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W.P.No.24863 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24863 of 2007

The President
Chennai Port Trust Industrial Co-operative Canteen Ltd.,
E.M.E.IV Office
II Floor, Bharathy Dock
Madras, Port Trust, Royapuram
Chennai 600 001.

... Petitioner

Vs.

1.The Presiding Officer
First Additional Labour Court
Chennai.

2.Mr.P.Krishnamurthy

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records and to quash the award dated 27.07.2006 passed in I.D.No.813 of 1999 on the file of the first respondent Labour Court, Chennai.



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For Petitioner : Mr.M.R.Dharanichander
For Respondents : R1- Labour Court
R2- served

ORDER

This Writ Petition is filed challenging the award of the I Additional Labour Court, Chennai, dated 27.07.2006 made in ID.No.813 of 1999.

2. The brief facts leading to the filing of the Writ Petition are that the Workman joined the services of the petitioner Management namely Chennai Port Trust Industrial Employees Cooperative Canteen Limited, as an attender. Even when he was working as an attender, he was not regular in service and therefore for his absence on several days, a show cause notice dated 08.04.1996 was issued. The Workman submitted a letter of apology on 11.04.1996 and he was permitted to join service. Again he was unauthorisedly absent on certain days, again he submitted a letter of apology on 15.02.1997 and continued in employment. Again he was unauthorisedly absent from 01.04.1997 and a show cause notice dated 18.06.1997 was



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issued. After the showcase notice, the Workman was discharged from the service with effect from 01.07.1997. However, it seems that again the Workman had reported before the Management and by way of a fresh appointment dated 28.08.1997 the Workman was again employed. Even after the fresh employment between the years 1986 to 1998, the Workman was absent on several days more than the period for which he was entitled to avail leave. In the year 1994 he was absent for 213 days. In the year 1995 he was absent for 199 days. In the year 1996 he was absent for 258 days. In the year 1997 he was absent for 221 days. On 13.10.1998, the Workman gave a letter that in view of the charge made by the petitioner Management, he does not need reinstatement but requested for settlement of his benefits. The workman also thereafter issued a legal notice on 24.12.1998. Thereafter, dispute was raised on 06.04.1999 and since the conciliation failed the present claim Petition is filed challenging the order of discharge dated 28.01.1998.

3. Before the Labour Court, the Workman examined himself as *W.W.1* and one Rathinam was examined as *W.W.2*. On behalf the management one Kamalakannan was examined. On behalf of the Workman, Exhibits as



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Ex.W.1 to *Ex.W.11* were marked. on behalf of the management exhibits as

Ex.M.1 to *Ex.M.27* were marked. The Labour Court after considering the case on merits, held that when a charge has been levelled against the workman his discharge from service without conducting an enquiry is illegal. Having termed so, the Labour Court did not choose to exercise its power under section 11-A of the Industrial Disputes Act. This was done in spite of the pleading by the petitioner management in paragraph 8 of the reply statement, that an opportunity should be given to them to lead evidence before the Labour Court to support of the order of the discharge. However, without following the said procedure, the impugned award was passed on 27.07.2006. Aggrieved by the same, the management is before this Court.

4. When the matter came up for hearing, the learned counsel appearing on behalf of the management would submit that after the award was passed by the Labour Court the Workman was also reinstated on 03.01.2007 and he completed his service and has superannuated. Now the question remains to be decided by this Court is whether or not the Workman is entitled for back wages from 28.01.1998 up to 03.01.2007.



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5. It can be seen that right from the appointment of the Workman from the year 1979, the Workman attended the work only sporadically. With extraordinary compassion as if he is the only person there in Chennai for employment, the management has given repeated employment to him after accepting repeated apologies. Even after the fresh employment, he defaulted every year by remaining absent for so many days. It is strange that after so many years, the order of discharge was passed only in the year 1998 when the workman has been irregular from 1986 onwards. The blame is completely on the management. Anyhow, when the order of discharge has been passed in the year 28.01.1998 and when the Labour Court passed the award, then also promptly the management has reinstated him into service.

6. Be that as it may, now for the error committed by the Labour Court, normally this Court has only to set aside the award and remit the matter back to the Labour Court. Since the Workman has been reinstated into service and he has also worked and superannuated from service, there is no question of remanding the matter now for consideration of the charge on



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merits. Therefore, this Court proceeds to consider the charge on merits. There is more than enough materials to prove the charge and only on technical grounds the Workman manages to scrape through.

7. In such situations, considering the period of service put in by the Workman and considering the number of days he was unauthorisedly absent, I am of the view that in this case the Workman would not be entitled for the back wages. For ready reference, the number of days in which the Workman was absent is given in the tabular column as extracted hereunder:

<i>Year</i>	<i>EL</i>	<i>LHP</i>	<i>LWP/Dies Non</i>	<i>Total Leave</i>
1986	11	12	46	69
1987	3	18	95	116
1988	2	18	104	124
1989	2	9	117	128
1990	2	12	91	105
1991	1	14	129	144
1992	0	8	146	154
1993	0	13	49	62
1994	0	13	200	213
1995	3	18	178	199
1996	0	18	240	258



Year	EL	LHP	LWP/Dies Non	Total Leave
1997	0	14	207	221
1998	0	0	28	

8. For all the above reasons, even while holding the order of the award of the Labour Court ordering reinstatement as valid, I am of the view that by considering the gravity of the charge, the plea of the Workman, the overall facts and circumstances of the case, interest of justice would be best served if the back wages from 28.01.1998 till 03.01.2007 is denied to the Workman. The Workman would otherwise be entitled to continuity of service and the other service benefits.

9. In the result, this Writ Petition is partly allowed on the following terms:

1) the award of the I Additional Labour Court, Chennai dated 27.07.2006 made in ID. No.813 of 1999 is upheld in as much as it orders reinstatement



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of the Workman, however, shall stand set aside and modified in as much it awards back wages. That part the award is modified to the effect that the Workman shall be reinstated into service with continuity of service and all other attended benefits, but however without back wages.

No costs.

27.11.2024
(½)

Neutral Citation : No
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To

The Presiding Officer
First Additional Labour Court
Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

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