



W.P.No.2538 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18/12/2023
Pronounced on	8 /1/2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.2538 of 2014

T. Poovalagan ... Petitioner

Vs

1. The Presiding Officer
Principal Labour Court
Vellore.

2. The Management of Malladi Drugs and
Pharmaceuticals Limited
No.67 SIPCOT Industrial Complex
Ranipet
Vellore District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in connection with the award pronounced in I.D.No.270 of 2010 dated 23/2/2012 in the preliminary issue and on 21/9/2012 and quash the same.



training to work in the said Department. The petitioner had to face extreme hardship to work in the Fermentation Department. The petitioner has requested the Management to repost him to the earlier Department, however, his request has not been considered.

3. On 14/3/2009, the second respondent Management has issued a charge memo alleging that he has unnecessarily transferred the YP stage material of the Fermenter – 8 to the broth Service Vessel 202, without either receiving any instructions from the superiors or informing such act to his colleagues. The charge memo also speaks that on account of such transfer of material, resulted in contamination of the final stage material of Fermenter 6, loss of time and extra load of work in ETP Department and on account of timely intervention of the operator Mr.Vijayakumar, damage had been avoided. It is also stated in the charge memo that due to the act of the petitioner, Management has incurred a loss to the tune of Rs.5,000/-.

4. The petitioner had offered explanation to the said memo, on 9/4/2009, denying the allegations and a domestic enquiry was ordered and one M.Sankaran has conducted an enquiry and report has been submitted that charges against the petitioner is proved. The Management has accepted



the enquiry findings and proposed to punish the petitioner with dismissal from service and issued show cause notice on 8/10/2009. The petitioner has submitted an explanation dated 4/11/2009 and ultimately, the petitioner was dismissed from service on 4/11/2009. The petitioner has raised an Industrial Dispute before the Principal Labour Court, in I.D.No.270 of 2010. An Award has been passed rejecting all his claims. Aggrieved by the same, present writ petition is filed on the following grounds:-

(i). The enquiry report is erroneous as the Management has not produced any evidence during the enquiry to prove that the petitioner had opened the wall either deliberately or knowingly, in order to cause loss to the Management.

(ii). The Labour Court has not exercised the powers under Section 11 – A of the Industrial Disputes Act and the labour Court should have appreciated the evidence produced before the enquiry and should have come to an independent conclusion about the allegations of mis conduct.

(iii). The labour Court has not taken into consideration that the petitioner has worked for more than 24 years with unblemished services.



(iv). The labour Court should have appreciated that only after the petitioner joining United Labour Federation he was started victimising by the Management. The principles of natural justice have not been followed.

5. Heard Mr.V.Prakash, Senior Advocate for the petitioner and Mr.Michael Amalraj, learned counsel for the second respondent.

6. It is the submission of the learned counsel for the petitioner that the labour Court has failed to exercise its powers under Section 11 A of the Industrial Disputes Act and there is no record that the petitioner with an intention to cause the loss to the respondent Management. According to the respondent Management, the petitioner has transferred the YP Stage material of the Fermenter – 8 to the broth Service Vessel 202 without any directions from the superiors, thereby, caused loss to the tune of Rs.5,000/-.

7. The petitioner admittedly is an illiterate, working for a longer period in Water Treatment Plant, however, he has been transferred to Fermentation Department. Admittedly, the petitioner was not given any training to work and operate the machinery in Fermentation Department. The nature of work of the petitioner is purely a technical work and the



petitioner who is an unskilled labour, without giving proper training, was transferred to the Fermentation Department. There is no doubt that transferring from one Department to other Department cannot be questioned. It is the prerogative right of the Management. However, while effecting the transfer, Management is expected to see that the unskilled labour cannot be transferred to a place where skill is required. Even if the unskilled worker is transferred to a place where skill is required, either he has to be given proper training or he should be asked to do an unskilled work. Since it is a pharmaceutical industry any small error will affect outcome and output adversely. Therefore, the Management should not have transferred the petitioner to a place where skill is required. Keeping in view of the fact that he is an illiterate and the nature of work that was entrusted to him cannot be properly executed without any proper training. If at all the petitioner the petitioner commits any error, out of his inexperience to work in Fermentation Department, he cannot be found fault unless he does it deliberately.

8. There is no record to show that the petitioner has transferred such a material with an ulterior motive purposefully. Further, the magnitude of transferring of such material can be assessed. It is projected that he has



been transferred the material without any authorisation from Fermenter – 8 to the Broth Service Vessel 202, which resulted in loss of time and extra load and loss of Rs.5,000/-. If at all the petitioner has caused monetary loss same could have been compensated by way of deducting from his salary. If at all he has sustained loss of time, and caused extra load to one Department, the petitioner could have been suitably punished. But for a loss of Rs.5,000/- and for making the other Department person to work for extra one hour, the petitioner was terminated from service.

9. Though the learned counsel for the respondent Management has submitted vehemently that the transfer cannot be questioned, the Management could have explained as to the reasons for transfer of the petitioner from one Department to the other Department. According to the petitioner, he has joined the Trade Union and thereby, petitioner was victimised.

10. On going through the Award of the labour Court, it appears to this Court that the labour Court has gone beyond the submissions of the Management and made certain observations. Though Management has mentioned in the charge memo that the petitioner has purposefully



transferred the material, labour Court has gone ahead and made a comment that the petitioner has made sabotage. There are no allegations of sabotage, even by the Management. If it is a sabotage, the petitioner should not have informed about the transfer to his co-employees. Admittedly, he has informed the transferring of the material and immediately, Mr.Vijayakumar, one of the employees has intervened and rectified the problem. If it is really the sabotage, the petitioner should have done clandestinely and damage would have been much more. No motive also attributed to the petitioner as to why he goes to the extent of causing damage to the factory, where he has been working since 1985.

11. The labour Court has not taken into consideration of the fact that though he has been working since 1985, there is no complaint at all until the charge memo is given and there was no complaint against him until he joined Trade Union. This Court is at a loss to understand as to how suddenly the Management gets a great idea of transferring the petitioner to the place where he cannot fit in and then issue the charge memo that the petitioner has purposefully transferred some material from one vessel to the other and then labour Court goes to the extent of commenting it is a sabotage. On considering the above, this Court is of the opinion that the labour Court has



not properly appreciated the material as required under Section 11 A of the Industrial Disputes Act, thereby, orders of the labour Court are perverse.

12. However, it is an admitted fact that the petitioner has admitted that he has transferred the material from one vessel to the other. According to the explanation offered by the petitioner, one of the contract employees has advised him to transfer the material from one vessel to the other. The petitioner was expected to get instructions from the superiors and not from the Contract worker. It is alleged by the Management that on account of transfer material, the Department has sustained a loss of Rs.5,000/- and extra load of one Department and the employees of one Department had to work for an extra hour. This is the only loss caused on account of act committed by the petitioner. Even though the management should not have transferred the petitioner to its Department and even though the petitioner was not properly trained and even though the loss caused to the Department is not huge and is very less, still this Court cannot appreciate the fact that the petitioner has transferred the material to one vessel to the other without permission of the superiors. Whatever irregularity committed by the petitioner is too small mis conduct of indiscipline for which the major punishment of dismissal from service should not have been awarded.



13. Considering the discussion made above, this Court is of the opinion that punishment of dismissal from service is shockingly disproportionate, as the second respondent could not make out a case that the alleged mis conduct of transferring material from one container to another is an intentional one. As observed by the Tribunal if Mr.Vijayakumar, one of the employees has not alerted, damage could have been much more. In view of the above, this Court while concurring with the finding of the Tribunal that the petitioner has conducted some misconduct is not in agreement with the confirming of the dismissal of the petitioner from service. Therefore, same is liable to be set aside.

14. The petitioner, as on the date of filing of the writ petition was 52 years. Now, after passing of nine years, the petitioner is 61 years and has reached the age of superannuation. Even if the order of the labour Court in I.D.No.270 of 2010 is set aside, in so far as punishment of removal is concerned, still the petitioner cannot be reinstated. This Court is also of the opinion that the petitioner cannot be awarded with backwages from the date of alleged termination from service as he has not worked, keeping in view of the policy of no work and no pay.



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15. Since this Court has given the finding that the termination of the petitioner is irregular and the same is liable to be set aside, the petitioner can be given continuity of service from the date of dismissal until his age of superannuation notionally without monetary benefit. However, the petitioner is entitled to all terminal benefits which an employee will get after his retirement.

16. With the above observation, this writ petition is partly allowed and the order dated 23/2/2012 passed in I.D.No.270 of 2010 is set aside. No costs.

8/1/2024

mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Presiding Officer
Principal Labour Court
Vellore.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.2538 of 2014

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