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W.P.No.28786 of 2017 & W.M.P. No.30964 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.28786 of 2017 & W.M.P. No.30964 of 2017

The Management of
ARKEMA Peroxides India (P) Ltd.,
Semmankuppam, Cuddalore.
Represented by its General Manager ... Petitioner

Vs.

1. Dhanasingh Vedakkan
2. The Presiding Officer,
Labour Court, Cuddalore ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records relating to the
Award dated 13.09.2017 made in I.D. No.44 of 2013 on the file of the
2nd respondent.

For Petitioner : Mr.M.Sricharan Rangarajan
Senior Counsel
for Ms. Krithika Jaganathan
for M/s. Lakshmi Kumaran &
Sridharan Attorneys
For R1 : Mr. D.Baskar



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ORDER

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The petitioner, the Management of ARKEMA Peroxides India (P) Limited, Cuddalore, represented by its General Manager has challenged the Award dated 13.09.2017 by the Labour Court, Cuddalore, in I.D. No.44 of 2013.

2.The 1st respondent Dhanasingh Vedakkan, joined the petitioner Company as Technician in the Maintenance Department. He was a habitual absentee right from the year he joined the Company. He was politely reminded, verbally warned, warned in writing and also proceeded departmentally by issuing show cause notices. According to the petitioner Company a long rope was given to the 1st respondent. He was issued a charge memo on 13.04.2012 for his frequent absenteeism. The 1st respondent replied to the charge memo denied the charges and also questioned the intention of the petitioner Company. He was placed under suspension with effect from 25.04.2012 and a domestic enquiry was conducted. The Enquiry Officer was a retired official of the petitioner Company. The enquiry concluded and on 09.07.2012 his findings were submitted. Based on the findings the 1st respondent was



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issued a second show cause notice dated 20.07.2012 seeking his explanation for the proposed punishment of 'termination of services'.

After receiving the reply on 30.07.2012, the termination order dated 10.08.2012 issued. His terminal benefits were also settled on 08.11.2012. The 1st respondent approached the Labour Court, Cuddalore, in I.D. No.44 of 2013 in which the Labour Court gave an Award dated 13.09.2017, that the 1st respondent be reinstated with back wages. However, the domestic enquiry was not found fault with. The aggrieved petitioner Company has come up with this petition praying for setting aside the Award.

3. Mr.M.Sricharan Rangarajan, learned Senior Counsel appearing for the petitioner Company would contend that the Labour Court's Award ought to have taken a single stance. On the one hand when it has held that there is no infirmity in the domestic enquiry, it has, on the other hand ordered for reinstatement of the 1st respondent with back wages. He further contended that the 1st respondent had been absenting himself for shorter and longer periods citing health reasons and on every occasion the petitioner Management has been accommodative. He further contended that leave is not a matter of right and giving medical



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certificate alone cannot make the 1st respondent eligible for leave.

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4. Per contra, Mr. D.Baskar, learned counsel for the 1st respondent contended that the 1st respondent has a blemishless record of service since 1995 and he is being targeted only after he started indulging in Union activities. His further contention is that on many occasions he was turned away from the gate of the factory even after punching of attendance and such acts had an adverse effect on his mental well being as well as his physical health. He also argued that the Labour Court was able to take a holistic view of his position and found the decision of termination to be illegal.

5. The instant case is not one of the 1st respondent going on leave once in a while on medical grounds without prior intimation. It is one of frequent absence from duty. Though the 1st respondent has claimed that he has had a blemishless track record of being regular to duty since 1995 when he joined the petitioner Company, the latter had adduced telegrams dated 22.08.1995, 19.10.1995, 10.07.1996, 19.10.1996 and 21.03.1997 sent to him regarding his absence without prior intimation. He was also advised to avoid such leave on 15.10.1997, 4.11.2008 and 28.07.2011.

The petitioner Company had about 50 permanent employees and were



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engaged in manufacture of chemicals. There were many occasions when the petitioner Company, in order to protect the interests of the 1st respondent, allowed him to resume duty with just a caution letter. In fact the 1st respondent had in many of his letters addressed to the petitioner mentioned about his ill health and also his inability to attend duty. In such correspondence he had also given an undertaking that such occasions would not recur. It is not that the 1st respondent was not aware of the effects on the functioning of the Company due to his frequent absence. However, it appears, at one stage the 1st respondent started questioning the intentions of the Management attributing his involvement in Union activities as the reason for the Management going tough on him. It is well settled that any employee of an Organisation is bound to abide by the Rules and Regulations of that particular Organisation and that leave is not a matter of right. In my considered opinion adequate opportunities were afforded to the 1st respondent and it was only when the conditions worsened and reached a point of no return, the Management was constrained to conduct a domestic enquiry in which an elaborate charge sheet was issued. The 1st respondent preferred to go on an offensive mode instead of explaining his inability or compulsions and therefore the Award dated 13.09.2017 passed by the Labour Court,



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Cuddalore, in I.D. No.44 of 2013 is perverse and illogical.

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6. In the result, the Writ Petition is allowed. No costs.

Consequently connected Writ Miscellaneous Petition is closed.

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Index : yes/no

Speaking /Non speaking Order

To

The Presiding Officer,
Labour Court, Cuddalore.



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R.HEMALATHA, J.

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