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WP.No.19654 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19654 of 2018
& WMP.No.23088 of 2018

The Managing Director,
M/s.Hindustan Unilever
(Detergent Factory),
Puducherry-4 rep.by its
Authorized Representative
Ms.Vidya Chandrasekar

...Petitioner

Vs

1.Mr.P.Jothilingam (deceased)
2.Chitra
3.Karthika
4.Vinothini
5.Kaviyan
6.Visalatchi

(R2 to R6 suo motu impleaded
as legal heirs of the deceased R1
vide order dated 14.9.2023 by MDIJ)

...Respondents

PETITION under Article 226 of The Constitution of India praying for
the issuance of a Writ of Certiorari to call for the records connected with
I.D.(L) No.30 of 2015 and to quash the impugned award dated 25.4.2018



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passed by the Industrial Tribunal-cum-Labour Court, Puducherry.

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For Petitioner : Mr.Sanjay Mohan for
M/s.S.Ramasubramaniam & Associates

For R2 to R6 : Mrs.Ramapriya Gopalakrishnan

ORDER

This is a petition filed by the petitioner - management seeking to quash the award dated 25.4.2018 in I.D.No.30 of 2015 on the file of the Industrial Tribunal-cum-Labour Court, Puducherry.

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

(i) The first respondent joined in the services of the petitioner as a trainee in 1996. His services were confirmed by order dated 08.7.1997 as a daily rated workman (W1 Grade). He was a chronic absentee and was unauthorizedly absent in the year 2013 for 259 days. He was issued with a charge sheet dated 13.1.2014. Thereafter, a domestic inquiry was conducted, in which, the first respondent participated. The Enquiry Officer found him guilty of the charges and submitted the report. Pursuant to that, the first respondent was terminated from the services of the petitioner by order dated



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(ii) Thereafter, the first respondent initiated conciliation proceedings, which ended in failure. Therefore, the first respondent approached the Industrial Tribunal-cum-Labour Court, Puducherry by filing an industrial dispute. In that, the petitioner filed a counter. Ultimately, after contest, the Presiding Officer, Industrial Tribunal-cum-Labour Court, Puducherry, by the impugned award, (i) held that the punishment of termination of service imposed on the first respondent was disproportionate to the misconduct of unauthorized absence, (ii) partly allowed the industrial dispute directing the petitioner management to reinstate the first respondent into services by giving penalty of stoppage of five increments for the period from 2013 to 2017 with cumulative effect and (iii) partly dismissed the industrial dispute in so far as the claim for back wages and other attendant benefits was concerned. Challenging the same, the petitioner management is before this Court.

3. When the matter came up for admission on 01.8.2018, in WMP.No.23088 of 2018, this Court granted an order of interim stay of



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reinstatement alone for a period of four weeks.

4. Thereafter, the first respondent filed WMP.No.3836 of 2019 seeking to direct the petitioner - management to pay him the last drawn wages of Rs.14,500/- per month pending disposal of the writ petition. Further, this Court, by order dated 27.2.2019, allowed WMP. No.3836 of 2019 and directed the petitioner - management to pay the last drawn wages, as admissible to the first respondent, pending disposal of the writ petition within a period of two weeks.

5. Learned counsel appearing for the petitioner would submit that the 1st respondent is a chronic absentee and that he was absent for 259 days for which, he was charge sheeted. After conducting enquiry, the enquiry officer submitted his report proving the charges against the 1st respondent. However, without properly advertng to the above facts, the Labour Court has mechanically passed the impugned award holding that the punishment of dismissal imposed by the petitioner is highly disproportionate to the misconduct of the 1st respondent which is not sustainable. Accordingly, he prayed for allowing the Writ Petition.



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6. Per Contra, learned counsel appearing for respondents 2 to 4 would submit that during the pendency of the writ petition, the first respondent - employee died and his legal heirs were impleaded suo motu on 14.9.2023. He further submitted that the 1st respondent has rendered more than 16 years of service in the petitioner corporation however, without considering the long years of service rendered by the 1st respondent as also the fact that the charges against the 1st respondent is not a grave one, imposing a major punishment of dismissal from service is not sustainable one. Since, the above facts have been elaborately considered by the Labour Court while passing the impugned award, the same requires no interference. Accordingly, he prayed for dismissal of this Writ Petition.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Normally, Courts should not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and



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further 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.

9. A careful perusal of the materials available on record reveal that the manner in which the enquiry had been conducted had not been put in issue before this Court. The only issue put before this Court is the proportionality of the punishment imposed on the delinquent. It is evident from the records that the 1st respondent has rendered long years of service in the petitioner corporation, however, without considering the past service, the delinquent has been terminated from service. A perusal of the charges reveal that the said punishment was imposed merely for the misconduct of unauthorized absence. The charges have been proved, which has resulted in the punishment of termination from service.

10. It has been the consistent view of the Courts that it is always



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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 to the act of the delinquent, 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 levelled 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 shown to interfere in the quantum of punishment and only in rare and appropriate cases to substitute 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 conscience of the 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



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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.”

(Emphasis Supplied)

11. From the decision it clearly shows that where the punishment imposed shocks the conscience of the Court, the Court is duty bound to interfere with the same. In the present case, the delinquency is unauthorized absence for which the punishment of dismissal from service is highly disproportionate which fact has been rightly appreciated by the Labour Court while passing the impugned award. Hence, this Court does not find any perversity in the findings rendered by the Labour Court with regard to setting aside the punishment of dismissal and this Writ Petition deserves to be dismissed.

12. It is seen from the records that during the pendency of the Writ Petition, the 1st respondent died and respondent 2 to 4 were substituted as his legal heirs and hence, the question of reinstatement does not arise. However, the deceased workman is entitled for terminal benefits.



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13. Accordingly, the impugned award of the Labour Court stands confirmed and this Writ Petition stands dismissed. The Petitioner management is directed to compute and pay all the terminal benefits to the legal heirs of the 1st respondent within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

29.09.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To
The Industrial Tribunal-cum-
Labour Court, Puducherry.



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M.DHANDAPANI,J

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