



W.P.(MD).No.15916 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15916 of 2013

and

M.P(MD)No.1 of 2013

John George

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. The Management,
New Ambadi Estate Private Limited,
Having his Headquarters at Valparai,
Coimbatore District, Tamilnadu.

3. The General Manager,
New Ambadi Estate Private Limited,
Having his Headquarters at Valparai,
Coimbatore District, Tamilnadu.

4. The Deputy General Manager,
New Ambadi Estate Private Limited,
Maniyankuzhi Post,
Kaliyal Village,
Kanyakumari District,
Tamilnadu.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus***, calling for the records on the file of the 1st respondent pertaining to its proceeding in I.D.No.73 of 2011, dated 20.09.2012 and to quash the same and consequently direct the respondents to reinstate the petitioner into service



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with all backwages continuity of service and with all other attendant benefits within a time frame that may be stipulated by this Court.

For Petitioner : Mr.S.C.Herold Singh
R-1 : Court
For R-2 to 4 : Mr.M.Jerinmathew, for
Mr.M.E.Ilango

ORDER

This writ petition has been filed, challenging the award passed in I.D.No.73 of 2011, dated 20.09.2012.

2. Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.M.Jerin Mathew, for Mr.M.E.Ilango, learned Counsel appearing for the respondents 2 to 4. Perused the material documents available on record.

3. The petitioner was appointed as a Deputy General Manager in the respondents Estate. The petitioner was also a Union activist. Hence, there was frequent quarrel between the petitioner and the respondents. The respondents have issued a Show Cause Notice to the petitioner on 19.12.2005 and the petitioner has submitted an explanation on 05.01.2006. Thereafter, a charge sheet was issued on 02.02.2006, after enquiry, the enquiry report was submitted on 29.02.2007 wherein it was



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held the charges are proved. After giving an opportunity to the petitioner, the respondents dismissed the petitioner from service. Aggrieved over the same, the petitioner has raised an Industrial dispute before the Labour Court in I.D.No.73 of 2011. The Labour Court has passed a preliminary award, stating that the petitioner was granted sufficient opportunity and there is no violation of principles of natural justice. Thereafter, the 1st respondent has proceeded to enquire the main petition and has come to the conclusion that the punishment imposed on the petitioner is proportionate and dismissed the petition filed by the petitioner. Aggrieved over the same, the present writ petition is filed.

4. The contention of the petitioner is that the respondents have initiated enquiry proceedings beyond the time frame prescribed under Clause 23 of the *Standing Orders for Estate Staff*. The prescribed time limit is three months and the relevant portion is extracted here under:

“23. Procedure for disciplinary action in respect of acts of misconduct:

(i). No penalty prescribed under Standing Order 22 shall be imposed on any %staff unless he has been given a reasonable opportunity to explain the circumstances alleged against him.

(ii). If a staff is alleged to have committed an act of misconduct under Standing Order 21, the employer may conduct an enquiry by issuing a show-cause notice call on the staff to submit a written



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explanation within 5 days from the time such explanation is demanded and if such written explanation is unsatisfactory or if the staff fails to submit a written explanation and further disciplinary action is warranted, issue a charge sheet not later than two months after the receipt of explanation giving the staff an opportunity to explain the charges made against him in proceedings which shall be commenced as soon as possible thereafter, by the employer or such other person as may be authorized or appointed by the employer for the purpose, but not later than three months or earlier than 10 days after issue of charge sheet.”

5. In the present writ petition, the respondents have issued the charge sheet to the petitioner, on 03.02.2006. The respondents ought to have initiated the proceedings within three months from the date of charge sheet, i.e., within on 03.05.2006, however, the respondents have initiated the enquiry proceedings only on 26.05.2006. Admittedly, which is beyond the period of Standing orders.

6. The learned counsel appearing for the respondents submitted that such a plea was never taken before the Enquiry Officer or before them. On perusal of the records, it is seen that the petitioner has not taken such a plea. However, such plea is legal plea and it is settled proposition that the legal plea can be taken at any stage of the litigation.



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Therefore, this Court is of the considered opinion that such plea shall be entertained before this Court and this Court is entertaining this plea.

7. The respondents submitted that the past record of the petitioner would prove that the petitioner continued his insubordination. In spite of several notices and memos, the petitioner continued his activities. The relevant portion of past record is extracted hereunder:

“1. Suspended for 10 days from 22.11.95 to 02.12.95 for signing attendance on sick leave day, marking casual leave for your absence day, misbehaving with Assistant Manager, failure to follow company norms on leave procedure and for late coming.

2. Suspended for 15 days from 03.04.2007 to 17.04.2007 for lapses in your performance and routine responsibilities, late coming and making workers to wait for work, failure to maintain daily records etc.

3. Several warning memos have issued to you by your superiors, dated 21.08.86, 25.04.82, 22.07.94, 11.07.95, 16.04.95, 06.09.96, 03.05.97, 05.07.02, 17.06.04, 29.03.04, 01.07.04, 06.12.05 and 12.10.05 in respect of various lapses in your duties and responsibilities.

4. Several advise letters had been issued to you by your superiors dated 17.09.93, 15.06.95, 04.07.95, 08.05.95, 17.12.98, 01.09.01, 03.07.02, 13.07.04, 09.11.04, 17.05.05, 18.11.05, 28.01.06, 22.02.06 and 29.03.06 regarding various lapses in your day-to-day performance and responsibilities.”



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The contention of the petitioner is that the petitioner being Union activist, had raised several issues before the respondents not for himself but for the entire workers community. But the same was considered as insubordination and misconduct.

8. The next plea that was raised is that the charges on the face of it would not amount to insubordination. On perusal of the charges this Court is of the considered opinion that the Learned Counsel appearing for the petitioner is right in stating that the impugned charges cannot be categorized as insubordination or misconduct. In such circumstances, the plea that the petitioner being a Union activist, the respondents had initiated disciplinary proceedings ought to be accepted.

9. By taking all these facts and circumstances of the petitioner's case and also the fact that the petitioner had attained superannuation, this Court is inclined to modify the dismissal order as Compulsory retirement. The petitioner has joined duty on 11.07.1993 and dismissed from service on 03.01.2008. By taking this period, the respondents are directed to grant terminal benefits, which is applicable to the petitioner.



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10. With these observations, this Writ Petition is allowed. No

Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
ksa

23.02.2023

To

The Presiding Officer,
Labour Court,
Tirunelveli.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.15916 of 2013**

23.02.2023