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W.P.No.15575 of 2018 & W.M.P. Nos.18494 & 26726 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.Nos.15575 of 2018 &
W.M.P. Nos. 18494 & 26726 of 2018

M/s. NVH India Auto Parts Pvt. Ltd.,
Represented by it's Manager - HR,
Plot No.B-68, SIPCOT Industrial Park,
Irungattukottai, Sriperumbuthur,
Kanchipuram District.

... Petitioner

Vs.

1. The Presiding Officer,
I Additional Labour Court, Chennai.

2. R. Dharani Manikandan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records pertaining to
the orders dated 10.11.2017 of the 1st respondent in I.D. No.777 of 2015
and quash the same.

For Petitioner : Mr.S. Makesh
For R2 : Mr.V. Prakash, Senior Counsel
Assisted by Mr.K.Sudalai Kannan



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ORDER

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This petition by M/s. NVH India Auto Parts Private Limited, Irungattukottai, Sriperumbudur, Kancheepuram District, has challenged the Award dated 10.11.2017 of the I Additional Labour Court, Chennai, in I.D. No.777 of 2015. The 2nd respondent is one Dharani Manikandan, an employee of the petitioner Company and had filed the ID 777/2015 against his dismissal from service.

2. The 2nd respondent joined the petitioner Company on 18.01.2008 as an Operator Trainee and was confirmed in the service on 01.04.2013. On 03.05.2014 he was placed under suspension and on 10.05.2014 he was issued a charge memo alleging non-marking of attendance in the bio-metric device, leaving the work place without prior permission, not attending to the work allotted to him, forging some Company documents such as salary registers and also causing loss to the Company. The attendance pertained to the three dates 01.04.2014, 12.04.2014 and 28.04.2014 for which the biometric attendance was not there while the physical attendance register had his presence marked. His reply for the charge memo being vague, a domestic enquiry was



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conducted in which the Enquiry Officer, held all the charges as proved.

A second show cause notice was issued to him on 11.08.2014 for which he replied on 18.08.2014. The petitioner Company passed an order dated 08.09.2014 dismissing the 2nd respondent with effect from 31.08.2014 and settled his salary dues of Rs.96,135/- as final settlement.

2.1. The aggrieved 2nd respondent approached the Assistant Labour Commissioner, Sriperumbudur who attempted for a conciliation which failed. The 2nd respondent approached the Labour Court, Chennai, for adjudication in I.D. No.777/2015 in which reinstatement was ordered and 50% back wages were ordered to be given to the 2nd respondent.

3. Mr.S. Makesh, learned counsel for the petitioner would contend that the Labour Court had erred in its assessment. He pointed out that the 2nd respondent was a habitual absentee and had earlier been reprimanded for the absenteeism. He further contended that on this occasion he had attempted to tamper with the Manual Attendance Register to make himself eligible for full salary. According to him, the 2nd respondent has a history of long absenteeism earlier and apology



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letter for his month long absence without any information were adduced in the enquiry. Thus, it was argued, that this was not a solitary instance.

His argument was that Manual Attendance Register was used only when biometric machine fails and that on the three days, viz., 01.04.2014, 12.04.2014 and 28.04.2014 when the biometric was in order his signature was found on the Manual Register and on those days he had left the office without doing any work and without any prior permission. According to the Counsel, fairness was ensured in the domestic enquiry wherein adequate opportunity was afforded to the 2nd respondent to defend himself and he had no evidence to prove his innocence.

4. Mr.V. Prakash, learned Senior Counsel assisted by Mr.K.Sudalai Kannan, learned counsel for the 2nd respondent contended that no other charge except the non-marking of attendance in the biometric device was substantiated in the enquiry and the punishment of dismissal was totally disproportionate to the gravity of charges proved. His further contention was that even the basic complaint was not furnished to the 2nd respondent on which he was placed under suspension and also faced an enquiry. The basic complaint based on which the charges were framed was provided to the 2nd respondent only



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during the enquiry, it was argued. It was further contended that the witnesses on the side of the Management could not withstand the testimony of cross examination and it transpired that they were all set up only to implicate the 2nd respondent without any basis. According to him, the punishment of dismissal was cruel and totally disproportionate to the gravity of the charges proved, as no other charge except the non-marking of attendance in the biometric device was substantiated in the enquiry. He prayed for dismissal of the petition.

5. There are two important aspects to this case. One is whether the domestic enquiry was conducted in a fair manner and another is whether the dismissal order of the petitioner Company is correct and warranted. According to the Labour Court, the documentary and oral evidence on the side of the petitioner Company could support only one charge that of non-marking of attendance in the biometric system. Even on this aspect the manual attendance register had many entries of other staff/employees raising a suspicion whether the biometric device was actually in order or not on those days. The other charges were not substantiated at all in the enquiry. According to the Labour Court, even that one charge of non-marking of attendance in the biometric device while the Manual Register



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had his attendance was not without flaws. The impugned order reasoned that had it been as the Company claimed (that the biometric was working), then how there were so many employees who signed in the Manual Register on the three days. The history of prolonged absenteeism and related documents adduced in the enquiry went useless with no charge on this aspect in the charge memo. The Labour Court in fact had made a postmortem of the Enquiry Officer's report and could come up with serious and glaring deficiencies in the same. In my opinion the enquiry process itself suffered from infirmities and the intention to oust the 2nd respondent from the service appeared to be the only motive of the process. The basic complaint copy ought to have been given to the 2nd respondent at the time of issuance of charge memo itself.

5.1. Another weird aspect was the date of the dismissal order. The dismissal order was dated 08.09.2014 for the punishment of dismissal with retrospective effect from 31.08.2014. Such orders are ordinarily against the basic principles of service jurisprudence. No punishment can be imposed with retrospective effect especially when the second show cause was dated 11.08.2014, and there is no valid reason for such an order. Therefore, the dismissal order is illegal and void on this count



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also.

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5.2. The Labour Court has not only ordered reinstatement but also ordered 50% back wages to be paid. According to the Labour Court, there has been a balance attempted between both the parties as the 2nd respondent had not refuted the past record of his. However, this was not a part of the charge memo and therefore the allegations cannot be held as proved. It appears that the petitioner Company has acted in haste and wanted to remove the 2nd respondent by hook or crook. Such acts do not augur well for the Company.

6. In the result, the Writ Petition is dismissed. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

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bga
Index : yes/no
Speaking /Non speaking Order

To

The Presiding Officer,
I Additional Labour Court, Chennai.



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R.HEMALATHA, J.

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