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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.06.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No. 12533 of 2014

And

M.P.No. 1 of 2014

The Management of

LUK India Private Limited

Hosur

Represented by its Senior Manager – IR

Mr.P.Srinivasan

... Petitioner

..Vs..

1. The Presiding Officer
Labour Court,
Salem.

2. M.C.Krishnan

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the first respondent in I.D.No. 250 of 2005 and quash its award dated 02.12.2013.



2

For Petitioner

:: Mr.G.Anand Gopalan
for M/s. T.S.Gopalan &Co.,

For 2nd Respondent

:: Mr.K.M.Ramesh
for Mr. K.Bharathi

ORDER

The second respondent was an employee with the writ petitioner. He had joined service on 04.05.1987. He was a permanent employee between 1989 to 06.06.2002.

2. The cause of action for the present proceeding is that the second respondent was absent from 05.02.2002 to 11.03.2002. A show cause notice was issued on 12.03.2002 by the writ petitioner. The same was returned as “undelivered”. Hence, an enquiry was instituted. An Advocate was appointed as an Enquiry Officer. The enquiry notice sent by the Enquiry Officer on 28.03.2002 was also returned as “undelivered”. Yet again in order to give an opportunity to the writ petitioner, a publication was made in a newspaper, calling upon the petitioner to be present on 07.05.2002 for enquiry. Even for that notice, there was no response by the second respondent. Being left with no other option, the enquiry proceedings



were held ex-parte and the enquiry officer found the second respondent guilty under Clause 17(e) of the certified standing orders of the writ petitioner.

3. Clause 17(e) relates to an employee being habitually absent without authorisation. The Enquiry Officer submitted a report finding the second respondent as guilty as charged. The said report was accepted by the Management and it was decided to impose the punishment of dismissal.

4. On 15.05.2002, a second show cause notice was sent, which was also returned as “undelivered”. Therefore, the show cause notice was published in Dinamalar on 28.05.2002. On 04.06.2002, an explanation was given by the second respondent. He had states that he was unable to attend due to health reasons. The second respondent did not produce any medical certificate or any other tangible evidence supporting the same. Consequently left with no other option, he was dismissed from service.

5. It is pertinent to point out here that after his dismissal, on



29.10.2002, the second respondent wrote to the writ petitioner seeking for release of gratuity in favour of AK122 Dharmapuri District National Engineering Employees Thrift and Credit Society. He had borrowed monies from the Thrift Society. In the application for payment of gratuity, it was specifically stated that he had been terminated from service on 05.06.2002.

6. Despite the specific statement he was terminated, he signed the said application for payment of gratuity on 21.11.2002. After receipt of the gratuity amount, the second respondent approached the Labour Officer under Section 2(a) of the Industrial Disputes Act, which ended in failure on 23.03.2003. A report had been filed on 04.07.2005 and thereafter, he filed a petition in I.D.No. 250 of 2006 before the first respondent.

7. The first respondent allowed the petition and directed reinstatement without backwages with continuity of service only on the ground that having worked for 15 years, the period between 05.02.2002 to 11.03.2002, was condonable and an opportunity would be given to the second respondent to get back into the service of the writ petitioner. Challenging the same, the present Writ Petition has been filed.



8. I heard Mr.Anand Gopalan, learned counsel for the writ petitioner and Mr.K.M.Ramesh for Mr.K.Bharathi, learned Senior Counsel for the second respondent.

9. I have gone through the award passed by the first respondent.

10. It is pertinent to point out here that the second respondent did not let in any evidence challenging the validity of the enquiry report. In fact, he did not enter the witness box at all. He had marked only one document, which is the conciliation failure report. On the contrary, all the records that preceded the enquiry report and the enquiry report were filed by the Management. The charge that it was an exparte enquiry and therefore, should not be given much credence, does not appeal to me. No one prevented the second respondent from attending the enquiry. He kept away on his own free will and accord and it is not open to the employee to walk in and out at any time he pleases.

11. The Certified Standing Orders of the petitioner is very clear. Habitual absence without any authorisation invites consequences. Despite



being aware of the same, he stayed away from employment. Apart from this fact, the most crucial factor which goes against the second respondent is that he applied for refund of gratuity. In the application made by him, he has specifically stated that he was terminated from service on 05.06.2002. The aspect of acquiescence had not been considered by the Labour Court. The Labour Court had also not considered the fact that the second respondent had not thought it fit to grace the witness box in order to rebut the case of the writ petitioner. He had decided to remain exparte not only in the enquiry proceedings but literally remained exparte even before the Labour Court.

12. Mr. Anand Gopalan, learned counsel for the petitioner invited my attention to a Judgement of the Supreme Court in ***Prabhakar Vs. Joint Director and another (2015) 15 SCC 1***. In the said Judgment, it had been held that the acquiescence would apply even to Industrial Disputes under Section 2(a) of the Industrial Disputes Act, 1947. The failure to consider the aforesaid aspects including the principles of acquiescence render the order illegal and it is liable to be interfered by this Court.

13. Accordingly, I set aside the said order. The Writ Petition is



allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

06.06.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

The Presiding Officer
Labour Court,
Salem.

V. LAKSHMINARAYANAN, J.,

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