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W.P.No.25314 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	01.02.2023
PRONOUNCED ON :	30.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.25314 of 2014

Settu Sundar

... Petitioner

Vs.

1. The Management,
Christian Medical College and Hospital
Vellore-4

2. The Principal Labour Court,
Vellore, Vellore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records in award passed in I.D.No.220/2010 dated 03.10.2011 on the file of the 2nd respondent and quash the same and consequently direct the 1st respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.



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For Petitioner : Mr.G.Jermiah
For Mr.G.Somasekar

For R-1 : Mr. Shivathanu Mohan
For M/s.Ramasubramaniam Associates

* R2- Court

ORDER

This Writ Petition has been filed praying to quash the Award passed in I.D.No.220 of 2010, dated 03.10.2011 on the file of the 2nd respondent and consequently to direct the first respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.

2. The averments in the writ petition is that the petitioner, who was appointed as an Administrative Assistant on 26.10.2001, was made as a permanent workman of the Student Nurses Hostel on 31.10.2003, which is being run by the 1st respondent Management. Due to ulterior motive of his superiors, the petitioner was victimised with false allegations and memos. Therefore, the respondent Management had issued a charge memo, dated 01.02.2007 and placed the petitioner under suspension.



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3. Denying the charges levelled against him, the petitioner had submitted his explanation, dated 26.02.2007. Pursuant to the same, a domestic enquiry was also conducted and the respondent Management issued a second show cause notice dated 05.06.2007, for which the petitioner had submitted his explanation on 22.06.2007. Without considering the said explanation, the respondent Management had dismissed the petitioner from service by order dated 05.11.2007.

4. Aggrieved by the order of dismissal, the petitioner had raised an industrial dispute before the Labour Officer, Vellore and since the Conciliation ended in failure, the Labour Officer had filed the failure report. In continuance of the above, the petitioner had approached the Labour Court, Vellore and filed a petition under Section 2 A(2) of the I.D.Act 1947 to reinstate him in service with continuity of service, back wages and all other attendant benefits.

5. The charges levelled against the petitioner would read that (a) while on duty after 11.45 am, he did not return till 5.00 p.m. (b) absented from duty without prior intimation and caused huge dislocation of work (c) absconded



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from duty for 25 days. (d) had acquaintance and friendship with lady employees and students (e) left the workspot without intimation to higher authorities (f) caused huge dislocation of work in the hostel and mess (g) quality and quantity of work is very poor and slip shod behaviour (h) pre-occupied with family problems and found quarrelsome, non cooperative and non productive. (i) provoking colleagues and other employees resulting undesirable incidents.

6. For the above said charges, petitioner given his explanation. Enquiry was held; employee participated in the enquiry; on the side of Management, 4 witnesses were examined, but employee did not cross examine them and the employee has not examined any defence witness. The enquiry officer, after analysing the evidence and on examining the exhibits, held that the charges levelled against the petitioner are proved and found him guilty of charges.

7. On the basis of the enquiry officer report, the respondent management considering the gravity of the charges framed against the petitioner, terminated him from service. The petitioner's challenge to the said punishment, was rejected by the Labour Court, Vellore. Aggrieved against the same, the petitioner has



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filed the present writ petition.

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8. According to the learned counsel for the petitioner, the 1st respondent Management had conducted the domestic enquiry without following any rules and regulations and also without affording an opportunity to the petitioner to cross examine the witnesses on the side of the 1st respondent Management, concluded the enquiry holding the charges against the petitioner as 'proved'.

9. The learned counsel for the petitioner submitted that previous enmity existed between the respondent Management's witness one Siluvaimani and the petitioner. Siluvaimani used to raise false claim by fabricating bills and vouchers. Complaining the same, the petitioner had reported several times before the respondent Management against the said Siluvaimani. Keeping in mind the said dispute, Siluvaimani has made false statement against the petitioner and the Enquiry Officer without checking the veracity of the testimony of the said witness, concluded that the charges are proved.



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10. Per contra, Mr. Sivathanu Mohan, the learned counsel appearing on behalf of the first respondent Management would submit that the petitioner had been already warned on various occasions for provoking his colleagues by doing undesirable activities within the campus and for disobeying his superiors. Due to the said act of the petitioner, the first respondent Management has issued a charge memorandum dated 01.02.2007, listing out 7 charges and the petitioner has submitted his explanation to the Management vide letter dated 26.02.2007. Considering the same to be unsatisfactory, domestic enquiry was ordered to be conducted against the charge of misconduct against the petitioner. The Enquiry Officer had conducted the enquiry and upon completion of the same, has submitted his report dated 25.05.2007. Finding the petitioner to be guilty, show cause notice was given to the petitioner on 05.06.2007. Thereafter the respondent Management, considering the gravity of the charges framed against the petitioner, has terminated the services of the petitioner. Therefore, according to the learned counsel for the respondent Management, the punishment awarded to the petitioner by the respondent Management is neither disproportionate nor vindictive on the part of the respondent Management and hence prayed to dismiss the writ petition.



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11. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent Management and perused the materials placed before this Court.

12. Before the Labour Court, on the side of the workman, petitioner was examined and Ex.W.1 Failure report was marked. On the side of Management, no witness was examined, but 15 documents were marked.

13. The Labour Court framed three points for consideration, which would read as under:

- (i) Whether the termination of the petitioner is justified?*
- (ii) Whether the petitioner is entitled to get a direction, directing the respondent Management to reinstate them in service with continuity of service, back wages and all other attendant benefits? and*
- (iii) To what relief, the petitioner is entitled to?*

14. The Labour Court answered the points for consideration by pointing out that in the domestic enquiry, four witnesses examined on the side of



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Management, were not examined by the petitioner; petitioner neither examined any defence witness not chosen to examine himself in the enquiry. So the enquiry officer submitted his report finding the petitioner guilty. The learned Judge held that the preliminary issue framed in the I.D. that as to whether the domestic enquiry conducted by the Management is illegal and proper was decided to the effect that the same is fair and free manner and in accordance with law.

15. The learned Judge, Labour Court, while deciding the question as to whether punishment awarded to the petitioner is justified or not, held that the charge framed against the petitioner that he was having acquaintance and friendship with many lady employees and students and spoiling the name and fame of the Institution, such behaviour cannot be kept in a ladies hostel where 530 ladies are staying; for the said charges the petitioner has not denied it in his explanation; he has not cross examined the Management witness and never examined himself as evidence. The learned Judge held that the charge memo framed against the petitioner is very serious in nature and keeping such person in the esteemed Institution is not correct.



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16. The learned Judge, following the settled law held that it is essential to decide about the validity of the domestic enquiry as a preliminary issue and the court had held that the domestic enquiry conducted by the management is legal and proper; the petitioner was permitted to give rebuttal evidence to establish his case; the Labour court shall rely only the materials on record and shall not take any fresh evidence in relation to the matter, therefore, the petition filed for reinstatement and other benefits is rejected. The learned Judge, also following the judgments of the Supreme Court in 2006(3) LLN 761 and AIR 2007 SC 152, held that if enquiry is fair and proper, in the absence of any allegations or victimization or unfair labour practice, the Labour court has no power to interfere with the punishment imposed.

17. The learned Judge found that the charge framed against the petitioner is very serious in nature and keeping such person in the esteemed institution is not correct and therefore, held that the punishment awarded to the petitioner for his misconduct is not disproportionate and the same is justified.



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18. The decision of the Labour court is well reasoned one and as a matter of fact, no relief could be granted to the writ petitioner as he calls for no sympathy and for the proven charges levelled against him, the punishment imposed is not disproportionate to the findings as to shock the judicial conscience. Accordingly, this court do not find any reasons to interfere with the award of the Labour Court.

19. In the result, this Writ Petition is dismissed. No costs.

30.03.2023

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
sts/nvsri



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To

1. The Management,
Christian Medical College and Hospital, Vellore-4
2. The Principal Labour Court, Vellore.



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J.NISHA BANU, J.,

sts/nvsri

Pre-Delivery order made in
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