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WP.No.27445 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2024

PRONOUNCED ON : 11.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

WP.No.27445 of 2012

and

MP.No.2 of 2012

The Regional Manager,
Indian Overseas Bank,
Regional Office,
No.11/92 Cross-Cut Road,
Gandhipuram,
Coimbatore-641 012.

... Petitioner

Vs.

1. The Central Government Industrial Tribunal-cum-
Labour Court
Rep. by its Presiding Officer,
Shastri Bhavan,
Haddows Road,
Chennai-600 006.

2. K.Dhanarajan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, calling for the records of the first respondent relating to the impugned Award dated 21.05.2012 passed in ID.No.39 of 2007



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in so far as the first respondent interfered with the punishment of compulsory retirement and directed reinstatement without back wages but with continuity of service and all other attendant benefits.

For Petitioner : Mr.V.Stalin
for M/s.Row and Reddy
For Respondents : R1-Labour Court
Mr.D.Muthukumar for R2

ORDER

The respondent-Management is the appellant herein. The petitioner before the Labour Court is arrayed as 2nd respondent in this writ petition.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Labour Court.

3. The instant writ petition has been filed against the order of the Central Government Industrial Tribunal-cum-Labour Court, Chennai [for brevity hereinafter called “Labour Court”], dated 21.05.2012.

4. The brief facts, which give rise to the instant writ petition is that the petitioner/2nd respondent, in pursuance of the reference dated 26.06.2007, has



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filed his claim petition before the Labour Court. It is the case of the petitioner/2nd respondent that he was appointed as a Clerk before the Appellant's Bank on 24.02.1986 at Kurichi branch. According to the petitioner, he was charge sheeted on 22.12.2004 for his unauthorised absence of 266 days and was imposed with a punishment of compulsory retirement vide order dated 01.03.2005. It is the submission of the petitioner/2nd respondent that the order of compulsory retirement is disproportionate to the gravity of the offence and that the very order has been passed to victimize him. The petitioner would further submit that, only under compelling reasons and circumstances, he was not able to attend the duties and that in spite of his explanation, the alleged unauthorised absence was construed as the major misconduct. It is the further submission of the petitioner/2nd respondent that without enquiry, the punishment was inflicted. The petitioner further states that even the appeal filed by the petitioner before the Appellate Authority was rejected erroneously. Hence, it is the contention of the petitioner that the punishment of compulsory retirement is disproportionate to the gravity of the offence. Therefore, prays to interfere with punishment, order for reinstatement to the service.



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5. Resisting the above contention, the respondent-Management has contended that the petitioner has been previously charged for four times, and in spite of the leniency shown against him, he has not mend himself and did not improve. While so, he was again absented unauthorisedly for a period of 266 days between January to December, 2004. This respondent-Management further submits that in spite of certificate of fitness given by the Medical Board, Coimbatore the petitioner did not resume duty. Though he applied for a leave from 04.05.2004 and 07.05.2004 and reported duty on 08.05.2004, he left the Bank on the very same day without signing the Attendance Register. Thereafter, he stopped attending office from 01.06.2004 and caused the dislocation of work. Thus, appellant-Management, not satisfying with the explanation has imposed the punishment of compulsory retirement with superannuation benefits.

6. Before the Industrial Tribunal, the petitioner/workman has marked as many as 119 documents as Exs.W1 to W119. On behalf of the respondent-Management, they have marked as many as 102 documents as Exs.M1 to M102. Both of them have examined each one witness.



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7. The Labour Court, after having considered the oral and documentary evidence has held that there was an unauthorised absence, and that the charge against the petitioner was proved. In spite of such positive finding, the Labour Court found that his absence was not willful and only because of the compelling health reasons. Therefore, to enable him to repent from his past conduct and correct himself, the Labour Court set aside the order or compulsory retirement and ordered to reinstate without back wages. Not satisfied with the order of the Labour Court, the respondent-Management has filed the instant writ petition.

8. The learned counsel for the respondent/Management would vehemently contend that when the Labour Court has arrived at a positive conclusion that there was a misconduct, the findings recorded by the Labour Court that it was not a habitual absenteeism and only because of the compelling reasons, is without any evidence. It was also the contention of the learned counsel for the respondent-Management that the Labour Court failed to take into consideration of the past conduct of the petitioner/2nd respondent. It was further contended that the order passed by the Labour Court is beyond the scope of Section 11A of “The Industrial Disputes Act, 1947” [hereinafter



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shall be referred to as “ID Act” for the sake of convenience]. It was also the contention of the learned counsel for the respondent-Management that on receiving the order of compulsory retirement, the petitioner had received the terminal benefits without any cavil. Therefore, according to the respondent, the petitioner is estopped to challenge the order of the punishment. It is also the contention of the learned counsel for the respondent-Management that the Labour Court has not gone into the actual factual position, but exceeded its power by setting aside the order of punishment, which is contrary to law. Hence, prayed to interfere with the order of the Labour Court.

9. Per contra, the learned counsel for the petitioner/2nd respondent would vehemently contend that the order of the Labour Court is in accordance with law. It was also the contention of the learned counsel for the petitioner/2nd respondent that for mere absence from duty for some period, a punishment of compulsory retirement was ordered, which is nothing but a shockingly disproportionate. Hence, contended that the interference made by the Labour Court is justifiable. It was also the contention of the learned counsel for the petitioner/2nd respondent that the respondent-Bank did not conduct any enquiry to prove the charge. It is the further contention of the petitioner that



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his absence was only because of the compelling medical reasons and the Labour Court has taken cognizance of all those medical certificates and found that the punishment is shockingly disproportionate. Therefore, it is the contention of the learned counsel for the petitioner that there is no merit in this writ petition. Hence, prayed to dismiss the same.

10. I have given my anxious consideration to either side submissions.

11. The charge against the petitioner is that he was unauthorisedly absent. According to the finding of the Labour Court, such unauthorised absence was proved. At this juncture, it is useful to refer the judgment of Allahabad High Court relied by the petitioner in ***Anil Kumar Srivastava Vs. Chairman, Life Insurance Corporation of India and others*** reported in **2003 3 LLJ 108**. Wherein, as rightly found by the Labour Court, Rules of Natural justice are not a strait-jacket formula. Though the petitioner contented that no enquiry was conducted, it is an admitted case of the petitioner/2nd respondent that he was absent between 11.01.2004 to 03.05.2004 and that he was certified by the Medical Board that he was fit for duty during the absented period. Only in that background, the Labour Court has also found that though



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no enquiry was conducted, the charge of unauthorised absence is proved on the face of it and such finding not challenged. However, the Labour Court interfered with the punishment on the premise that he was not the habitual absentee and that there is a scope for repent. Only in the above background, the Labour Court set aside the punishment and ordered for reinstatement without back wages.

12. Before proceeding further, this Court deems it appropriate to delve deep into the charge against this petitioner/2nd respondent. He has been charged on 22.12.2004 for the unauthorised absence of 266 days. It was also mentioned in the charge that he has not improved his attendance, despite repeated counselling warning from the branch. Further, as he has been charged thrice prior to this impugned charge Memorandum, the instant unauthorised absent was classified as a major misconduct. It is not in dispute that the petitioner has been charged and punished thrice, prior to the impugned charge. Therefore, the classification of instant unauthorised absence as a major misconduct cannot be faulted. Pertinently such classification has also not been challenged. The Management has found that the petitioner has no inclination to work any more in the Bank service, and lost confidence with the



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petitioner. Therefore, it is rational to understand that the finding of the Appellant-Bank that the petitioner has abandonment from service. Further, the Management has rightly found and recorded their loss of confidence with the petitioner.

13. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court relied by the respondent-Management in ***Delhi Transport Corporation Vs. Sardar Singh*** reported in ***(2004) 7 SCC 574***. Wherein, the Hon'ble Supreme Court held that when there is a conclusion regarding negligence and lack of interest, then the burden is upon the employee, who claims that there was no negligence and lack of interest on his part by placing relevant materials. While considering the order of the Labour Court, this Court could not find any record or evidence to show the inclination to work on the part of the petitioner. Though there were many Medical Certificates produced, the Appellate Authority of the Bank has rightly rejected all those medical certificates. Even before this Court, the petitioner/2nd respondent is not in a position to demonstrate that the clinical reports would prove its *bona fideness* for his absence. As a matter of fact, the Medical Board found him that his absence was not justified.



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14. At this juncture, it is relevant to refer that the respondent/Management has classified the charges as major misconduct in view of his past conduct of imposing penalty thrice for his earlier misconduct. While exercising the powers under Section 11A of ID Act, the Labour Court can interfere with the order of discharge or dismissal only when it found that the same is not justifiable. The petitioner, being the employee of the Bank, and was absent for a continuous period of 266 days would definitely affect the functioning of the Bank, which indirectly reflect the non-inclination of the petitioner to work in the Bank.

15. While going through the order of the Labour Court, it is seen that it proceeded on the ground that the punishment of compulsory retirement is shockingly disproportionate to the gravity of charge. It is pertinent to mention here that while invoking jurisdiction under Section 11A of ID Act, the Labour Court must take into consideration of various aspects, which includes past conduct of the delinquent. Here admittedly there were three past misconduct. However, the Labour Court did not deal into such past misconduct. It is further pertinent to mention here that, in a public service, such as Banking, the absenteeism will have a greater impact. His absence would have resulted in



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disruption of essential service, which would result in to unnecessary harassment. Therefore, this Court is of the firm view that the interference shown by the Labour Court in the order of punishment is not justifiable and beyond the scope of Section 11A of the ID Act. Therefore, this Court would like to interfere with the order of the Labour Court.

16. In the result, the writ petition is allowed by setting aside the order of the Labour Court and by restoring the punishment imposed by the Appellant-Management. No costs. Consequently, connected MP is also closed.

11.07.2024

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Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No

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