



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.01.2024

Orders Pronounced on : 19.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 16914 of 2015

M. Mohan

...Petitioner

Versus

Second Additional Labour Court
Chennai – 600 104.

Empee Distilleries Limited
Mevaloor Kuppam
Thiruperumanthur Taluk
Kanchipuram District – 602 105.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Award of the 1st respondent dated 15.05.2013 in I.D.No. 336 of 2006, quash the same and consequently, to direct the 2nd respondent to reinstate the petitioner into service with continuity and with back wages and other attendant benefits.



For Petitioner : Mr.S.T.Varadarajulu
For 1st Respondent : Labour Court
For 2nd Respondent : Mr.P. Veeraraghavan

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ORDER

This Writ Petition is filed by the petitioner challenging the Award passed by the first respondent in I.D.No. 336 of 2006, dated 15.05.2013 and quash the same and consequently to direct the 2nd respondent to reinstate the petitioner into service with continuity and with back-wages and other attendant benefits.

2. The case of the Petitioner is as follows:

According to the petitioner-workman, the second respondent-Management was running a Distilleries with 250 workmen, where he was appointed as a Helper. According to the Petitioner, he had worked continuously for a period of seven years and he rendered unblemished service from 14.12.2002. He had become a member of the employees' Union from 1989 which was functioning for the welfare of the workers. The petitioner has also participated in the Union activities and fought for the cause of the workers. Subsequently, the petitioner was arrested on 21.12.1992 at about 2.30 p.m., at the instance of a false complaint given by the second respondent and thereafter, the petitioner was being released on bail. After completion of the criminal case, the petitioner was acquitted by the learned Judicial Magistrate No-II,



Thiruvallur, in C.C.No. 290 of 1993.

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3. The petitioner-workman submitted a representation for continuity of his employment to the second respondent, which was kept in abeyance. The petitioner was issued charge memo dated 19.03.2002, in which it has been stated that he absented himself from 21.12.1992. The petitioner submitted his explanation dated 30.03.2002, wherein he has denied the charges levelled against him. The petitioner was attacked by one Devarajan, with weapon and out of the said accident, the petitioner sustained injuries in both the hands and neck and was admitted in the Stanley Hospital, Chennai on 07.04.2002 and was discharged on 19.04.2002.

4. The Enquiry was conducted without any information or any opportunity of hearing to the petitioner to take part in the enquiry, thereby the enquiry had totally been denied to him and according to the petitioner, the Management totally violated the principles of natural justice and therefore, the enquiry report submitted by the Enquiry Officer dated 16.07.2002 is vitiated on the procedural violations. After completion of the domestic enquiry, a finding was rendered, holding that the charges against him stood proved, thereby, he was dismissed from service on 14.12.2002.



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5. The petitioner challenged the order of dismissal before the first respondent-Labour Court, in I.D.No. 336 of 2006 and an Award was passed on 15.05.2003, dismissing the dispute in the said I.D., raised by the petitioner herein. Challenging the dismissal of the Award by the first respondent-Labour Court, the present writ petition has been filed by the petitioner-workman.

6. The learned counsel for the petitioner vehemently contended that his first contention is vitiated for violation of principles of natural justice. The learned counsel for the petitioner further contended that the charge memo dated 19.03.2002 was issued, framing the charge as below:-

“It is alleged against you that in course of your duties on 21.12.1992 you committed theft of company's property, namely, iron hammer, 10 Spanners, 5 hacksaw blades worth Rs.500/-. In respect of the above theft a criminal case was filled against you and the same was taken on the file of learned Judicial Magistrate No.II, Tiruvallur as C.C.No. 290 of 1993. It is alleged that immediately thereafter from 22.12.1992 you stopped reporting for duty and remained unauthorizedly absent. There has been no communication whatsoever from you regarding your unauthorized absence from 21.12.1992.

Subsequently orders were passed in C.C.No. 292 of 1993 on 10.04.2000 wherein you were acquitted by the criminal Court on the charges of theft. Even after orders were passed in C.C.No. 292 of



1993 nothing was heard from you and you continue to remain unauthorizedly absent till date. The above acts of yours in remaining unauthorizedly absent from 24.12.1992 if proved would amount to a grave and serious misconduct within the meaning of service regulation applicable to you. You are hereby called upon to show cause within 48 hours of receipt of notice as to why disciplinary action should not be initiated against you for being unauthorizedly absent from 21.12.1992 failing which it will be deemed that you have no explanation to offer and the management will proceed further as it deems fit.”

7. The second contention of the learned counsel for the petitioner/workman is that the occurrence was alleged to have been committed on 29.01.1992, the Charge-Memo was issued on 19.03.2002 after a lapse of ten years and such an inordinate delay in initiating the domestic enquiry is wholly not justifiable.

8. The learned counsel for the petitioner's third contention is that the petitioner made a representation dated 30.03.2002 seeking reinstatement on the ground that the case in Crime No.1812 of 1992 which was taken on file by the learned Judicial Magistrate No.II, Tiruvallur in C.C.No. 290 of 1993, had ended in acquittal on 10.04.2000. As the charge framed before the Criminal Court was not proved, he is entitled for re-employment with continuity of service.



9. The second respondent-Management had passed an order of dismissal from service, vide its letter dated 14.12.2002 which is extracted hereunder:-

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“We write further to the Second Show Cause Notice dated 24.10.2002 issued to you. Despite receipt of this Second Show Cause Notice, you have failed to submit your explanation. Notwithstanding, the fact that you have failed to submit your explanation, we have once again perused the entire Enquiry proceedings and the report of the Enquiry Officer. It is clear that you have been given adequate notice about the Enquiry but, however, you failed to participate in the same for reasons best known to you. The Enquiry Officer was therefore, forced to set you exparte after following the due process of law. We are satisfied that the evidence on record in the Enquiry clearly establishes the allegations levelled against you in the charge sheet dated 19.03.2002. The Enquiry Officer has given clear and cogent reasons in support of his findings that the charges levelled against you have been proved. The disposition of witnesses and the material in the Enquiry show that you have been unauthorizedly absent for a very long period of time and hence, committed serious misconduct.

Though your past record of service is free from blemish, the present act of misconduct of remaining unauthorized absent for years together by itself is a serious misconduct and hence, a serious view has to be taken in the matter. As you will appreciate that such unauthorized absence cannot be allowed to be tolerated in any establishment and the elementary duty of an employee is to make himself available for work to his employer. In the case on hand you have been happily absent from 22.12.1992 for nearly 10 years. In such acts of misconduct is allowed to be condoned then the same will have a disastrous effect on the discipline and morale of other



employees in the company. Thus, in view of the grave nature of acts of misconduct indulged as by you and in the interest of the company, production and discipline you are informed that you shall stand dismissed from services with immediate effect.”

10. This Court has given anxious consideration to the submissions rendered by the learned counsel on both sides.

11. The point for consideration before this Court is as follows:-

(i) Whether the 2nd Respondent was justified in initiating proceedings for ‘unauthorised absence’ of the Petitioner?

(ii) Whether the initiation of disciplinary proceedings against the Petitioner by the 2nd Respondent is vitiated, it having been initiated ten years of the alleged occurrence of the theft in the year 1992, when the Petitioner has been acquitted on 10.04.2000 by the Criminal Court in C.C.No.290 of 1993?

(iii) Whether the involvement of the petitioner in the charge of theft inside the premises of the second respondent-Management, and his absence from the date of arrest till his application for re-employment dated 30.03.2002 could be considered as an unauthorized absent or not?

12. While answering the first two issues before this Court, the primary



question would be as to who contributed to the inordinate delay for initiating the Disciplinary Proceedings. From the available records, it is seen that the Petitioner herein has absented himself from 19.02.1992 and he had only sent a letter dated 12.06.2000 to the second respondent-Management, seeking for continuity of service solely on the ground that the petitioner was acquitted in the criminal case in the year 2000.

13. It is clear from the records that the petitioner was accused of committing a grave offence of theft on 21.12.1992 in the place of the second respondent-Management, where the petitioner was employed. Apart from that, ever since such an accusation was made, the Petitioner absented himself and did not report to work. The charge framed against him is grave in nature and there is no material on the side of the petitioner to show the steps taken by the petitioner, for a valid reason why absented he himself from 22.12.1992.

14. Having failed to take any steps to report back to work, the petitioner cannot claim, as a matter of right, that there was inordinate delay in initiating the disciplinary proceedings as against him, and the Court cannot lose sight of the fact that the petitioner was alleged of having committed theft and his whereabouts were not known to the 2nd respondent/Management.

15. The Court has to answer, whether the disciplinary proceedings



initiated by the second respondent, is justified. It is evident that a notice of unauthorized absence by the second respondent was issued on 19.03.2002 calling for explanation from the petitioner, failing which it would be construed that in the absence of any reply, the second respondent would proceed further as against the petitioner. The petitioner had addressed a letter to the second respondent-Management on 30.03.2002 stating that he was acquitted in the Criminal Case which was pending before the learned Judicial Magistrate No.II, Thiruvallur in C.C.No. 290 of 1993. This by itself would show that the petitioner had not approached the second respondent-Management for almost a ten-year-period for his employment or for continuance of his service.

16. As rightly contended by the learned counsel for the second respondent-Management, by order dated 14.12.2002, the order of dismissal was passed, after conducting an enquiry and a finding was rendered in respect of the grave misconduct committed by the petitioner-workman, and therefore, the petitioner cannot now agitate, that there was inordinate delay in initiating the disciplinary proceedings.

17. Ex-P-1 is the complaint preferred by the second respondent-Management, which was treated as FIR, it is seen that the petitioner was alleged of having committed theft of second respondent-Management's properties, namely iron hammer, spanners, hack-saw blades, etc., worth about Rs.500/-, and



since then had not reported to work, which would clearly show the unauthorized absence and the conduct of the petitioner herein. It is settled principle that the disciplinary authority shall not go beyond the charge framed against the delinquent and the disciplinary authority is to render a finding as to whether there is some evidence or no evidence.

18. In so far as the allegation regarding theft is concerned, the evaluation of evidence and materials in a criminal Court is different to that of a domestic enquiry. As far as the petitioner is concerned, the material objects, namely M.Os.1 to 12 were alleged to have been stolen by the petitioner herein, which reflects in the FIR as narrated supra and the FIR would reveal that there are ample materials to show that there were enough evidence to proceed against the petitioner.

19. The learned counsel for the 2nd Respondent has relied upon a judgment in the case of The President, Cholan Pokkuvarathu Kazhagam, Madras Vs. The Presiding Officer, Industrial Tribunal, Madras and Another, reported in 1989 (2) LLJ 233 MAD, wherein the relevant paragraph No.2 is extracted hereunder:-

“2...On perusal of the enquiry report and documents filed and also the evidence both oral and documentary, I find that the Enquiry Officer had come to a right conclusion. I do not find his conclusion is



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perverse. As regards punishment, as it is a serious misconduct of misappropriating the Corporation's amount, the punishment of dismissal is correct.”

20. The learned counsel for the 2nd Respondent contended that the punishment imposed by the second respondent-Management as against the petitioner-workman, does not warrant any interference, in view of the decision rendered above.

21. The learned counsel for the petitioner has relied upon the judgment of the Honourable Supreme Court in the case of **Ajaib Singh v. Sirhind Co-operative Marketing Cum Processing Service Society Limited and Another**, reported in 1999 (6) SCC 82, wherein the relevant Paragraph No. 11 of the judgment is extracted hereunder:-

“11. In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour' Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of



facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the Courts were bound to render an even-handed justice by keeping balance between the two difference parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that “it is true that a fight between the workman and the management is not a 'justice between equals', the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution.”

22. It is evident from the above judgments that factually, this Court may not be in a position to hold that, the petitioner in the case on hand has collected evidence or some materials to come to the conclusion that the charge regarding theft levelled against the petitioner was not proved. The procedures followed in the domestic enquiry are entirely different and imposition of punishment of dismissal from service is wholly justified.

23. In the facts and circumstances of the case, it is useful to quote a judgment of the Hon'ble Supreme Court in **Civil Appeal No.7403 of 2021, dated 03.01.2022** in the case of **Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhay**, wherein, the Apex Court held as under,



regarding the distinction between a criminal proceedings and a disciplinary proceedings:-

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“10.4. Even from the judgment and order passed by the criminal court it appears that the criminal court acquitted the respondent based on the hostility of the witnesses; the evidence led by the interested witnesses; lacuna in examination of the investigating officer; panch for the spot panchnama of the incident, etc. Therefore, criminal court held that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. On the contrary in the departmental proceedings the misconduct of driving the vehicle rashly and negligently which caused accident and due to which four persons died has been established and proved. As per the cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives. Therefore, the Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal court. Even otherwise it is required to be noted that the Industrial Court has not interfered with the findings recorded by the disciplinary authority holding charge and misconduct proved in the departmental enquiry, and has interfered with the punishment of dismissal solely on the ground that same is shockingly disproportionate and therefore can be said to be an unfair labour practice as per clause No.1(g) of Schedule IV of the MRTU & PULP Act, 1971.”

24. This Court has also taken note of the inordinate delay on the part of the petitioner in approaching the disciplinary authority, i.e., before the second respondent-Management and for his re-employment and his continuity of service, which is clearly hit by delay and latches and acquiescence. The judgment of the Hon'ble Supreme Court in *Union of India v N Murugesan, (2022) 2 SCC 25* makes it clear that delay and latches, and acquiescence play a vital role in the granting reliefs in cases such as the present:



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“21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

...

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-



case basis.”

25. Further, merely because the Petitioner issued a representation in the year 2000, the Petitioner cannot seek to revive/suspend the acquiescence of the Petitioner to the fact he has not reported to work for almost a decade. The Hon'ble Supreme Court in ***Union of India v. C. Girija, (2019) 15 SCC 633***, after considering various other decisions on the issue of issuing a representation in an attempt to revive a stale claim, observed in the facts of the said case, as thus:

“20. ...it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2009, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both the Tribunal and the High Court did not advert to this important aspect of the matter. ... After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.”

25. In the present case, by mere making a representation on 30.03.2002 with regard to unauthorised absence since 1992, the delay and laches cannot be wiped out. The order of dismissal from service passed by the second respondent-Management is not disproportionate to the charge framed against the petitioner-workman herein, who has absented himself unauthorisedly for



almost a decade and allegations of theft.

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26. The above relied judgments of the Supreme Court are squarely applicable to the facts of the present case on hand. The domestic enquiry proceedings are justified in respect of the alleged misconduct of theft committed by the petitioner and the long period of unauthorised absence.

27. In this case, the impugned order passed by the Labour Court, confirming the dismissal of the petitioner from service, does not warrant any interference by this Court, considering the allegations of theft to have been committed by the petitioner and his unauthorised absence for a period of ten years, warrants no interference.

28. For the foregoing reasons, the Writ Petition filed by the petitioner is dismissed as devoid of merit. There shall be no order as to costs. Consequently, the miscellaneous petitions, if any, are closed.

19.02.2024

Index: Yes: No

Speaking order : Yes: No

Neutral Citation : Yes: No

MSM



To

1. The Presiding Officer
Second Additional Labour Court
Chennai – 600 104.

2. The Management of
Empee Distilleries Limited
Mevaloor Kuppam
Thiruperumanthur Taluk
Kanchipuram District – 602 105.



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N. SENTHILKUMAR, J

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Pre-Delivery Order
W.P.No. 16914 of 2015

Order pronounced on 19.02.2024