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W.P.No. 15974 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.08.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.15974 of 2015

The Assistant General Manager (Personnel),
M/s. Dalmia Magnesite Corporation,
Prop.Dalmia Bharatsugar and Industries Ltd.,
Vellakalpatti,
Karuppur Post,
Salem 636 012

... Petitioner

Vs

1. L. Balu,
2. Presiding Officer,
Central Government Industrial Tribunal
Shastri Bhavan,
26, Haddows Road,
Chennai – 600 006
3. Regional Labour Commission (Central)
Shastri Bhavan, 5th Floor
26, Haddows Road,
Chennai – 600 006

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorari calling for the records of the 2nd



W.P.No. 15974 of 2015

respondent in I.D.No.37 of 2014 culminating in its Award dated 25.02.2015 in I.D.No.37 of 2014 and quash the same.

For Petitioner : Mr.T.Poornam
For Respondent-1 : M/s.C.S.Monica
For Respondent-2 : Tribunal
For Respondent-3 : Served – No Appearance

ORDER

Challenging the award passed by the second respondent, the respondent/Management who had been arrayed as the respondent before the second respondent has filed the above writ petition.

2. The facts are set out briefly herein below. The parties are referred to as the workman, Management and Tribunal respectively.

(i) The workman was appointed as an apprentice in the



Management on 26.05.1989 and was relieved from service on 30.11.1990. Thereafter, he was once again re-appointed as an apprentice from 01.08.1991 to 31.01.1992 solely on his categorical assurance that he would maintain regular in attendance and the management could terminate his services, if he was irregular in future. This assurance was also guaranteed by the then Deputy General Secretary of the Magnesite Labour Union vide letter dated 25.07.1991.

(ii) However, it is the contention of the Management that the workman did not adhere to the undertaking given by him and he has been very irregular during the period from 2001 to 2010 and in the year 2011, between the period of January and June, he had worked only for 69 days out of 151 working days, of which, 64 days he was on leave on account of ill-health. Therefore, in the light of Clause 19(iii) of the Certified Standing orders, the services of the workman was terminated after issuing a show cause notice dated 16.07.2011 to



which, an explanation dated 20.07.2011 had been given. The only explanation was that for the last 10 years his wife has been suffering from heart ailment and 3 years ago she had undergone a surgery and that she continues to be unwell. That apart, he had also stated that he also suffered from ill-health. This order of termination was challenged by the workman before the Appellate Authority and even before the appellate authority, he had admitted that he was absent for a period of 64 days and requested to re-consider the order of termination. Thereafter, the appellate authority rejected the appeal, upholding the order of termination. Aggrieved by the same, the workman had moved the Tribunal. The Tribunal, by its Award dated 20.05.2015 had ordered reinstatement. The only ground on which the reinstatement, according to the management, had been granted was that the Management had not considered the explanation of the workman and terminated him without conducting an enquiry based on the standing orders and the fact that the workman was a chronic absentee. Challenging the said award, the Management is before this



Court.

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3. Mr.T.Poornam, learned counsel for the management would submit that, as per Clause 19(iii) of the standing orders, the Management could terminate the services of an employee on account of his illness after giving him one month's notice if he was absent for 60 days continuously or was absent for a broken period aggregating to 60 days or more during any period of six months. He would submit that a perusal of show cause notice dated 16.07.2011, paragraph 1.2 therein would clearly indicate that the workman was totally absent for a period of 82 days, of which 64 days were on medical leave and therefore, the workman would squarely fall within the Clause 19(iii) of the standing orders and the Management, having invoked the same after following the procedure prescribed therein, terminated the workman and this cannot be called into question. He would submit that the termination is a termination simplicitor and it does not require an enquiry. In support of this argument, the learned counsel had relied upon the order of this Court reported in **2009 SCC Online Mad**



3159 [E.M.E Edwards St.George School Vs The Presiding Officer,

Industrial Tribunal, Chennai and another] which followed the

judgment of the Hon'ble Supreme Court reported in **1978 (2) LLJ 168**

[Municipal Corporation, Greater Bombay Vs. P.S.Malavenkar and

Others]. He would also rely upon the judgment reported in **AIR 1968**

SC 266[Central Bank of India Ltd Vs. Karunamoy Banerjee] and

1984(1) LLJ 197[Krishnan Dev Puri Vs Union of India and

Others]. He would submit that the Tribunal has totally erred in

holding that the order of termination of the workman without any

enquiry is unsustainable and therefore, he is entitled to be reinstated.

Hence, the same deserves to be set aside.

4. Per contra, Ms.C.S.Monica, learned counsel for the workman would submit that the Management had taken into consideration the earlier antecedents and therefore, Clause 19(iii) would not apply, as it contemplates only a period of 6 months prior to the issue of the letter



of termination. She would also rely upon the observation of the Tribunal in paragraph 10, where reference has been made as follows:

“10. In reply to the above argument of the counsel for the Respondent, the counsel for the petitioner has referred to the subsequent decision of the Apex Court taking a contrary view In the decision in D.K. YADAV VS. J.M.A. INDUSTRIES LTD. reported in 1993 2 LLJ 696, the Apex Court has held that even if the Standing Order provides for an automatic removal of an employee on account of unauthorized absence, such Standing Orders will become illegal if principles of natural justice are not read into the same. Even in such cases, employees must be heard before an order is passed by the employer removing the name of the workman from the list, it has been held. In the decision in UPTRON INDIA LTD. VS. SHAMMI BHAN AND ANOTHER



reported in 1998 6 SCC 538 also it was held that the discretion conferred on the Management to terminate or not to terminate the services of an employee who overstays the leave has to be based on objective consideration of all the circumstances and material which may be available on records. The employee against whom action on the basis of the provision proposed to be taken must be given an opportunity of hearing, it was held. Thus, it could be seen that in spite of the Standing Orders providing for termination of the workman from service on account of unauthorized absence the employer is bound to conduct enquiry.”

The above judgment had held that even if the standing order provides for an automatic removal of an employee on account of unauthorized absence, principles of natural justice have to be read into the same and an opportunity should be given to the employee to explain himself. Therefore, she would submit that the award passed cannot be found



W.P.No. 15974 of 2015

fault with and the Writ Petition ought to be dismissed.

WEB COPY

5. Heard the learned counsels on either side and perused the materials available on record.

6. Admittedly, the workman has been on medical leave for 64 days. In the reply dated 20.07.2011 to the show cause notice dated 16.07.2011, the workman has admitted the fact that he has been on medical leave for over 64 days in six months, which he has reiterated in the appeal filed before the Tribunal. Therefore, there is no question of once again affording an opportunity to the workman to contest the enquiry. The judgment relied upon by the management amply demonstrates the same. This judgment reported in **2009 SCC**



Online Mad 3159 cited supra followed the earlier judgment of the

Hon'ble Supreme Court reported in **1978 (2) LLJ 168**. The learned

Judge has in the said judgment observed as follows:

“15. In respect of the opportunity to be given to ascertain the health of the petitioner, I would like

to refer to the judgment in Municipal Corporation V. P.S. Malavenkar (1978 (2) LLJ 168): ((1978) 3 SCC 78: AIR 1978 SC 1380) wherein, the Hon'ble Supreme Court has taken the view that even assuming that the order of termination is punitive, it cannot be struck down because the management availed opportunity open to it before the Labour Court to let in evidence justifying the action taken by the management. Further, in paragraph No. 8, the Hon'ble Supreme Court has observed as follows:-

"8. But even if the view were taken that the impugned order of termination of



WEB COPY



W.P.No. 15974 of 2015

service of the respondent was punitive in character and could not have been passed save and except as a result of a disciplinary inquiry held under Cl. (2) of Standing Order 21 read with Standing Order 23 the impugned order cannot be struck down as invalid on the ground of noncompliance with the requirement of these Standing Orders, since the appellant availed of the opportunity open to it before the Labour Court and adduced sufficient evidence justifying the action taken by the management. The appellant produced satisfactory evidence to show that the impugned order terminating the services of the respondent was justified and hence the impugned order must be sustained despite its having been passed without complying with the requirements of Cl. (w2) of Standing Order 21 read with Standing Order 23. We are fortified



in this view by a catena of decisions of this Court where it has been consistently held that no distinction can be made between cases where the domestic enquiry is invalid or defective and those where no enquiry has in fact been held as required by the relevant Standing Orders and in either case it is open to the employer to justify his action before the Labour Tribunal by adducing all relevant evidence before it....."

16. The learned counsel for the petitioner relies on the judgment of a Constitution Bench of the Hon'ble Supreme Court in T.N. Cements Corporation Ltd. v. N. Pandurangan (2006 (1) LLN 964): (2006) 1 ABR (NOC) 96. wherein, it has been held that though it is within the powers of the Corporation as per the regulation to terminate an employee' without enquiry still reasonable notice or pay in lieu thereof should be issued.



W.P.No. 15974 of 2015

Therefore, the award passed by the Tribunal on the ground that an enquiry has not been held has to necessarily be set aside, particularly when there has been no objection or denial on the part of the workman.

7. In the result, the Writ Petition is allowed. However, it is informed that the Management had deposited the amounts as directed and out of this, 50% has been withdrawn by the workman. While allowing this writ petition, it is made clear that 50% withdrawn by the workman shall not be recovered and the remaining 50% shall be refunded to the management. There shall be no order as to costs.

01.08.2024

Index : Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To,

13/15



WEB COPY



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W.P.No. 15974 of 2015

P.T.ASHA, J.,

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W.P.No.15974 of 2015

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