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W.P.No.27264 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2024

PRONOUNCED ON : 12. 08.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.27264 of 2016

and

W.M.P.Nos.3956 and 3959 of 2022

M/s.HCL Technologies Limited
Business Service Module-I, Tower-1
Room No.6, "Chennai One" SEZ Unit
ETL Infrastructure Services Ltd.,
200 Ft. Thoraippakkam Pallavaram Ring Road,
Thoraipakkam, Chennai 600 096.

...Petitioner

versus

1. The I Additional Labour Court,
The Presiding Officer,
City Civil Court Complex,
Chennai.

2. K.Ramesha

Respondents

Prayer : This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari direction to call for the records of the first respondent pertaining to his order dated 04.05.2016 made in I.D.No.372 of 2013, quash the same.

For Petitioner : M/s.Srinath Sridevan
Senior Counsel



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for P.M.N. Bhagavath Krishnan

For Respondents : Mr.P.Gurunathan
Additional Government Pleader for R1

: Mr.N.G.Prasath
for L.Praveen Banu for R2

ORDER

This Writ Petition is filed seeking for certiorari mandamus to call for the records of the first respondent pertaining to the orders dated 04.05.2016 in I.D.No.372 of 2013 and to quash the same.

2. The facts in brief as per the affidavit enclosed are as under:

The petitioner company, M/s.HCL Technologies Limited, is registered under the Indian Companies Act, 1956, with registered office at 806, Siddhartha, 96, Nehru Place, New Delhi. The petitioner company engaged in business of I.T and rendering services to its customers across globe. The petitioner's company maintains highest standards of professionalism and follows the best industry practices for ensuring optimal employee welfare.



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3. The Second respondent undertook employment with the petitioner company in terms of the offer cum appointment letter dated 08.08.2008 and joined as Senior Survey Programmer on 20.08.2008 on probation and his services were confirmed on 26.02.2010 and he was made as Team Leader.

4. Petitioner company has detail guidelines and policies for monitoring the work quality and consequences of non performance and one of them is “Separation Policy”. As per the Separation Policy of the company, there are various modes of termination. The petitioner company follows elaborate Performance Improvement Plan which is called PIP. If performance of an employee is found to be sub-standard, he/she will be placed under the observation of a panel of members who assist the employee to elevate employee's low performance. Most of the employees are able to pick up their performance during the PIP period and they return to ordinary employment, performance.

5. The performance of the second respondent was initially found to



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be satisfactory however his efficiency and performance have gradually started deteriorating day-by-day. The second respondent was asked to improve his efficiency and performance. His performance for the year 2011-12 was evaluated and rated as “Needs Improvement” which is a lower category of rating. The second respondent was intimated about his performance appraisal. He was placed under PIP on 21.12.2012 to improve his functional skills and placed under the supervision of the panel members of his own department. The performance of an employee will be assessed on the rating scale of 1-10, for which the minimum passing requirement was set as 4.2. The second respondent got 3.9 of rating scale. There was no improvement in the performance of the second respondent even after conclusion of PIP.

6. As the second respondent has failed to improve his performance the senior official of the company by name Ms. Samra Rahman (EP-Lead) had discussion with him on his non-performance, even then there was no improvement in his performance. He was referred to Mr.T.S.Mohan, Director HR for further discussion on 16.01.2013. There was no positive effort or inclination by the second respondent. On



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17.01.2013, second respondent has addressed a letter to the petitioner asking for one more chance to improve his performance and the same was not accepted. Second respondent was given two choices, namely voluntary resignation or opting for termination on grounds of non-performance. The second respondent opted for performance based separation as per the terms and conditions of employment. Ultimately the second respondent was terminated from service by the petitioner vide letter dated 22.01.2013.

7. The second respondent started sending unwarranted e-mails, tried to threaten and blackmail the petitioner company making baseless allegations. He gave complaints to media against petitioner company. He also threatened to give complaints to the petitioner company clients, customers and also to NASSCOM.

8. After seven months of the termination, the second respondent initiated a dispute before conciliation Officer and conciliation was failed. The second respondent has filed I.D.No.372 of 203 on the file of first respondent and the petitioner also filed counter. The second respondent



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marked Exhibits W-1 to W-35 and he himself deposed as one of the witnesses. On petitioner's side, Exhibits M-1 to M-13 were marked and one witness was examined as MW-1. Considering the oral and documentary evidence, the Labour Court has concluded as under:

“a) That the second respondent is not working in a supervisory capacity.

b) That the petitioner has not filed any document to show that the second respondent had voluntarily opted for performance based separation.

c) That there is nothing in the policy framed by the petitioner which classifies 'poor performance' as a misconduct or a ground for termination.”

9. Challenging the said finding of the Labour Court, the present Writ Petition is filed.

10. No counter affidavit is filed on the side of the second respondent. Heard both sides and perused the material placed on record.

11. Mr.Srinath Sridevan, learned Senior Counsel appearing for the petitioner has submitted that the approach of the Labour Court in finding



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that the second respondent was not working in supervisory cadre and has not chosen performance based separation, and that there is no policy that poor performance is one of the misconduct are erroneous. It is submitted further that second respondent comes under the the cadre of employee E-O and his salary was in excess of the limit mentioned in Section 2(s) of the Industrial Dispute Act, 1947. The second respondent therefore not a workmen and the Industrial Tribunal has no jurisdiction to entertain the petition. It is also submitted that the second respondent has opted for performance based separation and aware of the reasons for his termination and that many opportunities have been given to the second respondent to improve his performance. Therefore not giving show cause notice and not conducting an enquiry are not fatal to the petitioner. It is also submitted that as per the policy of separation a person whose performance is falling short of the expectations of the company, will be liable to termination, which amounts to the misconduct and liable for termination.

12. Learned Senior Counsel for the petitioner has further submitted that the Labour Court has committed patent error in not considering the



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material available before the Court to the effect that the second respondent has opted for performance based separation and that it was incorrect to observe that there is no policy of termination even if there is decrease in the performance, as it does not amounts to misconduct. It is also submitted that the Labour Court has failed to consider that the second respondent is in supervisory cadre and not a workmen, therefore the Labour Court does not have jurisdiction to handle this subject.

13. Mr.Prasad, learned Senior Counsel has submitted that there is very little scope under Article 226 of the Constitution of India and the grounds raised by the petitioner cannot be considered in this Writ Petition. Learned Senior Counsel for the respondents has also submitted that the performance of the second petitioner was increasing day-by-day until 2011 and how it can be suddenly declined in the year 2012-13.

14. Heard both sides and perused the records.

15. Section 2(s) of the Industrial Dispute Act runs as under:



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“2(s) “workman” means any person (including an apprentice employed in any industry) to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire and reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. But does not include any such person. Personnel of Army, Navy and Air force, Police services who is employed mainly in a managerial or administrative capacity”

16. According to the above definition, any person employed in the nature of doing manual, skilled, technical, operational, clerical or supervisory work for hire or reward etc, it can be defined as a workman. The said definition however excludes person employed in managerial and administrative and supervisory capacity, who draws wage



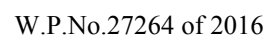
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Rs.10,000/- per month.

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17. The work of the Software Engineer is primarily skilled and technical one. If Software Engineer working as a Team Leader supervising others and if he is not one among the team, he will come under supervisory capacity. All Software Engineers cannot be treated as workers as per Section 2(S) of the Industrial Dispute Act. Depending upon the nature of the work of the Software Engineers, they can be classified as workman as per Section 2(S) of the Industrial Dispute Act or if they have been discharging the work of the supervisors like Team Leaders, they will have be excluded from the definition of the workman as per Section 2(S) of the Industrial Dispute Act. Whether an employee is a workman or not has to be determined with reference to his principle nature of duties and functions.

18. In the case on hand, the second respondent has joined the petitioner company as per the terms of offer cum appointment letter dated 08.08.2008 as Senior Survey Programmer on 20.08.2008. His services were confirmed on 26.02.2010. Upto this stage, he can be termed as workman as per Section 2(S) of the Industrial Dispute Act. However, the



19. It is submitted by the learned counsel for the respondent that the petitioner company has not issued any notice and no enquiry was conducted prior to the termination of the second respondent, thereby, the principles of natural justice have not been followed. It is true that second respondent was not given any notice of termination and no enquiry was conducted prior to his termination. There are no service rules which mandates giving notice before termination and enquiry to be conducted prior to the termination of an employee. The second respondent was appointed as per appointment letter on 08.08.2008 as Senior Survey



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Programmer and terms of his service including termination are governed by the terms of offer cum appointment letter dated 08.08.2008. These terms not indicate that a prior notice required to be given or enquiry required to be conducted before termination of the second respondent.

20. However, the petitioner is expected to follow the principles of natural justice. Following of the principles of natural justice does not necessarily mean issuing a notice and conducting of an enquiry. It is sufficient, if it is shown that the second respondent was given notice one way or the other that he will be terminated and that he should be given enough opportunity to reply.

21. The petitioner is a company which deals with software and competes with other companies in the world doing similar business. The performance of an employee as expected by the petitioner company needs to be maintained by the employees and as per policy of the company, in case, if the performance of any person falls short then he will be liable to be terminated. The performance of the second respondent was initially good, but according the petitioner that his



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efficiency and performance started gradually deteriorating, thereby the second respondent was asked to improve his performance. As there was no traces of improvement in the performance of the second respondent, he was placed under PIP on 21.12.2012. This programme is basically meant for giving an opportunity to the second respondent to improve his functional skills. He was placed under the supervision of panel of members. The second respondent was explained about the performance standards and requirement of his improvement. However, the second respondent stated to have miserably failed in improving his performance even after undergoing PIP.

22. Subsequently, also M/s.Samra Rahman (EP- Lead) had discussion with petitioner on his non-performance in the presence of Manager. Subsequently, Mr.T.S.Mohan, Director HR also had detailed discussion on 16.01.2013 regarding second respondent's performance, however according to the petitioner, there was no inclination to the second respondent to improve his performance. These aspects would certainly go to show and demonstrate that the second respondent was given number of opportunities to improve his performance. The second



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respondent is aware of the fact that if his performance continues to less than the required standard, there is a possibility of his termination therefore, the second respondent cannot contend that notices were not given to him prior to his termination. What all the petitioner Management done by way of PIP and subsequent meetings of the Senior Officers with the second respondent, is part of giving notice by indicating the second respondent about his poor performance and possibility of his termination.

23. The petitioner company has sent a letter dated 17.01.2013 asking the respondent either to voluntarily resign and to opt for termination on the ground of non performance for which that he was opted for performance based separation as per the terms and conditions of the employment. This reply by the second respondent go to show that his termination was effected after following the procedure as per the terms and conditions of the employment. Therefore, the second respondent cannot contend that the principles of natural justice have not been followed.

24. Learned counsel for the petitioner has cited the judgment of the



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Hon'ble Apex Court in ***the Chairman Board of Mining Examination and Chief Inspector of Mines and Another vs. Ramjee***, reported in (1977) 2 SCC 256, wherein it observed as under:

“13.The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a



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given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt — that is the conscience of the matter.”

25. Learned counsel for the petitioner also cited another judgment of the Hon'ble Apex Court in ***Midhun Suresh M vs. State Bank of India represented by its Chairman, Corporate Centre and Others***, reported in 2020 SCC OnLine Ker 15451,

4.Petitioner stated that the notice of termination Ext.P3 was issued immediately after Ext.P9 representation. Now that the petitioner's services as Acquisition Relationship Manager is terminated and the offer for engagement as Relationship Manager is also cancelled. The writ petition is filed at this stage challenging the termination notice Ext.P3 as well as Ext.P19 order affirming the action, alleging that the impugned action is in violation of the principles of natural justice. Petitioner points out that he was never informed of the performance rating or that he did not achieve the required target.

5.Respondents have filed a counter affidavit as well as a petition for vacating the interim order. In



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the counter affidavit respondents stated that under Clause 22.2 of Ext.P4 terms and conditions of engagement of officers engaged on contract basis which was furnished to the petitioner along with the offer of his appointment it was specifically made clear that petitioner's engagement would be terminated on three months' notice/three months' compensation without assigning any reason. More over it is also pointed out that Ext.P6 performance evaluation report for the year ended March 2019 was furnished to the petitioner on 25.07.2019 by which petitioner was specifically informed that his rating was 1.05 and 1.11 whereas the minimum rating required was 1.2. It was stated that his performance rating for both the half years were below the minimum rating of both and it was a matter of concern and that they were implementing a performance improvement plan with immediate effect in order to assess him in meeting performance standards going forward for a period upto 30.09.2019. By this petitioner was to achieve PIP bench mark during the PIP period April 2019 to September 2019 as given in the annexure. It is stated that even after the PIP



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petitioner did not improve and therefore it became necessary to terminate his services.

6.Regarding his appointment as Relationship Manager it is stated that even in the notification Ext.R1(h) as well as the offer of appointment as Relationship Manager it was specifically stated that any request for transfer/change of posting would not be entertained. Moreover petitioner did not furnish the required documents in acceptance of his offer letter apart from submitting representations requesting for change of place of posting. It is therefore their contention that petitioner's services were terminated in accordance with law. It is also stated that Ext.P19 order was passed after considering all the contentions raised by the petitioner.

7.Heard Sri. Ashok Shenoy and Girish, the learned Counsel for the petitioner and Sri. Amal George, learned Counsel for the Bank. Even though petitioner has stated that the termination of service was ordered without complying with the principles of natural justice and it is harsh and without furnishing reasons for the termination, it is seen that even at the stage of offer of appointment petitioner was informed about clause



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22.2 of Ext.P4 conditions of service, which provided for termination of service without assigning any reason on three months' notice. Petitioner has not challenged the said provision Clause 22.2.

8.The contention of the petitioner that he came to know about the reason regarding his poor performance or non achievement of performance only from Ext.P19 order cannot also be accepted in the light of Ext.P6 evaluation report based on which he was subjected to PIP. Petitioner's contention that Ext.P19 order casts a stigma on his career cannot also be accepted as the order of termination Ext.P3 does not refer to any such reason.

9.Even though petitioner submitted that his representations were not considered before or after the cancellation of appointment as Relationship Manager, petitioner does not have a case that he had submitted any letter accepting the offer pursuant to Ext.P8.

10.Yet another contention raised by the petitioner is that the process of evaluation was not correct and the respondents have not so far given him any reply on that. However the Bank has explained the



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rating given to him. Petitioner has not produced any material to show the manner in which evaluation is to be conducted. At any rate this Court would not be in a position to adjudicate on that issue.”

26. In view of the discussions made above, since the second respondent is not a workman as defined under Section 2(S) of the Industrial Dispute Act and that the principles of natural justice have already been followed by the petitioner company while terminating the second respondent and that second respondent was given enough chances and opportunities to improve his performance and since he has not improved his performance and finally since the second respondent himself has opted for performance based separation basing on terms of his appointment, this Court is of the opinion that the termination of the second respondent basing on his poor performance cannot be found fault. Accordingly, the impugned award of the Labour Court passed by the Labour Court is perverse.

27. In the result, this Writ Petition is allowed and the order dated 04.05.2016 made in I.D.No.372 of 2013 passed by the first respondent is



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hereby set aside. No costs. Consequently connected miscellaneous petitions are closed.

12.08.2024

Index : Yes / No
Speaking/Non-speaking Order
jai

To

1. The I Additional Labour Court,
The Presiding Officer,
City Civil Court Complex,
Chennai.



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Dr.D.NAGARJUN, J.
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