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W.P. No.24605 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.24605 of 2016

and

W.M.P. Nos.21021 and 27904 of 2016

The Management of MRF Limited
P.B.No.5285
Thiruvoriyur High Road
Chennai-600019.

... Petitioner

-VS-

1.M.Ashok

2.The Assistant Commissioner of Labour (in-charge)
(Conciliation)-II
Kuralagam, Chennai-600 108.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to Approval Petition No.269 of 2013 on the file of the second respondent, Assistant Commissioner of Labour I/C (Conciliation) – 2, Chennai - 600108 and quash the order dated 14.12.2015 made in Approval Petition No.269 of 2013.

For Petitioners : Mr.M.Vijayan

For Respondents : Mr.V.Prakash, Senior Counsel
For Mr.K.Krishnamoorthy (R1)

Mr.S.John J.Raja Singh, AGP (R2)



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ORDER

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2. It is the case of the petitioner that the first respondent viz., Ashok, was working with the petitioner Management as a workman in production Department. During the year 2012, the first respondent was unauthorized absent for a period of 51 days. Due to which, a show cause notice was issued on 17.10.2012 to the first respondent and he has submitted his reply. The petitioner Management appointed an enquiry officer and the first respondent has also attend the enquiry and he failed to attend the enquiry on 08.12.2012. The enquiry officer, after going through the evidence adduced and documents marked on behalf of the petitioner Management, submitted his findings dated 12.12.2012 stated that the first respondent was guilty of the charges contained in the show cause notice dated 17.10.2012 under clause 13(6) of the Certified Standing Orders. In order to give a fair and final opportunity to continue in the employment, the first respondent was directed to report for duty with all medical certificate, but he failed to do so. Therefore, the first respondent was



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not produced any medical certificate, but he failed to do so. Therefore, the first respondent was terminated from the service by the petitioner Management. In view of the same, the petitioner has filed approval petition before the Labour Court seeking approval for the dismissal of the first respondent under Section 33(2) (b) of the ID Act, 1947 which petition was taken up for hearing by the second respondent in A.P.No.269 of 2013. The Labour Court observed that there is no prima facie case for granting approval and rejected the approval petition vide order dated 14.12.2015. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner has given sufficient opportunity to the first respondent workman and the first respondent has not forwarded his illness report to the petitioner. The petitioner management has provided sufficient opportunity to the first respondent to enable him to participate in the enquiry, but he deliberately failed to participate. After issuing show cause notice, the first respondent was dismissed from service. The petitioner has rightly dismissed the first respondent from service, however, the second respondent approval authority rejected the approval petition. The said decision is contrary to the decision of the Hon'ble Supreme Court reported in *MANU/SC/0268/1978 in the case of Lalla Ram Vs.*



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Management of DCM. Chemical Works Ltd., and others.

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4. The learned counsel for the first respondent submitted that admittedly the workman entered into service in the year 2003 and regularised the service in the year 2005. During the course of employment, the first respondent has got electric shock in the fabric section. Thereby, he sustained ill health and the same was reported to the petitioner Management and they refused to grant leave to the first respondent. The enquiry officer has not properly considered the issue. However, the second respondent has appreciated the evidence let in by the first respondent and rightly rejected the approval petition, which need not be any interference.

5. Heard the learned counsel for the petitioner and the learned Counsel for the first respondent and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the first respondent employed as Workman in the petitioner management in fabric section. It is the grievance of the first respondent that due to electrocution, he could not attend the duty for long time and the same was properly explained by him during enquiry. It is the grievance of the petitioner that the first respondent has been removed from service for his unauthorised absent.



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7. The second respondent has rejected approval petition on the ground that one month salary was not paid to the first respondent. Admittedly, the first respondent examined as witness before the second respondent, in which, he has stated that the petitioner Management has paid last month salary for a sum of Rs.15,627/- instead of Rs.20,039/-. The said fact has not proved by the petitioner before the second respondent and the petitioner has not adduced any evidence or pay slip to prove that they have paid the full salary.

8. In such view of the matter, the second respondent has rightly assessed the issue and rejected the the approval petition, which cannot be interfered with. Accordingly, the prayed sought for by the petitioner cannot be granted.

9. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

10. However, the learned counsel on instructions submitted that the first respondent is agreed to forgo the backwages and seeks reinstatement. Therefore, this Court directs the petitioner to reinstate the first respondent



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without any back wages and whatever the amount already deposited to the first respondent need not be recovered and the first respondent is entitled for continuity of service.

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Rli

Index: Yes/No

NCS : Yes/No

To

- 1.The Assistant Commissioner of Labour (in-charge)
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M.DHANDAPANI, J.

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