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W.P.No.11865 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 21.12.2023

ORDER PRONOUNCED ON : 29.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.11865 of 2010

P.M.P. Textiles Spinning Mills Limited,
Pagalpatty,
Dharmapuri,
Rep. by its Managing Director,
Chennai – 600 003.

... Petitioner

VS.

1.The Presiding Officer,
Labour Court,
Salem.

2.V.Chellapandian

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the award dated 16.09.2009 made in I.D.No.407 of 2004, which was received by the petitioner on 26.11.2009 and quash the same.



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For Petitioner : M/s.P.V.Rajeswari

For R1 : Court

For R2 : Mr.C.K.Chandrasekar

* * * * *

ORDER

This Writ Petition is filed to call for the records relating to the award dated 16.09.2009 made in I.D.No.407 of 2004, which was received by the petitioner on 26.11.2009 and quash the same.

2.The petitioner will be referred to as the Management and the second respondent will be referred to as the workman.

3.The Labour Court on an appreciation of the entire evidence on record held that it was the Management that prevented the workman from attending duty on 16.03.2002 and therefore the oral termination from service on 16.03.2002 without proper enquiry was illegal and unsustainable. The Labour Court therefore directed the reinstatement of the workman, with continuity of service and full backwages along with cost of Rs.500/-. Aggrieved by the award of the Labour Court, the



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Management has filed the above writ petition.

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4.It is the workman's case that in a family feud he sustained injuries and was hospitalised in St.John's Medical Hospital, Bangalore. It is his further case that from 19.10.2001 till 15.03.2002 he underwent treatment, and that he applied for leave alongwith the Medical Certificate through his co-employee and the same was permitted by the Management. According to the workman as the management permitted leave his absence could not be treated as unauthorized. He further stated that when he reported for duty on 16.03.2002, after completion of treatment, he was denied entry by the Management. As the Management orally terminated his services without notice or enquiry, he raised the dispute.

5.On the other hand the Management's case is that it was the workman who voluntarily abandoned the service. Further in spite of the notices sent by it to the workman requesting him to report for duty on 23.11.2001, 12.12.2001, 21.03.2002 and 05.03.2002, he neither replied nor reported for duty. Hence, as the workman abandoned duty, there was no necessity of notice or an enquiry. According to the Management only in case of unauthorized absence enquiry was mandatory and not in case of abandonment of service.



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6.The crux of the matter is whether the case is one of abandonment of service or one of unauthorized absence. In case of abandonment of service as rightly contended by the learned counsel for the Management there is no necessity of enquiry, but if it is a case of unauthorized absence then the workman would be entitled to notice of enquiry and enquiry should be conducted.

7.The learned counsel appearing for the petitioner submitted that the Labour Court's findings on facts were perverse as the Labour Court did not appreciate Ex.P2 to Ex.P5 in a proper prospective. Further the Labour Court erred in its appreciation of the Management's documents which showed that this was not a case of unauthorized absence but one of abandonment of duty. The learned counsel therefore submitted that as the finding of the fact of the Labour Court is perverse this Court should interfere with the same.

8.The learned counsel appearing for the respondent on the other hand submitted that the Labour Court's appreciation of facts was unassailable. According to the counsel it is not a case of no evidence, but of sufficiency of evidence or appreciation of the evidence, therefore this Court cannot under Article 226 of the Constitution of



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India interfere with the Award. In short the submission of the learned counsel for the respondent is that the award of the Labour Court is based on evidence and as such no interference is called for.

9.I have heard both the learned counsels and have perused the entire materials on record.

10.It is seen from the records that the Labour Court relied on Ex.P2 to Ex.P5, Ex.P8 and Ex.P9 to hold that it was a case of unauthorized absence and therefore in the absence of any enquiry the termination of service of the workman could not be sustained. Ex.P2 and Ex.P3 are the wound certificates issued to the workman issued by St.John's Medical College Hospital, Bangalore. Ex.P4 is the medical sickness certificate and Ex.P5 is the fitness certificate issued by the aforesaid Hospital. Ex.P2 to Ex.P4 speak of the injuries sustained by the workman in a brawl between himself and his brother. From Ex.P4, it is seen that the workman was hospitalized as in-patient from 20.10.2001 to 26.10.2001. Ex.P5, is a medical fitness certificate issued to the workman for treatment as out-patient from 10.12.2001 to 15.03.2002. From Ex.P4 it is clear that the workman was treated as in-patient only from 20.10.2001 to 26.10.2001. While so, the workman should have sought permission from the



Management for his absence from the date of his discharge i.e. from 26.10.2001.

There is absolutely no iota of evidence except Ex.P8, the letter dated 27.03.2002 of the Union to support his contention that he sought permission for his absence. Ex.P8 is a letter dated 27.03.2002 of the Union addressed to the Management stating that when the workman sought permission to report for duty on 15.03.2002, he was refused entry by the Management. Ex.P9 is the Certificate of Posting for Ex.P8 letter.

11.It is pertinent to note here that it is the Management's case that even before the letter under Ex.P8 dated 27.03.2002, the Management had sent several notices to the workman under Ex.R1, Ex.R3, Ex.R5 and Ex.R7, asking him to report for duty. The certificate of posting for the aforesaid letters is marked as Ex.R2, Ex.R4, Ex.R6 and Ex.R8. The Labour Court rejected the Management's documents on the short ground that they were sent to the address of the workman at Kombai Village, Palayampudur Post, Dharmapuri District, whereas the workman was admitted in the hospital at Bangalore during that period. In my view the said reasoning is unsustainable because from Ex.P4 it is seen that the workman was discharged as in-patient as early as on 26.10.2001 and thereafter the workman was only treated as out-patient till 15.03.2002. It is for the workman to prove that he continued to stay in Bangalore even after discharge as inpatient. Further there is absolutely no



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explanation from the workman as to why he did not reply to the Management's notices and also if his leave letter was sanctioned by the Management. The workman relied on Ex.P8 which as already stated above was much after the notices sent by the Management asking him to report for duty. Even Ex.R9 dated 02.09.2002 sent by the Dharmapuri District Dhiravida Panchalai Thohilale Munnetra Sangam was much after the notices sent by the Management calling upon the workman to report for duty. In my view, the Labour Court has miserably misconstrued the evidence of the Management. In my view when there is absolutely no iota of evidence on the side of the petitioner to show that soon after discharge from hospital on 26.10.2001, he applied for leave and the same was sanctioned, the absence from 19.01.2001 to 15.03.2002 cannot be said to be merely unauthorized in the teeth of repeated letters by the Management asking him to report for duty.

12.The learned counsel for the petitioner relied on the Judgments in the case of Chief Engineer (Construction) Vs. Keshava Rao (Dead) represented by LRS. reported in (2005) 11 SCC 229; Vijay S.Sathaye Vs. Indian Airlines Limited and Others reported in (2013) 10 SCC 253 and Delhi Transport Corporation Vs. Rajender Kumar reported in 2016 (4) LLN 127 (DB) (Del.) in support of her submission that as on the facts of the case it is proved that this was a case of abandonment of service, the



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Management was not obliged to conduct enquiry before terminating the services of the workman. The Hon'ble Supreme Court in the case of Vijay S.Sathaye Vs. Indian Airlines Limited and Others reported in (2013) 10 SCC 253, held as follows:

“12.It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

13.The Hon'ble Supreme Court in the case of ***Delhi Transport Corporation Vs. Sardar Singh*** reported in ***2004 (4) LLN 1 (SC)*** held that it was for the employee concerned to bring some materials on record to show how his absence was on the basis of sanctioned leave and how there was no negligence. In the present case there is absolutely no evidence on the side of the workman to show that he had applied for



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leave and the same was sanctioned. Considering the long period of absence and the failure to produce any evidence by the workman to show that the leave was in pursuance of the permission granted by the Management, I am of the view that it is a case of abandonment of service and not as that of unauthorized absence.

14.The petitioner's counsel further drew the attention of this Court to the subsequent developments which according to her clearly establishes that not only the workman voluntarily abandoned service but also that the motive behind the dispute was to extract money from the Management. The Management in reply to the 17-B wages application filed by the workman, produced several documents including the Entrepreneur Memorandum dated 28.12.2007 filed by the workman before the Department of Industries and Commerce for “Vendan Moorthi Coir Industry”, Subsidy Certificate along with Current Consumption Charges Card dated 08.01.2010 issued by Assistant Engineer TNEB Opalayampudhur and the Acknowledgement dated 25.01.2010 issued by Government of Tamil Nadu, Department of Industries and Commerce along with application as additional documents. It is clear from the said documents that the workman is having his own business. In the light of the aforesaid additional documents the Management's plea that no purpose would be achieved in ordering reinstatement in my view is justified.



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15. For all the above reasons, the Writ Petition is allowed. There shall be no order as to cost.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

The Presiding Officer,
Labour Court,
Salem.



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N.MALA, J.

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PRE-DELIVERY ORDER IN
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