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WP.No.19108 of 2018

In the High Court of Judicature at Madras

Dated : 13.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.19108 of 2018

V.Mani

...Petitioner

Vs

The Management of Ammarun
Foundaries, Coimbatore-35.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records in pursuance of the impugned order in I.D.No.296 of 2010 passed by the Presiding Officer, Additional Labour Court, Coimbatore dated 13.10.2017, quash the same and consequently direct the respondent/management to reinstate the petitioner into service with back wages and continuity of service along with all other attendant and terminal benefits.

For Petitioner	:	Mr.K.Sathiyamurthi
For Respondent	:	Mr.S.Ravindran, SC for Mr.Bazeer Ahamed



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ORDER

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This is a petition filed by the petitioner seeking to quash the award dated 13.10.2017 in I.D.No.296 of 2010 on the file of the Presiding Officer, Additional Labour Court, Coimbatore and to consequently direct the respondent to reinstate the petitioner into service with back wages, continuity of service and all other attendant and terminal benefits.

2. The facts leading to filing of this case are as follows :

(i) The petitioner was a permanent employee under the respondent.

Due to sudden illness, he had not reported to duty from 10.3.2009 to 18.3.2009. He was suspended from service on 23.3.2009 and the subsistence allowance was not paid to him during the suspension period. After completion of medical leave, when he came to join duty on 19.4.2009, he was not permitted to join. Thereafter, charges were levelled against him on the ground that he was unauthorizedly absent without proper intimation nor permission. Ultimately, he was dismissed from service on 12.8.2010. The suspension order was also not revoked till the date of his dismissal.

(ii) The conciliation proceedings initiated before the Conciliation



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Officer ended in failure. Thereafter, the industrial dispute came to be filed by the petitioner before the Additional Labour Court, Coimbatore seeking to set aside the termination order dated 12.8.2010 and to direct the respondent to reinstate the petitioner into service with full back wages, continuity of service and all other attendant benefits. However, it was dismissed by the impugned award. The copy of the award was received by the petitioner only on 04.4.2018. Therefore, after summer recess, the petitioner filed this writ petition challenging the impugned award.

3. The learned counsel for the petitioner submits that though the petitioner has not examined any witness before the Labour Court, however, without considering the fact that the petitioner rendered 17 years of continuous service, the respondent management passed the order of dismissal on 12.08.2010 without conducting any domestic enquiry on the ground of unauthorized absence which is *per se* unsustainable. He further submitted that though the petitioner has marked Ex.W1 which is the medical certificate before the Labour Court, however, without considering the same, the Labour Court has dismissed the dispute raised by the petitioner vide



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award dated 13.10.2017 in I.D.No.296 of 2010 seeking reinstatement along with continuity of service which is *per se* unsustainable. Accordingly, he prayed to allow this writ petition.

4. The learned counsel Senior counsel appearing for the respondent submits that it was not in dispute that the petitioner was working as a regular workman in the respondent company. However, he was unauthorizedly absent to duty from 10.3.2009. He was suspended from work vide letter dated 23.3.2009. But, by letter dated 24.3.2009, the petitioner expressed his inability on the ground that he was under medical treatment. Without going into the genuineness of the said stand of the petitioner, he was asked to report for work on 01.4.2009. However, he did not report to work. Since the petitioner continued to absent himself to duty, several show cause notices were issued to him by the respondent and they were refused to be received. In the meantime, the petitioner sent a letter dated 26.11.2009 stating that the absence was due to family circumstances. Ultimately, he was dismissed from service by order dated 12.8.2010.



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5. He further submitted that pursuant to the said dismissal the petitioner raised the industrial dispute before the Additional Labour Court, Coimbatore and it was dismissed by the impugned award after taking into account the continuous absence of the petitioner for about 16 months from 01.4.2009 to 26.11.2009. The Additional Labour Court, Coimbatore also took note of the decision of the Supreme Court in the case of Chennai Metropolitan Water Supply & Sewerage Board Vs. T.Murali Babu [Civil Appeal No.1941 of 2014 dated 10.2.2014]. The suspension order imposed on the petitioner was revoked in his presence and he was expected to report for work on 01.4.2009.

6. He further submits that there is no need to conduct a domestic enquiry, when the absence of the petitioner was not in dispute. The petitioner had not entered into the witness box to prove the case of non employment. Hence, it is not open to him to challenge the validity of MW1 and MW2. The reason given by the petitioner for the delay in approaching this Court was nothing but an often repeated excuse usually given by the litigants, who slept over the matters. Ultimately, the learned Senior counsel



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for the respondent prayed to dismiss the writ petition.

7. Heard the learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of the petitioner.

8. It is not in dispute with regard to the employer-employee relationship. However, it is pointed out by the learned counsel for the petitioner that though several show cause notices were issued through RPAD to the petitioner, however, the same were refused by the petitioner and in order to prove the same, all the show cause notices were marked as Exs.M6 to M.11 before the Labour Court. More so, the petitioner was unauthorizedly absent for a period of 16 months and though the respondent management has made a request to the petitioner to re-join the duty, the petitioner refused to report to duty in the petitioner management. It is also seen that since the petitioner has not responded to the said show cause notices issued by the respondent, the respondent has passed the order of dismissal on 12.08.2010. Upon appreciating the oral and documentary evidences the Labour Court has passed the impugned award, unless and



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until there is any perversity in the order passed by the Labour Court, this Court cannot interfere with said award under Article 226 of the Constitution of India. Hence, the challenge in the impugned award by the petitioner has to necessarily fail.

9. With the above direction and observation, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.9.2023

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer, Additional
Labour Court, Coimbatore.



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M.DHANDAPANI,J

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