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W.P.No.8305 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 29.01.2024

ORDER PRONOUNCED ON: 05.04.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.8305 of 2021

and

WMP.No.8852 of 2021

1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

2.The Chief Engineer/Distribution,
Chennai Region (North),
144, Anna Salai, Chennai-600 002.

3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution/Central,
Valluvar Kottam Sub Station Complex,
Chennai-600 034.

...Petitioners

Vs.

Raja Mohammed

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records in award passed by the Presiding Officer, II Additional labour Court, Chennai, in I.D.No.470



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of 2010 dated 10.04.2017.

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For Petitioner : Mr.David Sundar Singh
For Respondent : Mr.K.Raviananthapadmanabhan
for Mr.B.Thirumalai.

ORDER

Writ petition is filed challenging the Award dated 10.04.2017 passed in I.D.No.470 of 2010.

2. The petitioners are Tamil Nadu Electricity Board and the respondent is a workman.

3. The respondent workman was engaged in non clerical work and holding the post of Technical Assistant. The workman was issued with No Objection Certificate for obtaining passport for employment abroad. Based on the NOC of the petitioners, the workman obtained passport and secured job in Saudi Arabia. The workman was sanctioned Extra Ordinary Leave (Hereinafter referred to as EOL) but without pay and allowances



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from 07.08.1992 to 06.08.1997 vide leave sanction letters dated 06.08.1992, 06.08.1993 and 10.09.1996. On the expire of the leave period, the workman submitted his application vide letter dated 03.07.1997 for permission to join duty and the workman was reposted to seven wells section vide order dated 07.08.1997 and thereafter he again applied for leave on medical grounds for a period of one year on 06.09.1997 and the same was sanctioned on 17.09.1997 for the period from 01.10.1997 to 30.09.1998. After expiry of the leave period of one year, the workman applied for further EOL for two years for the period from 01.10.1998 to 30.09.2000 on medical grounds. The petitioners summarily rejected the leave application directing the workman to immediately join duty by order dated 27.02.1999. As the workman did not report for duty, a memo was issued on 21.06.1999, which was returned as 'individual left India'. Therefore charges were framed against the workman and the same was communicated to him by registered post which was acknowledged by him on 22.05.2000. In pursuance of the workman's explanation the charge memo was cancelled and fresh charge memo was issued to the workman on 29.03.2002. The



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workman submitted his explanation on 30.05.2002, but as the same was found to be unsatisfactory, enquiry proceedings were initiated after giving him sufficient opportunity to participate in the enquiry proceedings. On completion of the enquiry, the enquiry officer submitted his report on 08.10.2003, holding that the charges against the workman were proved. Thereafter a show cause notice on the proposed punishment was issued to the workman on 25.10.2003. Since his explanation was found to be unsatisfactory, the final order of removal from service was issued on 19.12.2003. The workman preferred an appeal to the Chief Engineer/ Distributor/ Chennai Region/ North against the removal order and the same was rejected by the Chief Engineer on 11.03.2005. Thereafter the workman filed another appeal before the Chairman, TNEB and the same was also rejected on 06.12.2005. The workman thereafter approached the Conciliation officer on 11.01.2010 and as the conciliation failed, the dispute was referred to the Labour Court and registered in I.D.No.470 of 2010. The Labour Court vide the impugned Award set aside the removal order and further directed the petitioners to reinstate the workman with continuity of



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service along with backwages and all attendant benefits. Aggrieved by the impugned Award, the petitioners have filed the above writ petition.

4.The workman did not dispute the NOC granted by the petitioners for sanction of EOL (without pay and allowances) from 07.08.1992 to 06.08.1997 and the leave sanctioned on medical grounds from 01.10.1997 to 30.09.1998. According to the workman, while he was working in Saudi Arabia, in 1995 he met with a major accident which resulted in multiple fractures. As his EOL was to end on 06.08.1997, he wrote to the petitioners on 03.07.1997 to provide him work at Chennai. After initial surgery and treatment and on expiry of the deputation period on 06.08.1997, he returned to India, was allowed to work at Egmore, seven wells section and he also reported for duty on 07.08.1997. On 17.09.1997, the Medical Board of TNEB examined him and opined that he be allowed to take EOL without pay and allowances for a period of nine months to one year for the purpose of undergoing surgery, removal of steel plates and screws from his left thigh and left arm, which were placed for the injuries sustained by him in



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the accident. He was advised by the TNEB, Medical Board to undergo treatment and surgery in Saudi Arabia itself. Based on the Medical Board's opinion, he was granted one year EOL from 01.10.1997 to 30.09.1998. He thereafter left to Saudi Arabia for treatment and the approved Doctor in Saudi Arabia vide report dated 19.09.1998, after examining him opined that he should be kept under supervision post operation for a period of one year. In compliance of the EOL granted to him, he reported for duty and submitted a fresh application on 01.10.1998 for grant of EOL for further period of two years from 01.10.1998 to 30.09.2000 without pay and allowances basis.

5. According to the workman on receipt of the said application the Executive Engineer on 07.10.1998 strongly recommended to the Superintending Engineer to grant him leave for a period of two years as a special case. Thereafter on 27.10.1998, the Superintending Engineer also recommended for sanction of EOL to him for two years to the Chief Engineer. While so, his Saudi visa was to expire on 17.11.1998 and hence it



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became imperative for him to leave for Saudi Arabia urgently. Hence he conveyed to the petitioners the urgency and accordingly pressed for the required leave sanction. Even though the petitioner's were put on notice regarding the emergency situation, the petitioner's kept the leave application pending without a decision either ways thereon. The workman therefore orally informed the petitioners on the urgency and left for Saudi Arabia on 16.11.1998. The workman stated that had the petitioners refused sanction, he would not have left for Saudi Arabia. As his leave application was strongly recommended by his immediate supervisors and no decision was taken on his application, he left for Saudi Arabia, orally informing the petitioner's that he was leaving for post operative supervision as advised by the doctors in Saudi Arabia. As the petitioners rejected the workman's leave application for EOL, the absence of the workman from 01.10.1998 was considered as unauthorised absence and thereafter he was removed from service. Challenging the removal order, the workman raised the dispute.



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6.The learned counsel for the petitioners submitted that as per B.P.(FB).No.88 dated 24.10.1991 the total period of employment outside India was restricted to a period of 5 years only and as the respondent had over stayed, the leave without sanction, the order removing him from service was issued. The learned counsel further submitted that when the EOL application for the period from 01.10.1998 to 30.09.2000 was rejected, the failure of the respondent to report for duty immediately, amounted to misconduct of unauthorised absence. The learned counsel submitted that the Labour Court went wrong in passing the impugned order over looking that the petitioners had clearly established that the respondent over stayed the sanctioned EOL. The learned counsel therefore submitted that the Award of the Labour Court could not be sustained and it deserved to be dismissed.

7. The learned counsel for the respondent on the other hand submitted that the facts of the case clearly proved that the workman did had not wilfully over stay the leave but stayed back on medical grounds.



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The learned counsel submitted that the workman in obedience to the EOL sanctioned for the period from 01.10.1997 to 30.09.1998 returned to India and made fresh application for the period from 01.10.1998 to 30.09.2000, which was also recommended by both Executive and Superintending Engineer. As the Saudi visa was to expire shortly, the workman had no option but to leave for treatment immediately. The learned counsel submitted that the petitioners did not take immediate decision on his application for extension of EOL even though it was submitted on 03.10.1998 well before the expiry of the Saudi Visa. The learned counsel further submitted that had the decision to reject the leave sanction application been taken earlier, he would have opted to stay back and further as his immediate supervisor had recommended for sanction of leave, he, after informing them left to Saudi Arabia, as the Visa was going to expire. The learned counsel further submitted the the rejection order was passed in a mechanical fashion, assuming the application to be one of seeking employment abroad, over looking that even in the leave application the reason given was medical treatment. The learned counsel



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further submitted that B.P.(FB).No.88 dated 24.10.1991 was not applicable to the respondent's case, because the maximum limit of 5 years was only for the purpose of seeking employment abroad and not for other genuine reasons like medical treatment etc. The learned counsel therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

8.I have heard both the learned counsels and I have perused the materials placed on record.

9.The undisputed facts of the case are that on the basis of the NOC issued by the petitioners, the workman applied for passport and went for a job to Saudi Arabia. The workman availed EOL (Pay without allowances) for the period from 07.08.1992 to 06.08.1997, which was sanctioned vide orders dated 06.08.1992, 06.08.1993 and 10.09.1996. On the expiry of the sanctioned leave, the workman reported for duty and joined seven wells section on 07.08.1997, as per the order of the petitioners dated 07.08.1997.



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On the basis of the opinion of the Chief Medical Officer of the petitioner Board dated 17.09.1997, the respondent applied for medical leave for the period from 01.10.1997 to 30.09.1998 and the same was also sanctioned by the petitioners on 03.10.1997.

10.It is seen that the workman returned to India on the expiry of the leave granted on 03.10.1997 and submitted a fresh application on 01.10.1998 seeking EOL for two years from 01.10.1998 to 30.09.2000. The said application was considered by the petitioner's immediate supervisors (i.e) the Executive Engineer and Superintending Engineer and they recommended for sanction of leave for two years to the workman as a special case. It is also seen that the workman's Saudi Visa was to expire on 17.11.1998 and therefore it was imperative for him to leave for Saudi Arabia before the expiry of the Visa for his treatment. Hence he orally informed the petitioner's and left for treatment. It is pertinent to note here that there is no specific denial of this averment. It was only thereafter that the leave application was rejected and consequently disciplinary



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proceedings were initiated against the workman which culminated in the removal order.

11. The short point that is to be decided in this writ petition is whether the removal of the workman from service for the misconduct of unauthorised absence from 01.10.1998 was justified or not.

12. The petitioners case is that the leave application of the workman for the period from 01.10.1998 to 30.09.2000 was rejected on the basis of B.P.(FB).No.88 dated 24.10.1991. Under the said BP, the EOL (without pay and allowances) could not be granted beyond 5 years. The workman's case on the other hand is that the said B.P is not applicable to his case. The subject B.P.(FB).No.88 dated 24.10.1991 reads as follows:

“In G.O.Ms.No.196 P & A.R. (FR.II) Department dated 20-5-1991, the Government have issued orders permitting the Government servants to accept jobs abroad subject to certain conditions. The Tamil Nadu Electricity Board Engineers' Association has represented for issuing similar orders in the case of the employees of the Tamil Nadu Electricity Board,



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2. After careful consideration, the Tamil Nadu Electricity Board has decided to adopt the orders of the Government. Accordingly the Tamil Nadu Electricity Board passes the following orders.

(i) The employees of the Board desirous of seeking jobs abroad, irrespective of categories to which they belong technical, non-technical or clerical be permitted to apply and secure employment abroad either through the Overseas Manpower Corporation Limited, or other available sources. However, such of those scarce categories of Staff/Officers whose services are considered essential to the Board shall not be permitted to secure jobs abroad.

(ii) The period of employment abroad shall normally be three years which can be extended for a further period for two years.

(iii) The period of absence during employment abroad will be treated as extraordinary leave without allowances but such period of absence will not be construed as a break in service. It will not be counted for service benefits such as increment, Pay Leave etc., However, if contribution towards Pension is paid by the foreign employer or the employee, such periods will count for Pension.

(iv) On return from abroad, such officials shall not claim any preference over others in their parent departments for promotion or higher pay by virtue of the experience gained in foreign employment nor shall they claim exemption from working experience or other



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qualifications required under the Regulations of the Board.

3.The scarce categories mentioned in para 2 (i) above shall be identified in due course by the Board. The list shall be updated from time to time based on the emerging needs and experience.

4. As the absence of the employees of the Board during the employment abroad is treated as extra-ordinary leave without allowance, the Board directs that the pay of such of those employees will be determined with reference to their actual period of duty."

A bare reading of the aforesaid B.P shows that it is issued for the purpose of seeking employment abroad. The B.P. provides for grant of leave to the employees who take up employment abroad. It also provides for conditions, on which leave could be granted to take up foreign employment. As the BP primarily deals with foreign employment, the upper limit of 5 years imposed therein should be construed as a restriction for employment only. In the case at hand, it is not disputed by the petitioners that the workman met with a major accident and he was treated in Saudi Arabia for multiple fractures and that steel plates and screws were fitted for the said purpose. Even the petitioner's own Medical Board in its



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letter dated 17.09.1997 opined on the medical condition of the workman and further recommended EOL (without pay and allowances) for the period from 9 months to one year for treatment purpose. Based on this report, the petitioners sanctioned EOL to the workman on 03.10.1997 for the period from 01.10.1997 to 30.09.1998. It is hence clear that the petitioners were very well aware of the medical condition of the workman. Even in the leave sanction application for the disputed period from 01.10.1998 to 30.09.2000 the leave was sought on medical grounds by annexing the copies of the medical records. It is pertinent to note that the Executive Engineer who was the immediate supervisor of the respondent recommended for sanction of leave as a special case, because of his chronic illness. The Executive Engineer recommended for leave only for the purpose of medical treatment. It is seen that the Superintending Engineer while recommending for 'no objection certificate' to the workman even without looking into the application of the workman assumed that sanction was sought for employment in Saudia Arabia forwarded the application to the Assistant Engineer, who rejected the same by



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considering it to be one for employment. I find that the rejection of the workman's application for EOL was without application of mind either to the facts of the case or to the rule position. The petitioners failed to note that the EOL application was made purely on medical grounds. The petitioners failed to note that the respondent did not over stay the leave earlier sanctioned. In my view the above Rules on which the petitioner's case hinges, relates to employment only. Just because the workman was taking treatment abroad, the petitioners could not have assumed without any basis that the leave was for employment. In any case it is not the case of the petitioner that the workman was employed during the period of absence. The workman has sworn on affidavit before this Court that he did not work during the relevant period. There is no denial by the petitioner's of this vital fact.

13.It is also pertinent to note that further extension from 01.10.1998 to 30.09.2000 was necessitated because of the opinion of the attending surgeon that the workman needed to be hospitalised for a further period of



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9 months to avoid further complications and also that he was required to be under continued observation for removal of foreign materials like plates and screws. Another aspect that needs to be highlighted here is that the workman's Saudi Visa was going to expire and therefore he was constrained to leave immediately. It is seen that inspite of the workman's oral and written communications to the petitioners that he had to leave India by 16.11.1998 for medical treatment, the petitioner's slept over his application for 4 months and finally rejected the same on 27.02.1999. The conduct of the petitioner's in sleeping over the application of the workman and thereafter rejecting it is regrettable as the rejection was made without appreciating the urgency and need of the workman to go to Saudi Arabia for medical treatment.

14. Assuming that the workman was on unauthorised absence, the petitioners ought to have considered if, under the facts and circumstances and on the materials on record, the absence was wilful and deliberate. Even without considering the same, the imposition of the extreme penalty



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of dismissal in my view is disproportionate to the misconduct of unauthorised absence. The Labour Court therefore rightly held that the removal could not be sustained. It is stated by the respondent's counsel that the workman attained superannuation on 31.05.2023 and therefore the question of reinstating him into service does not arise.

15. In view of the above discussion, the Award of the Labour Court is confirmed. As the workman has superannuated, the workman will be entitled to all monetary benefits.

16. The writ petition is accordingly dismissed. No costs. Consequently, connected WMP is closed.

05.04.2024

dsn

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation:Yes/No



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To

- 1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.
- 2.The Chief Engineer/Distribution,
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4. The Presiding Officer,
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N.MALA.J.

dsn

PRE-DELIVERY ORDER IN
W.P.No.8305 of 2021

ORDER DELIVERED ON
05.04.2024

20/20