



W.P.No.11363 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.11363 of 2011

The Managing Director,
The Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai - 600 002.

.. Petitioner

Versus

1. N.Radhakrishnan

2. The Presiding Officer,
I Additional Labour Court,
Chennai.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the entire records culminated in passing the order, dated 26.08.2010 made in I.D.No.394 of 1999 on the file of the I Additional Labour Court, Chennai, the second respondent herein, quash the same.



W.P.No.11363 of 2011

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For Petitioner : Mr.Gautham S. Raman

For Respondents : Mr.R.Jaikumar, for R1

: R2 - Labour Court

ORDER

This Writ Petition is filed challenging the award of the second respondent/Labour Court, dated 26.08.2010 made in I.D.No.394 of 1999.

By the said award, the first respondent workman was directed to be reinstated into service with continuity of service and back-wages.

2. The brief facts leading to the filing of the Writ Petition are that the workman joined the service of the petitioner management with effect from 18.05.1977 as a Field Workman. He was regularised into service with effect from June, 1982. While so, in the year 1984, when he was working in the Regional Office - II, he was absent from duty from 07.08.1984. It is the claim of the workman that he was not well and was taking treatment and



W.P.No.11363 of 2011

WEB COPY

after he became alright, he reported for work on 08.10.1984 by producing a Medical Certificate issued to him. Since the workman's absence exceeded two months, by a communication, dated 19.01.1985, he was directed to appear before the Medical Board and a certificate be obtained.

3. It is the case of the workman that he appeared before the Medical Board and the Medical Board examined and certified him to be fit to join the service. Even thereafter, the management did not permit him to join the duty. Thereafter, by a memorandum, dated 04.03.1987, charges were leveled against the workman under Regulation 10(2) of the MMWSS Board Employees Discipline and Appeal Regulation, 1978. Two charges were leveled that he was unauthorisedly absent from 07.08.1984 and that he is indifferent and irresponsible in attending his duty regularly. It is seen from the communication, dated 15.06.1990, during the pendency of the Disciplinary Proceedings also, the workman reported for work, but,



W.P.No.11363 of 2011

WEB COPY

however, the Assistant Industrial Relations Manager sought a clarification as to the pendency of the Disciplinary Proceedings.

4. While so, the petitioner management, without passing any express order concerning the earlier charge memorandum, issued a second charge memorandum on 21.05.1993 containing the very same charges. The workman submitted his explanation on 04.06.1993. He pleaded that earlier he had appeared before the Medical Board and requested to immediately permit him to join the duty. The explanation was not accepted and the management proceeded with a Domestic Enquiry. On 03.09.1993, the Domestic Enquiry was conducted. In the Domestic Enquiry, the workman was also questioned by the Enquiry Officer and his answers were recorded.

5. The Enquiry Officer returned his finding by a report, dated 25.07.1994, without any specific finding as to the charges, holding that the workman did not take any steps to report for a long time. On the said



W.P.No.11363 of 2011

WEB COPY

finding, a second show-cause notice was also issued on 08.12.1995. Not accepting the explanation submitted by the workman, on 26.12.1995 the workman was terminated from the service. The workman made subsequent representations to take him back. Since there was no positive response, the workman raised a dispute on 22.10.1998. Upon failure of conciliation, the Claim Petition was filed and was taken on file in I.D.No.394 of 1999.

6. It is the case of the workman that even though the enquiry was sought to be conducted, no opportunity was granted to him. Pursuant to the enquiry, no order whatsoever was served on him. Therefore, his termination is nothing but a retrenchment in violation of Section 25(F) of the *Industrial Disputes Act, 1947*. The claim was resisted by the management by stating that even before the year 1984, on several occasions, the workman was irregular in reporting for work. In the enquiry, the workman was given ample opportunity and in the enquiry, he did not produce any evidence that he was mentally ill and did not submit any proper proof for his absence from



W.P.No.11363 of 2011

WEB COPY

work. Therefore, enquiry was made as per the procedure and the petitioner was dismissed from the service by the order, dated 26.12.1995, and suppressing the order of dismissal, he filed the Claim Petition.

7. With the said pleadings, in the enquiry before the Labour Court, the workman examined himself as *W.W.1* and marked ***Ex.W-1*** to ***Ex.W-17***. On behalf of the petitioner management, one *J.Sridharan*, was examined as *M.W.1* and one *Babu Manoharan*, was examined as *M.W.2*. ***Ex.M-1*** to ***Ex.M-9*** were marked. The Labour Court considered the evidence of the Management Witnesses, regarding the fact that initially the workman was referred to the Medical Board and thereafter no follow-up action was taken. The workman was absent from duty. When he reported for work and prayed for Medical Leave, the management chose to refer him to the Medical Board. Thereafter, without passing any orders whatsoever, initiated Disciplinary Proceedings and imposed the punishment. On the above findings, the Labour Court held that the imposition of the punishment as



W.P.No.11363 of 2011

WEB COPY

unjust and therefore, ordered reinstatement with back-wages and all the other attendant benefits. Aggrieved by which, the present Writ Petition is filed.

8. Heard *Mr.Gautam S. Raman*, learned Counsel for the petitioner and *Mr.R.Jaikumar*, learned Counsel for the first respondent/workman.

9. *Mr.Gautam S. Raman*, learned Counsel for the petitioner, would submit that when the workman was absent unauthorised, the Disciplinary Enquiry was duly initiated against him. The order of termination was passed. The workman suppressed the same and raised the dispute and as such, his claim has to be rejected on that ground. Secondly, as far as the very reason which is mentioned by the Labour Court as if no action was taken on the reference to the Medical Board is concerned, the same is doubtful. It can be seen that in the enquiry proceedings, dated 03.09.1993, when the workman was questioned whether he appeared before the Medical



W.P.No.11363 of 2011

WEB COPY

Board, he answers that he did not receive any communication and therefore, he did not go. Therefore, the very reason, based on which the Labour Court allowed the claim, is also factually unsustainable. In any event, the Labour Court ought to have seen that the workman was very irregular in reporting for work. The proceedings under the *Industrial Dispute Act, 1947* cannot be merely to get benefits without actually reporting for work. Therefore, the Labour Court ought not to have ordered reinstatement.

10. Concerning the back-wages, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Talwara Cooperative Credit and Service Society Limited Vs. Sushil Kumar***¹ to contend that firstly, there should be evidence let in by the workman, after proper pleadings that he is not gainfully employed elsewhere. Secondly, the Labour Court should consider the period of employment, the nature of charges, and the overall facts and circumstances of the case to grant back-wages. This is a case of a person who, from the very inception of the service, was irregular

¹ (2008) 9 SCC 486



W.P.No.11363 of 2011

WEB COPY

to the employment and did not also produce any proper proof concerning his unauthorised absence. Therefore, granting back-wages is only a premium to his misconduct and the award of the Labour Court should be interfered in that respect also.

11. Per *contra*, Mr R.Jaikumar, learned Counsel for the first respondent/workman would submit that in this case, from **Ex.W-2**, the letter of the management dated 19.01.1985, it would be very clear that in October, 1984 itself, the workman reported for duty and he was referred to the Medical Board. As a matter of fact, in the cross-examination, M.W.2 categorically admitted the said fact. Therefore, it is the management who felt that the workman should not be permitted to join the duty without the Medical Board certifying him. When the workman appeared before the Medical Board, thereafter, without passing any order whatsoever, a charge memorandum was issued in the year 1987. Even after the charge memorandum was issued, the workman was neither placed under suspension



W.P.No.11363 of 2011

WEB COPY

nor permitted to join the duty. He has been representing to the management continuously to permit him to join duty.

12. For the reasons best known to them, they abandoned the first charge memorandum and issued the second charge memorandum in the year 1993. Even in the enquiry proceedings, when the workman was questioned, it was only concerning the second reference which was said to be made by the communication of the management. The answer of the petitioner was not concerning the original communication, by which, he was directed to appear before the Medical Board. In view thereof, the Enquiry Officer himself did not categorically find that the charges are proved. Even without any disagreement, the show-cause notice was issued and the punishment was imposed. Therefore, it is the specific case of the workman that even before the conciliation officer and also in the claim statement, the order of termination was never served to him. Therefore, only for the said reason, the order of termination was neither specifically mentioned nor specifically



W.P.No.11363 of 2011

WEB COPY

challenged before the Labour Court. Therefore, he would submit that the order of the Labour Court need not be interfered with and the workman, being ready to report for work all the time, cannot be denied back-wages for the error committed on behalf of the management.

13. I have considered the said submissions made on either side and perused the material records of the case. It is admitted that the workman already reached the age of superannuation pending the Writ Petition on 30.11.2011. Therefore, in this background, this Court proceeds to consider the submissions made in this case.

14. Concerning the non-employment, it is the case of the management that the workman was terminated from the service after the conduct of a due enquiry. It is to be noted that in the counter filed by them, they never pleaded that in the event of the Domestic Enquiry being found to be not fair and proper, they are ready and willing to let in evidence on the merits of the



W.P.No.11363 of 2011

WEB COPY

charges. Be that as it may, since both the parties did not properly raise the question fairness of the enquiry and the merits of the charges, the Labour Court did not proceed to passing of a preliminary and final awards and considered the proof of charges on merits.

15. As far as the charge in this case is concerned, it can be seen that it is the allegation that the workman has unauthorisedly absented himself from 07.08.1984. In this regard, it can be seen that by *Ex.W-2* even during October, 1984, the workman reported for work and he was referred to the Medical Board. It is the case of the workman that he appeared before the Medical Board and the Medical Board found him fit. There is no answer concerning the same in the documents submitted by the management. If the workman being referred to the Medical Board, did not appear before the Medical Board, that fact does not find a place in the charge memorandum which was issued thereafter.



W.P.No.11363 of 2011

WEB COPY

16. Further, it can also be seen that in the earliest communication, which was marked as **Ex.W-5**, it is the consistent case of the workman that he appeared before the Medical Board on 19.01.1985 and thereafter, no action was taken on the report of the Medical Board. When the Management Witnesses were questioned about the same, the witnesses admitted the suggestions made on behalf of the workman that they neither produced the documents nor gave any reply concerning the same.

17. As regards the argument of the learned Counsel for the petitioner concerning the answer in the Domestic Enquiry, it can be seen that the question was not specifically concerning the reference to the Medical Board under **Ex.W-2**. Therefore, the same cannot be accepted.

18. Further, in the Domestic Enquiry in the Enquiry Report, the Domestic Enquiry Officer found as follows:-

"திரு.இராதாகிருஷ்ணன் சரியான
விலாசம் அளிக்கவில்லை. நம் அலுவலக



W.P.No.11363 of 2011

கடிதங்கள் திரும்பி வந்து இருக்கின்றன. முறையாக முன் அறிவிப்பு ஏதும் இன்றி பணிக்கு வரவில்லை. மருத்துவ குழுவுக்கும் இவர் சென்று வரவில்லை. மேலும் 1986 ம் ஆண்டு ஏ.ஐ.ஆர்.எம் அவர்களை பணியில் சேர சந்தித்தேன் என்பது சரியாக இல்லை. காரணம் ஏ.ஐ.ஆர்.எம் பதவி 1987 ஆண்டிலேயே தான் கொடுக்கப்பட்டது என தெரிய வருகிறது. ஆகவே திரு.என்.இராதாகிருஷ்ணன் நீண்ட காலமாக பணிக்கு வர எந்தவித முயற்சியும் எடுக்கவில்லை என்பது எனது கருத்து. ஆகவே இந்த கோப்பினை மேல் நடவடிக்கைக்காக அனுப்பப்படுகிறது."

There is not even a finding as to the guilt or otherwise of the employee. In that background, when the second show-cause notice does not even contend anything about the finding of guilt or otherwise of the Enquiry Officer, it cannot be said that the Domestic Enquiry was fair and proper since the workman was not even put on notice what was passing on in the mind of the employer.

19. Even on merits, the Labour Court, after appreciation of evidence, found that the workman has all along been reporting for duty. When the



W.P.No.11363 of 2011

WEB COPY

workman was conferred permanent status in the year 1982, when he is not reporting for work, the petitioner management, being a public sector undertaking, governed by the Rules, did not even place the petitioner under suspension. Therefore, the very action, whether the workman did not report for work or the management did not permit him to work, is answered by the Labour Court finding in favour of the workman. Therefore, by considering the Domestic Enquiry or the evidence before the Labour Court on the merits of the charges, it cannot be held that the award of the Labour Court, in as much as it orders reinstatement of the workman, as erroneous.

20. Now, considering the question of back-wages, even though the learned Counsel for the first respondent workman is right in contending that when the workman has been knocking on the doors of the management to permit him to join the duty, this Court also considers the following facts:-



W.P.No.11363 of 2011

WEB COPY

(i) In paragraph No.3 of the counter statement before the Labour Court, the particulars about the absence of the workman from the year 1982 to 1984 are also given, which is not denied;

(ii) The workman is said to have worked on a temporary basis from the year 1977 to 1982 and on a permanent basis, from the year 1982 to 1984;

(iii) The date, on which he is said to have attained the age of superannuation, is on 30.11.2011. Therefore, the period of work is less than the period of litigation and non-employment. That is also to be taken into account.

The grant of back-wages is not automatic and this Court has to take into consideration all the relevant facts and circumstances of the case. Therefore, I am of the view that the back-wages in this case shall be reduced to 30% till the date of superannuation and the workman shall be treated as being in service till the date of his retirement i.e., upto 30.11.2011 and all the terminal benefits be paid to him.



W.P.No.11363 of 2011

WEB COPY

21. In view thereof, this Writ Petition is disposed of on the following terms:-

(i) The award of the Labour Court, dated 26.08.2010 made in I.D.No.394 of 1999 is upheld since it orders reinstatement of the workman;

(ii) The workman shall be deemed to be in service with all continuity of service till his date of superannuation i.e., on 30.11.2011. However, concerning the back-wages, the award of the Labour Court stands interfered and the workman will be entitled only to 30% of the back-wages;

(iii) The workman shall be paid all the attendant benefits as if he superannuated from service on 30.11.2011 and also the 30% of the back-wages by calculating the same within 12 weeks from the date of receipt of a copy of this order;

(iv) The management shall calculate the back-wages and pass an order in writing intimating about the 30% back-wages. If the sum deposited by the management to the credit of the Industrial Dispute covers the entire 30%



W.P.No.11363 of 2011

WEB COPY

back-wages, the workman will be entitled to withdraw the same towards the

30% of the back-wages along with accrued interest;

(v) If the sum deposited before the Labour Court does not cover, the workman will be entitled to receive the amount which is deposited before the Labour Court along with the accrued interest, but, the balance sum shall be paid by the management;

(vi) All the retiral benefits shall also be settled by the petitioner management within 12 weeks from the date of receipt of a copy of this order;

(vii) There shall be no order as to costs.

06.12.2024

Neutral Citation : yes
grs

To

The Presiding Officer,
I Additional Labour Court,
Chennai.

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W.P.No.11363 of 2011

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.11363 of 2011



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W.P.No.11363 of 2011

06.12.2024