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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.30841 of 2018
and W.M.P.No.19034 of 2019

R.Parthiban ... Petitioner

Vs.

1.POS Hyundai
Steel Manufacturing India Pvt. Ltd.,
No.5 E, Kem Tower,
North Usman Road,
Thiyagaraya Nagar,
Chennai - 600 017.

2.POS-Hyundai,
Steel Manufacturing India Pvt. Ltd.,
Represented by its Assistant General Manager,
F 70, SIPCOT Industrial Estate,
Sriperumpudur, Irungattukottai,
Kanchipuram District.

3.The Presiding Officer,
II Additional Labour Court,
Chennai. ... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondents 2 & 3 in connection with the award passed in I.D.No.16/2014 dated 14.09.2018 and order of termination in Ref.No.HR/072/14/12 dated 27.03.2012 passed by the second respondent and quash the same and direct the respondents 1 & 2 to reinstate the petitioner in service with all monetary and service benefits including backwages.

For Petitioner : Mr.K.Sannjay
For R1 & R2 : M/s.T.S.Gopalan & co

ORDER

The writ petitioner was appointed as an Operator by the respondents 1 & 2 in the month of July 1998 for a salary of Rs.1,600/- per month. The petitioner worked in the post for nearly about one year and thereafter, he was posted as Carpenter by an order dated 03.01.2000. The petitioner's service in the post of Carpenter was confirmed on 01.07.2001.

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2. The petitioner, while working as a Carpenter sustained grievous injuries on his left hand and also on his index and middle fingers. However, the petitioner continued to work as a Carpenter. Subsequently, he was promoted to the post of Technician in the year 2004 and he was posted in the Packing Department. Though the petitioner requested the respondents 1 & 2 to post him in other departments, they refused to do so and compelled him to do the work of Crane Operator. Thereafter, on 27.03.2012, the respondents 1 & 2 terminated the service of the petitioner on the ground that the petitioner abstained from attending duty. In fact, the respondents 1 & 2 did not issue any Show Cause Notice or any Charge Memo.

3.Therefore, the petitioner filed a petition under Section 2 A(2) of the Industrial Disputes Act 1947, to reinstate him in service with full backwages and all other attendant allowances in I.D.No.16/2014 before the II Additional Labour Court, Chennai.

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4. The respondents filed a detailed counter before the Labour Court stating that the claim made by the petitioner is baseless. According to him, on 27.09.2002, the petitioner met with an accident and he was admitted in Ramachandra Medical College and Hospital, Chennai and the management of the respondents bore all his medical expenses. The respondents also paid a compensation of Rs.47,512/- to the petitioner. On humanitarian grounds, the petitioner was permitted to continue in service. When he reported for duty during January 2003, he was given relatively a lighter work as a Packing Supervisor. However, the petitioner absented himself without applying for leave, quite often. In the year 2009, disciplinary proceedings were initiated against him and on 05.01.2010 he was given a final warning. However, he continued to be irregular in attending the duty. On 15.09.2011, he again met with an accident while riding his two wheeler and the management gave him leave with wages during the period of his treatment in the hospital. However, the petitioner absented himself from 11.11.2011 to 17.11.2011, 21.12.2011 to 27.12.2012 and 06.01.2012 onwards. He was directed to report for duty

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on 31.01.2012. Though he reported for duty, he started absenting himself from February 2012. Since the petitioner was not regular in attending work, the respondents 1 & 2 decided to terminate the employment of the petitioner.

5. The learned Labour Court, vide her orders dated 14.09.2018, dismissed the I.D.No.16/2014 filed by the petitioner on the ground that the management has given several opportunities to the petitioner to amend himself. The Labour Court in fact had analysed the oral evidence of the petitioner as WW1.

6. It is seen from the records that the petitioner absented himself on the following dates.

i. 09.11.2011 to 17.11.2011

ii. 21.11.2011 to 29.12.2011

iii. 10.02.2012 to 29.02.2012

iv. 09.03.2012 to 14.03.2012

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This aspect was admitted by the petitioner. Even in his deposition before the Labour Court, the petitioner had contended that he submitted leave applications but the management did not receive the same. The petitioner during the course of cross examination admitted that on 19.07.2007 he was issued a memo for being absent for 27 days from June 2005 to May 2006. Therefore, it is clear that the petitioner has a habit of continuously remaining absent. The respondent in his counter had stated that the wife of the petitioner Sarala Devi was elected as a Councillor and subsequently, made President of Banavaram Village Panchayat in Arakonam Taluk, Vellore District and that the petitioner used to accompany her in connection with her official work. In fact the petitioner was given a charge memo for his misconduct by one Vijayakumar, Human Resource Department as is seen from Ex.M10 and the petitioner was suspended for three days. Based on the requisition letter submitted by the petitioner, warning letters were given to him on 14.12.2006 & 31.12.2011 (Ex.M17 & Ex.M18) and even after that the petitioner continued to be irregular to work. The petitioner had not also worked continuously for 240 days. The learned II Additional Labour Court,

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Chennai had examined the aspect of termination of the petitioner without conducting any domestic enquiry and observed thus :

> *"Now the crucial question is whether the termination order without domestic enquiry is valid under law. Secondly whether the termination order is higher punishment for the petitioner. The petitioner was given warning by management for many times. The document speaks for it. So after giving warning also the petitioner though joined continued to be irregular to work is noted. So when petitioner was irregular and indiscipline then management cannot show leniency always. In 1973 SCC 813 the Hon'ble Apex Court has clearly said that it is open to employer to prove before labour court its activities for the first time. So management has adduced evidence to prove genuinity in holding the job for petitioner. The absence of petitioner started from 2006 and it continued till 2012 and for the six years petitioner have not proved that he worked continuously for 240 days. The learned petitioner counsel referred the following case laws.*
>
> 1. *(2005) 12 SCC 428 - Aswinkumar & ORs -vs- State of Haryana & Ors.*
> 2. *(2010) 1 SCC 47 - Director of Fisheries Terminal Depot -vs- Bhkunhai Meghaji Bhai Corda*

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3. *(2010) 2 SCC 543 - Ramesh Kumar -vs- State of Haryana*
4. *2000 (2) LLN 47 - V.P.Ahuja -vs- State Punjab & Others.*
5. *1991 (62) FLR 677 (Mad) - M.Aruna Giri -vs- Bata India Ltd.,*
6. *AIR 1966 Supreme Court 1051 - The Mgmt of UTkal Machinery Ltd -vs- Workman*
7. *(2002) 10 SCC 130 - UPSRTC -vs- Jeewan Prasad Misra and another*
8. *(2002) 10 SCC 133 - Prithipal Singh -vs- State of Punjab and Others.*
9. *(2012) 1 CWC 195 - The Divisional Railway Manager -vs- Presiding Officer, CGIT*
10. *2017 (5) CTC 532 - C.Selvan -vs- The District Collector, Kanyakumari*
11. *2018 (1) CWC 526 - Adaikalam and Others -vs- Presiding Officer, Labour Court, Trichirappalli & Others.*

From all the case laws referred above though the circumstances differ workman worked continuously for 240 days and claimed the right under Section 25F. But petitioner would not come to rescue as the said judments were rendered in cases where an employee who put in 240 days were

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terminated without compliance of Section 25F. So this court is convinced that the management has given sufficient opportunity to the petitioner to make himself regular by it was not utilized by him. In this circumstance non issuing of charge memo, receiving explanation, proceeding with domestic enquiry and issuing 2nd show cause notice is no matter mandatory and it will not prejudice the right of the petitioner. In (2008) 1 SCC 224 the Hon'ble Apex Court has held that the chronic unauthorized absenteeism is a gross indiscipline and a serious misconduct. So this is not pleased to interfere with the punishment of termination because it should not be a wrong signal to the other employees but also jeopardize the discipline prevailing in the factory. Hence the order of termination is justified and issues 1 and 2 are answered accordingly."

I do not see any infirmity in the orders passed by the Labour Court.

7. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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Internet: Yes/No
Speaking/Non-Speaking order
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To

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R. HEMALATHA, J.
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