



W.A. No. 2188 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 2188 of 2023

R. Shanmugam

..Appellant

Vs.

1. The Presiding Officer,
Principal Labour Court,
Vellore.

2. The Management of
M/s. Tamil Nadu Industrial Explosive
Limited, Tel Post,
Vellore – 600 059.

..Respondents

Prayer: Writ Appeal as against the order dated 19.06.2018 passed in

W.P. No. 8326 of 2011.

For Appellant :: Mr.S.T. Varadarajulu

For Respondents :: Mr.Abdul Wahab for
M/s.K.V. Subramanian Associates for
R2

J U D G M E N T



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(Delivered by S. Vaidyanathan,J.)

The present writ appeal is directed against the order of the learned Single Judge dated 19.06.2018 dismissing the writ petition filed by the employee and thereby confirming the award passed by the Labour Court.

2. The gist of facts which resulted in the filing of this writ appeal is as hereunder:

The appellant had joined the service of the 2nd respondent Management as a casual labourer on 14.11.1988 and thereafter, he was posted as Danger Area worker with effect from 14.05.1989. His services were confirmed as per order dated 10.07.1989. Since the appellant absented himself unauthorisedly on certain occasions, charges memos were issued. Three separate charge memos were issued for three different periods of absence for which no explanation was given by the employee. However, in order to give an opportunity to the employee, an enquiry officer was appointed and separate enquiry proceedings were conducted in respect of each charge memo issued. The enquiry officer found that the charges



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levelled against the appellant were proved and second show cause notice was issued to the employee proposing the punishment of dismissal from service and the appellant was asked to submit his written explanation. Not being satisfied with the explanation given by the appellant and that the appellant had been imposed with punishments for such misconduct earlier, he was imposed with the punishment of dismissal from service. Challenging his termination, the appellant had raised an industrial dispute before the 1st respondent Labour Court in I.D. No. 251 of 2004. The 1st respondent Labour Court, after adverting to all the materials placed on record and after considering the arguments and submissions made on behalf of the employee and the Management, by award dated 12.05.2009, dismissed the industrial dispute. The award passed by the Labour Court was questioned by the employee before this Court in W.P. No. 8326 of 2011 and by the order under challenge, the learned Single Judge, dismissed the writ petition, giving rise to the instant writ appeal.

3. Heard both sides.

4. From a perusal of the award of the Labour Court, it is seen that



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the Labour Court has observed that there was categorical evidence by M.W.1 that the appellant/employee had absented himself without any permission on all those days mentioned in the charge memos and that such unauthorised absence would constitute misconduct in terms of standing orders applicable and this Management witness was not cross-examined by the employee. Besides, the employee, during the domestic enquiry, in all the three enquiries, had himself admitted that he was unauthorisedly absent on all those days mentioned in each charge memo. He had further stated that as he was falling ill frequently, he was taking treatment, and apologised for his absence. This admission of the employee was also considered by the Enquiry Officer while giving his report. Taking note of the totality of circumstances, the order of dismissal from service had been passed by the employer. The Labour Court further opined that the medical certificate produced before it was not at all produced before the Enquiry Officer and hence, the evidence tendered for the first time cannot be accepted. The relevant portion of the award of the Labour Court with regard to the above aspect is extracted hereunder:

“The petitioner as WWI has stated in the chief examination that



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whenever he takes leave, he will take the leave only after giving the leave application. Such a case has also not been put forth during the Enquiry proceeding. During cross examination WW1 says that in the domestic enquiry regarding the charge memorandum under Ex.M20, he has stated that since he was not well, he could attend the duty and he has filed a Medical Certificate also before the Enquiry Officer. It is to be noted that he has deposed that he has stated before the Enquiry Officer that he was not well and it has been brought on record. If really he has given such a certificate, he ought to have mentioned it in the petition itself. As already stated, Ex.M25 is the explanation given by the petitioner for second show cause notice on the basis of the Enquiry reports. He has not stated in Ex.M25 that whenever he absents himself or takes leave he will give leave applications. He has also not stated in Ex.M25 that he has given a Medical Certificate before the Enquiry Officer and that has not been brought on record. So such evidence for the first tie, during enquiry before this Court cannot be accepted.”

The Labour Court, taking note of the gravity of the misconduct, more so, taking into account the extenuating and aggravating circumstances prevailing in the present case, found that the punishment imposed cannot be held to be disproportionate to the gravity of the charges.



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5. Since the Labour Court has rendered a finding of fact, the learned Single Judge has categorically held that the punishment imposed by the employer cannot be held to be arbitrary and confirmed the award of the Labour Court. The learned Single Judge had also observed in paragraph No.13 that the employee had suffered previous punishments and had not shown any improvement and his retention in service would not be in the interest of the industry and that it would also usher indiscipline in the workforce employed by the industry. Unless the finding of the Labour Court is vitiated on the ground of perversity, the learned Single Judge held that the award does not call for any interference. The learned Single Judge had also observed in paragraph No.13 that the employee admittedly was an habitual absentee and therefore, cannot be shown any indulgence by the Court.

6. We find that there are no reasons to interfere with the order of the learned Single Judge which confirmed the award of the Labour Court. Hence, the writ appeal stands dismissed. It is made clear that for the actual number of years of service rendered, the employee is entitled to PF and



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Gratuity, upto the date of dismissal and the same shall be released by the employer, if not already done. No costs.

nv

(S.V.N.J.) (K.R.S.J.)
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To

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