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W.P.No.7801 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.7801 of 2016

K.Ezhumalai

... Petitioner

Vs.

1.The Managing Director,
M/s.Barathi Mills,
Puducherry.

2.The Labour Court at Pondicherry,
Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the award of the Labour Court at Pondicherry dated 27.06.2014 in I.D.No.34 of 2012 and direct the 1st respondent to reinstate the petitioner with back wages, continuity of service and all the consequential benefits.

For Petitioner : Ms.N.S.Tanvi

For Respondents : Mr.A.Tamilvanan
Additional Government Pleader [R1]
Court [R2]



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ORDER

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This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records and quash the award of the Labour Court at Pondicherry dated 27.06.2014 in I.D.No.34 of 2012 and direct the first respondent to reinstate the petitioner with back wages, continuity of service and all the consequential benefits.

2. The petitioner is the employee of the first respondent mill and he entered into service in the year 1981. In the year 2004, due to chicken pox, he was not able to report for duty. He sent leave letter for ten days through his co-worker, since he was in quarantine. Whiles, on 26.03.2005, he received an order dated 06.12.2004 from the first respondent mill stating that the petitioner is demoted to the position of badli worker on the ground of unauthorised absence from duty. Thereafter, the petitioner had reported for duty and he was asked to come back a few weeks and in this manner several months went by. However, he was not allowed to join duty. Thereafter, he suffered major road accident in the year 2005 and severely injury, thereby, he had not reported for duty. After recovery, the petitioner sent another letter dated 30.09.2006 requesting the first respondent mill to



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provide employment, but the petitioner did not receive any positive response from the first respondent mill. However, the first respondent issued a publication in Dina Thanthi on 08.01.2009 stating that from 27.03.2005, the petitioner was continuously absent from duty. Therefore, the first respondent mill conducted enquiry on 23.01.2009 and on various dates. Subsequently, the petitioner received a second show cause notice dated 28.04.2010 and he sent reply dated 05.05.2010 and explained his illness before the first respondent mill. However, the first respondent mill discharged the petitioner from service on 02.08.2010. Aggrieved by the order of discharge, the petitioner raised an industrial dispute before the second respondent in I.D. (L).No.34 of 2012 and the second respondent/Labour Court rejected the same. Challenging the same, the petitioner filed the above writ petition before this Court.

3. The learned counsel for the petitioner submits that, during the pendency of the writ petition, the first respondent mill itself was closed in the year 2020 and they are providing compensation to the employees who worked with them till the year 2020. However, in the present case, the petitioner entered the service in the year 1981. After rendering more than



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25 years of service, he was discharged from duty in the year 2010 on the ground that he was unauthorisedly absent from duty from the year 2005 onwards. Even assuming there is any unauthorised absence, the punishment imposed by the first respondent mill is highly disproportionate. However, the second respondent/Labour Court without considering the harsh punishment imposed by the first respondent mill, refused to interfere with the order of discharge and dismissed the industrial dispute, which is not sustainable. In support of his contention, he relied upon the judgment of the Apex Court in the case of ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)***.

4. The learned Additional Government Pleader (Puducherry) appearing for the first respondent submitted that, though the petitioner entered service in the year 2001, however, between the years 2003 to 2004, in different spells, he had not attend the duty and for his unauthorized absence for the particular period, he was discharged from service. Thereafter, between the year 2005 to 2009, he has not reported duty, thereby, the first respondent mill initiated department proceedings and the petitioner received the notice. However, he has not chosen to



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adjudicate the issue before the Enquiry Officer. The Enquiry Officer drawn proven minutes as against the petitioner. Based on the proven minute, the order of discharge was passed in the year 2010 and the said facts was elaborately considered by the Labour Court and the Labour Court dismissed the application, which cannot be interfered with.

5. Further, the learned Additional Government Pleader (Puducherry) submitted that, though the petitioner claims that he was affected by chicken pox and subsequently, met with a road accident, however, no document was marked before the Labour Court for his unauthorised absence during the said period. In the absence of any documents, no sympathy can be shown in favour of the petitioner. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Puducherry) appearing for the first respondent and perused the materials available on record.



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7. Admittedly, the petitioner entered service in the year 1981. In the year 2004, he was demoted on the ground that he was unauthorisedly absent from duty for different spells between 2003 to 2005. However, subsequently, from the year 2005 onwards, he had not reported duty, thereby, disciplinary proceedings were initiated and the same is ended in the order of discharge. However, the initial issue arises for consideration is whether for unauthorised absence, the punishment imposed by the first respondent proportionate or not.

8. The whole case hinges on the proportionality of the punishment imposed on the workman as there is no dispute on factual aspects. Normally, this Court would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali Vs. High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.



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9. It has been the consistent view of the Courts that, it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscious of the



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Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

(Empasis Supplied)

10. In the present case, the allegation made against the petitioner is not corruption or insubordination or any other major allegation, but the allegation levelled only relates to unauthorized absence.

11. Though it is the case of the Management that the petitioner had not placed any documents before the Labour Court to establish that he had suffered chicken pox and also met with an accident, even inspite of the same, it is to be pointed out that the proportionality of the punishment to the charges levelled against the petitioner is on the higher side and definitely it shocks the conscience of this Court and, therefore, the order of dismissal is wholly perverse and disproportionate. However, this material aspect has not been considered by the Labour Court while dismissing the dispute raised by the petitioner, which requires to be interfered with.



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12. However, in the factual matrix it is also to be noted that the Mill has since closed and no useful purpose would be served in giving any relief such as reinstatement with some punishment attached to it. In the aforesaid circumstances, exercising the inherent jurisdiction vested in this Court under Article 226 of the Constitution, this Court is inclined to modify the punishment of dismissal from service and in place of ordering reinstatement with any strings attached to it by way of punishment, this Court directs payment of a lumpsum compensation to the petitioner by the Management as the same would meet the ends of justice.

13. Accordingly, this Court, modifies the punishment of dismissal from service and in lieu thereof, invoking its inherent powers under Article 226 of the Constitution, directs the first respondent mill to pay a lumpsum closure compensation to the petitioner as has been paid to similarly placed persons like the petitioner, within a period of eight (8) weeks from the date of receipt of a copy of this order.



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M.DHANDAPANI, J.

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14. Accordingly, the Writ Petition is allowed in part with the aforesaid observations and directions. There shall be no order as to costs.

01.08.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Labour Court at Pondicherry.

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