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W.P.No.4006 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2024

PRONOUNCED ON : 27.06.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.4006 of 2020

and

WMP.No.4742 of 2020

The Management
Sri Agila Spinning Mills Private Ltd.,
Unit-2
Kapparathampatti
Jalakandapuram
Salem 636 501.

...Petitioner

-Vs-

A.Chinnappan

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, Writ of Certiorari, to call for the records in I.D.No.32 of 2014 on the file of the Labour Court, Salem and quash the award dated 30.09.2019 (published on 27.11.2019) passed therein.



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For Petitioner : Mr.Anand Gopalan
for M/s.Agam Legal

For Respondents : Mr.Sudalai Kannu

ORDER

This Writ Petition is filed by the Management of Sri Agila Spinning Mills Private Ltd., against the respondent workman challenging the award passed on 30.09.2019 in I.D.No.32 of 2014 seeking to quash the same by way of issuing Certiorari.

2. The petitioner Textiles Mills is situated in Jalakantapuram, Salem District. The respondent herein was employed in the Spinning Department as sider at the relevant point of time. He was not regular to the work and was absenting himself unauthorisedly on very many occasions and he has been continuing the same and causing prejudice to the harmonious functioning of the Mill. He was charge sheeted to explain as to why action shall not be initiated against him for his



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unauthorized absence during the years 2009, 2010, 2011 & 2012. He has submitted a reply on February 20, 2013. As the reply was not satisfactory, enquiry was ordered. The enquiry officer after conducting enquiry in accordance with the principles of natural justice submitted a report holding that the respondent was guilty of the charges. Thereafter, by following the procedure, the respondent was dismissed from the service by an order dated 08.10.2013.

3. A collective dispute was pending before the Industrial Tribunal. Approval was sought from the authority and after enquiry, approval petition was allowed as per the order dated 21.05.2014. The respondent has challenged the order of dismissal by raising an industrial dispute under Section 2A of the Industrial Disputes Act, in ID.No.32 of 2014. During the course of enquiry, two witnesses were examined and 10 documents were marked. The Labour Court on considering the materials, allowed the same only on the ground that the order of dismissal was afterthought and directed the petitioner to reinstate the respondent with the continuity of service.



4. It is submitted by the learned counsel for the petitioner that the Labour Court is required to frame issue pertaining to the validity of the procedure adopted in the enquiry as well as its propriety, so that the Management will get an opportunity to produce the evidence to prove the charges levelled against the employee in case of necessity. It is also submitted that there is no finding of the Labour Court in respect of validity of the enquiry.

5. The respondent not filed counter affidavit. However, heard the learned counsel for the respondent and perused the records including the impugned award.

6. A perusal of the averments made by the respondent before the Labour Court, it is clear that he has raised two aspects namely principles of natural justice are not followed and that he was not absent as alleged by the Management. Though the Labour Court has formulated points for determination, there is no point formulated as to whether the domestic enquiry was conducted by following the principles of natural justice. In case, the Tribunal come to the conclusion that the principles of natural justice have not been followed, then the petitioner will get



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an opportunity to adduce the evidence, so that the Labour Court can take appropriate decision.

7. In addition to that, during the course of enquiry before the Labour Court on behalf of the workman, PW1 was examined and Ex.P1 to Ex.P3 were marked and on behalf of the Management RW1 was examined and Ex.R1 to Ex.R7 were marked. At para 5 of the impugned order, the Labour Court has observed that based on the attendance, the petitioner was absent from 2009 to 2012 intermittently and the act of the respondent is clear violation of duty, which will encourage the other co-employees to follow similar type of dereliction of duty. However, the Labour Court has observed that on 05.03.2013 the Management has issued a charge memo belatedly to the respondent workman for his absence during the year 2009, thereby, the action of the petitioner against the respondent workman is an afterthought and thus the dismissal order was set aside, with a direction to reinstatement the respondent except this there is no other valid ground for setting aside the dismissal order.

8. On considering the above observation and conclusion, it is clear



that the impugned order passed by the Labour Court is perverse. The Labour Court has observed that the respondent workman has absented himself from 2009 to 2012 and has committed misconduct however it is observed that initiating the action against him based on the charge memo dated 05.03.2013, is afterthought. The Labour Court has not explained as to how taking action on the basis of charge memo dated 05.03.2013 in respect of misconduct from 2009 to 2012 becomes an afterthought. Perhaps, the intention of the Labour Court could be that since belated action was initiated in 2013 for the misconduct from 2009 to 2012, same cannot sustain. But, it is to be noted that the action was initiated for the absence from 2009, 2010, 2011 and 2012 in the year 2013. Even if the action of the year 2009 to 2011 is belated one, it cannot be said that initiating the action in 2013 for unauthorised absence of 2012 cannot be belated.

9. However, there is no clarity in the order and there is no discussion as to whether delay in initiating the disciplinary proceedings causes prejudice to the workman and whether on that ground the dismissal of the workman can be set aside. In view of the above, during the course of submission, both the counsel have agreed for remanding this matter back to the Labour Court for fresh disposal



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in accordance with law.

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10. In view of the above discussion, this Writ Petition is allowed, the impugned order dated 05.03.2013 is hereby set aside and the matter is remanded back to the Labour Court, Salem, with a direction to dispose the I.D.No.32 of 2014 by following due process. The Labour Court is further directed to permit the parties if they required to adduce additional evidence and dispose of the same as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2024

Index:Yes/No
Internet:Yes/No
dna

To

The Labour Court, Salem.



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Dr.D. NAGARJUN,J.,

dna

**Pre-Delivery Order made in
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