



W.P.No.28651 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

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

W.P.No.28651 of 2017
and
WMP.Nos.16679 of 2019 & 30838 of 2017

1. The General Committee,
The Madras Flying Club,
Civil Aerodrome, Meenambakkam,
Chennai – 600 027.
2. The Honorary Secretary,
The Madras Flying Club,
Civil Aerodrome, Meenambakkam,
Chennai – 600 027.

...Petitioners

(Cause title amended vide order dated 30.09.2019 made in WMP.No.22308 of 2017 in W.P.No.28651 of 2017)

Vs.

1. S.Sundar Raj
2. The Presiding Officer,
First Additional Labour Court, Chennai,
High Court Complex, Chennai – 600 104.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records of the 2nd respondent pertaining to the order dated 30.06.2017 passed by the 2nd respondent herein in I.D.No.215 of 2013 filed by the 1st respondent before the 2nd respondent and quash the same by confirming the order dated 11.06.2012 vide Ref.No.0575/19 passed by the 2nd petitioner.



WEB COPY



W.P.No.28651 of 2017

For Petitioners : Mr.C.P.Sivamohan for
M/s.R.Nagarani

For Respondents : Mr.Balan Haridas, for R1

ORDER

This Writ petition has been filed seeking quashment of the order of the 2nd respondent dated 30.06.2017 made in I.D.No.215 of 2013.

2. The case of the petitioners is that, the 1st respondent joined the services of the petitioner club as Clerk in the year 1981 and was subsequently promoted to various posts and was working as a Senior Stores Officer in the petitioner club at the time of termination. Despite being employed in a managerial capacity, the 1st respondent instigated the employees of the petitioner club to indulge in unrecognised union activities and also sent various communications and complaints to Government authorities, making false allegation as against the petitioner club, which is a clear violation of 18(a)(b)(c) & (n) of the standing order of the petitioner club, besides, he also led a section of employees to meet Captain Arun Maan, Director General of Civil Aviation and presented the matter without the permission of the petitioner management. Thereby, on 19.03.2011, the

2/12



W.P.No.28651 of 2017

petitioner club issued a charge memo as against the 1st respondent. Being not satisfied with the reply dated 07.04.2011 submitted by the 1st respondent denying the charges, that too after a long time, the petitioner club passed an order of suspension dated 08.04.2011 and proceeded with the enquiry proceedings. Though the enquiry was adjourned repeatedly and though the copy of the enquiry proceeding was sent to the 1st respondent, in order to provide opportunity to him to defend himself, however, he has not utilised the same and instead of appearing for enquiry, he sent a representation along with false medical certificate stating that he was undergoing treatment for heart decease and he did not appear for enquiry even once. Thereby, the enquiry was closed *ex parte* on 07.01.2012. Thereafter, another charge sheet dated 22.12.2011 came to be issued to the 1st respondent on the ground that, he deliberately submitted a false medical certificate in order to avoid participating in the earlier enquiry proceedings. Though the enquiry was adjourned for the presence of 1st respondent, he did not appear for the enquiry and did not submit any explanation and therefore he was set *ex parte* and the enquiry was concluded, holding the 1st respondent guilty of the charges levelled against him, vide reports dated 19.03.2011 and 22.12.2011. Thereafter, the 2nd show cause notice was issued to the 1st respondent on 3/12



W.P.No.28651 of 2017

08.03.2012 and being not satisfied with the reply letter dated 21.03.2012, the petitioner management terminated the services of the 1st respondent on 11.06.2012. Challenging the said order of dismissal, the 1st respondent raised an Industrial Dispute in I.D.No.215 of 2013 before the 2nd respondent, who in turn passed the present impugned award dated 30.06.2017, directing the petitioner management to reinstate the 1st respondent back into service with 95% back wages. Challenging the same, the petitioner is before this Court.

3. Though very many grounds have been raised, the major contention of the learned counsel for the petitioners is that, at the time of dismissal, the 1st respondent was employed in a Managerial capacity, i.e, as Senior Stores Officer and his job was supervisory in nature and he is not a workman and he does not come under the purview of workman as defined under Section 2S of the ID Act and thereby, the dispute raised by him is not maintainable. However, without considering the said fact, the 2nd respondent by present impugned order had mechanically allowed the dispute raised by the 1st respondent and ordered for reinstatement of the 1st respondent that too with 95% back wages, which is wholly unsustainable and the impugned award



W.P.No.28651 of 2017

necessarily needs to be interfered with. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 1st respondent submitted that, though the 1st respondent sent a detailed explanation, however, the same was not taken into consideration by the petitioners and it is pertinent to note that, as per the Articles of Association, only the General committee is having powers to issue show cause notice and not the 2nd petitioner and therefore, the show cause notice in pursuance of the preliminary enquiry issued by the 2nd petitioner is liable to be set aside for want of jurisdiction. Further, though it is the claim of the petitioner management that for certain alleged misconduct committed by the 1st respondent, which is in violation of the standing order of the petitioner club, disciplinary proceedings has been initiated, however, it is not so and the alleged misconduct mentioned in the charge memo does not attract the rules 18(a), (b), (c) and (n) of the standing orders, as the same deals with the wilful disobedience and strike by an employee and indicting others and about frequent repetition of any act or omission attracting imposition of fine under the Payment of Wages Act, which is in no way connected with the alleged misconduct of submission of



W.P.No.28651 of 2017

false medical certificate by the 1st respondent. He further submitted that, though the major contention of the petitioner management is that the 1st respondent is not a workman, however, the said issue was elaborately considered by the Labour Court and it was held that, the 1st respondent is a workman and is coming within the ambit of Industrial Disputes Act, 1947 and he can invoke the jurisdiction of the Court and can also derive the benefits of ID Act. Hence, the Labour Court, after elaborately discussing each and every issue, passed the present impugned award, which does not warrants interference of this Court and accordingly, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the 1st respondent joined the services of the petitioner club as Clerk in the year 1981 and was subsequently promoted to various posts and he was working as a Senior Stores Officer in the petitioner club at the time of termination. While so, for alleged misconduct, the petitioner management initiated departmental proceedings as against the 1st respondent



W.P.No.28651 of 2017

and the same ended in dismissal of the 1st respondent on the ground that the 1st respondent instigated the employees of the petitioner club to indulge in unrecognised union activities and sent various communications and complaints to Government authorities, making false allegation as against the petitioner club and also that he submitted false medical certificate to avoid enquiry proceedings, and the said misconducts are in violation of Rules 18(a), (b), (c) and (n) of the Standing orders of the petitioner club. Challenging the said termination, the 1st respondent raised an Industrial Dispute before the 2nd respondent, who in turn passed the present impugned award dated 30.06.2017 in I.D.No.215 of 2013, directing the petitioner management to reinstate the 1st respondent back into service with 95% back wages.

7. The major issue arises for consideration in the present Writ petition is whether the alleged misconduct said to have been committed by the 1st respondent, for which the petitioner management issued charge memo, are in violation of the standing orders of the petitioner club. For better appreciation, the relevant rules of the Standing orders of the petitioner club is extracted hereunder:-



W.P.No.28651 of 2017

WEB COPY

“10. The following acts or omissions shall be treated as misconduct:-

(a) Wilful insubordination, or disobedience, whether alone or in combination with another or others, of any lawful and reasonable order of a superior.

(b) Striking work or inciting others to strike work with another or others in contravention of any lawful and reasonable order of a superior.

(c) Striking work or inciting others to strike work in contravention of the provisions of the Industrial Disputes Act, 1947, or any other enactment or rules in force for the time being.

.....

(n) Frequent repetition of any act or omission for which a fine may be imposed under the Payment of Wages Act, 1936.”

8. There can be no quarrel that insofar as the imputations levelled by the management against the 1st respondent are clearly within the aforesaid purview of the above standing orders. However, what is to be seen is that whether the said allegations with regard to the violations of the standing orders, alleged to have been committed by the 1st respondent have been proved by the management.

9. A perusal of the materials available on record, both oral and documentary reveal that the 1st respondent has partaken the group while



W.P.No.28651 of 2017

presenting the memorandum to the various governmental authorities. But there is no material, which points that it is the 1st respondent, who had instigated the other persons to give the said memo. In the absence of any clinching material to show that the 1st respondent was instrumental in the preparation of the said memorandum and had instigated the other employees to give the said memo, mere allegation in the absence of any proof cannot be the basis to fix the responsibility on the 1st respondent to hold that the 1st respondent had committed the violations as provided for in the standing orders. Therefore, in the absence of any materials, the findings arrived at by the Labour Court that the 1st respondent has not committed any violations of the provisions of the Standing Orders are just and reasonable and does not suffer the vice of any illegality warranting any interference.

10. Insofar as the issue relating to whether the 1st respondent was employed in managerial capacity or not is concerned, though it is the claim of the petitioners that, the 1st respondent was employed as Senior Stores Officer and his job was supervisory in nature and he is not a workman and thereby the dispute raised by him is not maintainable, however, the petitioner management has not marked any material to show the managerial



W.P.No.28651 of 2017

nature of the duties performed by the 1st respondent. Mere supervisory work done by the 1st respondent cannot be brought within the ambit of managerial capacity, as a junior workman is always a subordinate to a senior workman, who has supervisory control over the junior and for that, the senior workman cannot be said to be in a managerial capacity as the said workman discharges supervisory work. It is evident from the impugned award that the 1st respondent was functioning as administrative officer on additional charge for quite some time but the said incidental work done by him cannot be held against him to hold that the 1st respondent was holding a managerial role in the organisation, which would take him outside the purview of the ID Act. The Labour court, after careful perusal of the arguments advanced on either side and after careful examination of the materials placed before it, had held that the 1st respondent is a workman and he comes within the purview of the ID Act, which is just and reasonable and does not warrant any interference.

11. The Labour Court had awarded 95% backwages in favour of the 1st respondent based on the averment made by the 1st respondent in the claim petition that he is not gainfully employed during the non-employment period. The management had not proved through any materials that the

10/12



W.P.No.28651 of 2017

workman was gainfully employed. In such view of the matter, considering the fact that, the award is of the year 2017 and the 1st respondent had retired from service in the year 2015 itself, in order to strike balance in between the contesting parties, this Court is inclined to fix the back wages at 50% and only to that extent, this Court is inclined to modify the impugned award dated 30.06.2017 made in I.D.No.215 of 2013.

12. Accordingly, this Writ petition is disposed of by modifying the impugned award to the extent that the workman/1st respondent would be entitled to backwages at 50%. The petitioners are directed to settle the terminal benefits along with 50% backwages to the 1st respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous petitions are closed.

07.09.2023

skt

Speaking Order : Yes/ No
Index : Yes/ No
NCC : Yes/ No

To

The Presiding Officer,

11/12



W.P.No.28651 of 2017

First Additional Labour Court, Chennai,
High Court Complex, Chennai – 600 104.

WEB COPY

M.DHANDAPANI, J.

skt

W.P.No.28651 of 2017
and
WMP.Nos.16679 of 2019 & 30838 of 2017

07.09.2023

12/12