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W.P.No.11201 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.03.2024

Pronounced On : 28.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No. 11201 of 2014

N.V.Veerasamy

... Petitioner

Vs.

1. Management of Salem Silk,
Hand Loom Weavers Co-operative
Production and Sales Society Ltd.,
No.34, II Agraharam, Salem - 1.

2. I Additional Labour Court,
Chennai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for records from the file of the second respondent in respect award passed in I.D.No.767 of 2009 dated 17.07.2013 to quash the same and direct the second respondent to pass fresh order.

For petitioner	:	Mr.A.S.Narasimhan
For R1	:	Mr.D.Shivakumaran
For R2	:	Labour Court



ORDER

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This writ petition is filed seeking to quash the award passed in I.D.No.767 of 2009 dated 17.07.2013 and to direct the second respondent to pass fresh order.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner is the ex-employee of the first respondent society which is mainly operating in Salem and has got branches in other places. During the year 1988 the petitioner was recruited as Salesman at Kancheepuram as he opted to work there since it is his native place. In the appointment order there is no condition that the petitioner will not be transferred out of Kancheepuram. He worked at Kancheepuram from the year 1988 until 1997. On 12.11.1997 he was transferred to Chennai which is nearly 75 KM away from Kancheepuram. The petitioner has made several representations to the first respondent to grant his special allowances to work at Chennai. The first respondent transferred the petitioner to Salem by an order dated 01.07.1998. He has applied leave and failed to join in Salem.



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2.2. The first respondent issued show cause notice dated 10.02.1999. In response to that the petitioner reported for duty at Salem on 01.03.1999 along with medical report, however, he was not allowed to join. Another show cause notice was issued on 10.03.1999 for which the petitioner submitted his explanations and then he was directed to report on 17.09.1999. However, on 22.09.1999 when the petitioner went to join duty he was not permitted to join. Therefore, the petitioner sent representation dated 14.10.1999. Yet another show cause was issued by the first respondent on 03.03.2000 directing the petitioner to appear for domestic enquiry. However, the petitioner has addressed a letter requesting the first respondent to pay his salary from 01.07.1998 to 22.03.2000 to participate in the enquiry.

2.3. The petitioner got another notice dated 09.04.2000, indicating another date for the domestic enquiry but the petitioner did not appear for the said enquiry. Accordingly, domestic enquiry was completed in the absence of the petitioner and report was submitted by the enquiry officer on 30.05.2000. A second show cause notice was issued to the petitioner on 28.06.2000 final orders of dismissal were passed on 05.07.2000.



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2.4. The petitioner has raised Industrial Dispute Act 1947 before the conciliation officer however, same were failed. The petitioner made an application under Section 2A of the Industrial Dispute Act, 1974, in I.D.No.767 of 2009 before the second respondent seeking continuation of employment with back wages on the ground that the enquiry was conducted setting the petitioner *ex parte* and thereby, the principles of natural justice was not followed and that however, the second respondent Labour Court has dismissed the I.D.No.767 of 2009 by an award dated 17.07.2013. Aggrieved by the same, this present writ petition is filed.

3. Counter affidavit has been filed by the first respondent and submitted that the petitioner has applied leave without joining at Salem but the respondent has asked the petitioner to join duty but he did not respond. The explanation of the petitioner was not satisfied thereby, a show cause notice was issued to the petitioner. Enquiry officer was appointed and the same was also informed to the petitioner. But the petitioner did not attend the enquiry inspite of giving notices. He was given another chance to attend the enquiry but even then he failed to attend the enquiry and he sent a message stating that he was sick and



could not attend the enquiry. As the enquiry was scheduled at Salem Head Office and the first respondent management agreed to pay his conveyance expenses for attending the enquiry even then he did not attend.

4. The petitioner was given three chances to attend the enquiry as he did not turn up on which he was set as *ex parte* on 06.05.2000 and the enquiry proceeding was completed. One witness was examined on the side of the management and 30 exhibits were marked on behalf of the management. The enquiry officer submitted his report on 30.05.2000 holding that the charges against the petitioner were proved. Second show cause notice dated 20.08.2000 was issued to the petitioner along with the findings of the enquiry officer and the petitioner sent a reply dated 30.06.2000. As the explanation was not satisfactory, the petitioner was removed from service on 05.07.2000.

5. Heard both the sides and perused the materials available on record.

6. It is submitted by the learned counsel for the petitioner that the enquiry conducted by the enquiry officer is bad as he has conducted



the enquiry setting the petitioner as *ex parte* and thereby, opportunities was not given to the petitioner to defend. It is further submitted that the petitioner has challenged the report of the enquiry officer before the Labour Court. However, the second respondent without appreciating the facts has dismissed the reference by taking into consideration all the facts which were not the subject matter before the domestic enquiry.

7. The learned counsel for the respondents has submitted that the Labour Court, during the course of enquiry has considered the issue comprehensively and conducted enquiry in respect of the issues pertaining to the dismissal of the petitioner and therefore, the report is justified.

8. The grievance of the petitioner/workman is that in the domestic enquiry the issue before the enquiry officer was that the petitioner has not responded to the show cause notice dated 03.03.2000. But the Labour Court has not considered that aspect and has discussed the other aspects and ultimately found that the removal of the petitioner is justified. The learned counsel for the first respondent submits that while considering under 10 A of the Industrial Act, the Labour Court can consider all the aspects which led to the dismissal of the petitioner.



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9. As per the enquiry report, the petitioner has applied leave however, as per the rules of the society only 20 days of short leave will be given and the first respondent management has sent many letters including a telegram asking the petitioner to join work. The first respondent management has given a memo dated 03.03.2000 to the petitioner which is marked as Ex.A18 for which reply was given by the petitioner under Ex.A9. Considering the materials placed before the enquiry officer it was found by the enquiry officer that the petitioner has not worked even a single day after he was transferred to Salem, despite sending several notices. It is also observed that the petitioner was given number of chances to attend duty, inspite of it, on one reason or the other the petitioner failed to join duty. It is also observed that as per the society rules only 20 days of short leave will be granted in a year and he can take medical leave to a extend of 90 days. The petitioner without joining had sent medical leave applications and thereby, the enquiry officer has concluded that the allegations made against the petitioner were true and the same was challenged by the petitioner before the Labour Court. The Labour Court has gone through the entire materials placed before the enquiry officer meticulously.



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10. Further, the Labour Court has also recorded the evidence of both sides and has marked 38 documents on behalf of the petitioner whereas 14 documents on behalf of the respondents. On considering the oral and documentary evidence, the Labour Court has come to the conclusion that the principles of natural justice have not been violated. In the course of enquiry it was found that a number of notices were given to the petitioner and even after receiving the same the petitioner failed to attend the enquiry. However, he has been sending letters after letters including the medical records, applications etc, giving one excuse or the other for his absence.

11. In the cross examination before the Labour Court the petitioner has admitted that he has filed forged medical certificate to the respondents. It is observed by the Labour Court that the petitioner has sent medical certificate on 01.07.1998, however, the date of the medical certificate was 02.07.1998 and thereby, it was found that the medical certificate was forged and fabricated one. It is also observed that the petitioner has not filed any medical prescriptions, medical bills and any other case sheet maintained by the hospital or any other relevant



documents to sustain that he was suffering from ill health and was taking treatment.

12. Therefore, on considering the materials placed before this Court the Labour Court has found that the findings of the enquiry officer that the removal of the petitioner was justified.

13. On going through the materials on record, more particularly the award of the second respondent, Labour Court, it is clear that the Labour Court has comprehensively dealt in respect of the petitioner's continuous absence without any medical grounds. Thereby, this Court is of the opinion that the orders of the Labour Court are sound and reasonable and passed based on the merits. In order to set aside the orders of the Labour Court, this Court under article 226, the petitioner is expected to make out a case that the orders of the Labour Court are perverse. On going through the orders of the Labour Court as discussed above, this Court cannot record any findings that the award passed by the Labour Court is perverse or without any evidence. Therefore, the orders of the Labour Court cannot be intervened.



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DR. D.NAGARJUN,J.

vca

14. Accordingly, this writ petition is dismissed. No costs.

28.03.2024

vca

Index : Yes/No
Internet : Yes/No
Citation : Yes/No

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