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W.A.No.808 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL**

**W.A.No.808 of 2024
and
C.M.P.No.5542 of 2024**

The Deputy Manager,
(Port Operations)
Chennai Harbour,
Food Corporation of India,
District Office,
Chennai.

..Appellant

Vs.

1. The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan,
Chennai.

R.Elumalai (Deceased)

2. Malliga
3. Mohana
4. Uma
5. Jayaseelan

Respondents 2 to 5
are legal heirs of deceased R.Elumalai)

... Respondents



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Writ Appeal filed under Clause 15 of the Letters patent against the order passed by this Court in W.P.No.10768 of 2011 dated 08.11.2023

For Appellant : Mr.M.Imthias

For Respondents : R1-Court
R2 to R5 - No appearance.

JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J)

This appeal has been against the order passed by this Court in W.P.No.10768 of 2011 dated 08.11.2023, in which, the award passed by the Labour Court was modified only with regard to full backwages to that of 50% backwages and proportionate benefits.

2. The brief facts of the case are as follows:

i) The deceased R.Elumalai was employed as Departmental Labour to work at Madras Harbour for Food Corporation of India. He was absent for duty from 20.02.1998 to 06.07.1998 without prior intimation. He submitted his application for leave only on 08.07.1998 for the aforesaid leave period with medical certificate and fitness certificate. Again, he absented himself from duty. Therefore, a memo dated 21.07.1998 was sent to him but the same was not received by him. Again, a memo dated



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15.09.1998 was issued to him, to which, he gave his explanation and requested the Management not to take any action. He was absent for 221 days from 20.02.1998 to 28.09.1998. He was terminated from service under the provisions of Rule 19(4) of the Standing Order with effect from 20.02.1998 vide order dated 23/31.10.1998.

ii) The said Elumalai received all the terminal benefits from the Management and after nearly nine years from the termination, he made representation on 05.02.2007 before the Regional Labour Commissioner raising objection. The matter was referred to the Labour Court and the said Elumalai filed claim petition stating that he went on leave on medical grounds and the punishment imposed is disproportionate and excessive. The Labour Court passed an award reinstating him into service with full backwages, continuity of service and all attendant benefits. Against which, writ petition was filed, in which, the award was modified only with regard to full backwages to that of 50% backwages and proportionate benefits alone. Hence, the present appeal.

3. (i) Learned counsel for the appellant would state that the



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workman was absent for 221 days without permission and hence, he was terminated from service. Learned counsel would further state that the said Elumalai received all terminal benefits and kept quiet for nearly nine years and thereafter, he raised Industrial Dispute and hence, the same is hit by laches. Learned counsel for the appellant would state that as per Rule 19(4) of Standing Order of Workmen employed at Madras Harbour by Food Corporation of India, workmen absent for more than 15 consecutive days without leave or remaining absent for more than 15 consecutive days beyond the period of leave originally granted shall be deemed to have left the service without notice and his name will be removed without further notice. Hence, the action taken by the department is valid and legal.

(ii) Learned counsel for the appellant would further state that the employee received the terminal benefits without protest, but raised Industrial Dispute after nine years and the Tribunal, without considering all these aspects ordered for reinstatement with backwages, continuity of service and all attendant benefits. Aggrieved by the same, the Management filed a writ petition and the learned Judge granted stay on



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payment of backwages. However, the employee was reinstated in service on 01.07.2011 and retired on 31.08.2013 and subsequently, died on 06.04.2020 and his legal heirs were brought on record. However, the learned Judge modified the award as stated supra. Hence, he would pray to allow the writ appeal.

4. We have heard the learned counsel for the appellant. Though notice was served on the respondents, there was no representation on their behalf. We have also perused the materials available on record.

5. It is not in dispute that Elumalai remained absent from duty from 20.02.1998 to 28.09.1998 without prior intimation. It is seen that he was sick and after the expiry of leave, he applied for leave with Medical Fitness Certificate, which the Management did not accept. Admittedly, no enquiry was conducted, thus, principles of natural justice has been violated. Though the delinquent made representation on 23.10.1998, he was terminated on 23.10.1998. No valid reason was stated by the Management for not conducting enquiry after proper disciplinary action.



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6. The contention of the learned counsel for the appellant that the employee received the terminal benefits without protest and after nine years, he cannot raise industrial dispute, cannot be countenanced. The delinquent, after dismissal, had resorted various methods seeking redressal of his grievance by sending representations to various authorities. He was also not given an opportunity to participate in an enquiry. His absence is not intentional but due to illness supported by medical certificate. Therefore, we are of the opinion, inflicting grave punishment of termination from service is not proper.

7. The Writ Court, taking note of the subsequent development that the delinquent was reinstated in service on 01.07.2011 and retired on 31.08.2013 and subsequently, died on 06.04.2020, modified the award only in respect of payment of full backwages to that of 50% backwages and attendant benefits in connection thereto, with which, we do not find any infirmity or illegality to interfere with.

8. In view of the above discussion, we find no merits in this Appeal. Accordingly, the Writ Appeal fails and the same stands



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dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
vsi

(J.N.B,J.) (P.D.B., J.)
25.06.2024

To

The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan,
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