer of kitchenware items and has a unit in SIPCOT Industrial Complex. The petitioner's factory is governed by the Factories Act and it has got certified standing orders. The employee joined the petitioner's company as a Trainee in the year 1986 and he was confirmed in April, 1989. While so, the employee was issued with a charge sheet cum show cause notice on 22.11.2005 for misconduct of habitual absence for 34 days between 01.11.2004 and 31.10.2005. The employer did not offer any explanation to the charge sheet and therefore notice of enquiry was sent to him and in the enquiry proceedings the employee admitted the charges. The Enquiry Officer found that the charges against the employee were proved. Thereafter after giving reasonable opportunities to the employee orders were passed on 24.07.2006 dismissing him from service. The employee therefore raised the Industrial Dispute challenging the dismissal order. The Labour Court allowed the claim petition by directing the petitioner to reinstate the employee with continuity of service along with backwages. Aggrieved by the award passed by the Labour Court, the



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petitioner has filed the above writ petition.

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4.The employee in his claim petition stated that he sustained accident on 06.11.1987 during the course of his employment and inspite of the grievous injuries sustained by him in the accident, the petitioner without any sympathy burdened him with heavy work. The employee stated that due to the injuries sustained by him he was forced to take leave for treatment and after treatment when he reported for work on 10.08.2006, the petitioner refused entry to him in the factory. The employee even thereafter made several requests to the petitioner to give him work, but the petitioner did not yield to the requests. It was the employee's further case that without any proper enquiry, he was dismissed from service and so he was constrained to raise the dispute against the dismissal order.

5.The Labour Court on an appreciation of the evidence on record found that the termination of the employee was proper and valid. The Labour Court further found that the quantum of punishment imposed was disproportionate to the nature of misconduct and therefore modified the punishment of dismissal from service to one of reinstatement, but without



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backwages.

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6.The learned counsel appearing for the petitioner submitted that the Labour Court having found that the termination was valid and the enquiry proceedings were conducted in a fair and proper manner erred in interfering with the quantum of punishment. The learned counsel submitted that the Labour Court on mere sympathy over turned the punishment imposed by the petitioner and the same was not permissible in law. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of ***Kerala Solvent Extractions Ltd. Vs. A.Unnikrishnan and another*** reported in ***(2006) 13 SCC 619***, in support of his case.

7.The learned counsel for the employee on the other hand submitted that the Labour Court had properly appreciated the entire evidence on record and considering that the misconduct of unauthorised absence was for 34 days only interfered with the quantum of punishment which cannot be faulted. Hence he prayed for dismissal of the writ petition.

8.I have heard both the learned counsels and I have perused the



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materials on record.

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9.It is seen that the employee was served with the charge sheet on 22.11.2005 for the misconduct of habitual absence and negligence to work. The employee failed to give any reply to the charge sheet inspite of service of the same. Enquiry proceedings were commenced on 20.02.2006 and notice of enquiry was given to the employee though initially he did not appear for the hearing he later attended the enquiry held on 14.03.2006 and participated in the enquiry. Before the Enquiry Officer, the employee admitted all the charges levelled against him in the charge sheet and the same was recorded by the Enquiry Officer. The employee signed the enquiry proceedings on 14.03.2006 in acknowledgment of his presence and participation in the enquiry. The enquiry concluded on 14.03.2006 itself, as the employee admitted all the charges levelled against him. In pursuance of the enquiry officer's report a second show cause notice was sent to the employee on 13.06.2006, but the same was returned with endorsement "ADDRESSEE IS NOT PRESENT AT COMPANY – RETURNED TO SENDER" and "PARTY REFUSED – RETURNED TO SENDER". Thereafter the dismissal order was passed on 24.07.2006. The Labour Court on an appreciation of the



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entire evidence on record returned a finding that the termination of service of the employee was legal and valid as it was passed after a fair enquiry. The Labour Court interfered with the quantum of punishment on the ground that as the misconduct was for unauthorised absence and as the number of days of absence was also only 34 days, the imposition of the punishment of dismissal from service was disproportionate to the nature of misconduct and hence the highest punishment of dismissal from service was unwarranted.

10. In my view, the Labour Court erred in interfering with the quantum of punishment. It is seen from the dismissal order that the petitioner on 20 earlier occasions, for the very same misconduct of unauthorised absence was imposed lesser punishment. It is seen that the employee was a habitual absentee and even the Labour Court found that the employee was in the habit of attending work at his whims and fancies and not as per the petitioner's requirement. As rightly contended by the learned counsel for the petitioner, the Labour Court in the light of its own

findings on fact ought not to have interfered with the quantum of punishment imposed by the petitioner on mere sympathy. In this regard, the Judgment of



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the Hon'ble Supreme Court in the case of ***Kerala Solvent Extractions Ltd.***

Vs. A.Unnikrishnan and another reported in (2006) 13 SCC 619 is relied

on. The relevant paragraph is as follows:

“10.We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well mean but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of



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the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”

11.Hence on the facts of the case and the dictum of the Hon'ble Supreme Court, I am of the view that the award of the Labour Court is unsustainable and the same deserves to be set aside. Accordingly, Writ Petition is allowed. However, there shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

The Presiding Officer,
Labour Court,
Salem.



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N.MALA, J.

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