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W.P.No.24847 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 28.02.2024

ORDER PRONOUNCED ON: 05.04.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

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M.Ernest Raja.

...Petitioner

Vs.

New Generation Media Corporation Pvt. Ltd.,
(Puthiya Thalaimurai Television)
Rep. By its Director G.K.Manohar,
No.25A, NP Industrial Estate,
Ekkattuthangal, Guindy, Chennai-600 032.

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records of the Hon'ble Labour Court, Chennai, in I.D.No.454/2017 order dated 21.02.2019, quash the order of dismissal dated 04.06.2016 passed by the Respondent.

For Petitioner : Mr.S.Ravi

For Respondent : Dr.V.Venkatesan

for Mr.B.Sudhirkumar

ORDER

Writ petition is filed challenging the order dated 21.02.2019 in I.D.No.454 of 2017.

2. The petitioner was employed as cameramen by the respondent on



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11.02.2011. On 23.05.2016, the petitioner was issued with show cause notice for the misconduct of circulating a Meme in a whatsapp group. The petitioner was enquired on 25.07.2016 and thereafter on 04.06.2016, the petitioner was dismissed from service. The petitioner raised dispute and the same was registered in I.D.No.454 of 2017. The Labour Court found that the domestic enquiry was not properly conducted and therefore afforded opportunity to the respondent to prove the charge before it.

3. The respondent filed counter stating that the petitioner was in the habit of quarrelling with his seniors and on earlier occasions the petitioner was warned and on one occasion the petitioner was also suspended for the period from 10.02.2016 to 16.02.2016. It is further stated that on 20.05.2016, the petitioner floated indecent Memes in the whatsapp group against the superior officials and therefore an explanation was called for from the petitioner on 23.05.2016 and the petitioner was also asked to appear before the disciplinary committee for an enquiry. The petitioner appeared on 27.05.2016 before disciplinary committee and submitted his explanation. As the explanation was found to be unsatisfactory, the petitioner was



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dismissed from service with effect from 30.05.2016 as per recommendation of the disciplinary committee. The dismissal order was sent by registered post on 14.06.2016. But the same was returned as the petitioner had not informed the change of address, thereafter the termination order was communicated through an email on 23.06.2016. The respondent further submitted that it was because of the indecent behaviour of the petitioner on various dates that viz., 07.10.2014, 10.02.2016 and 23.05.2016 that the petitioner was dismissed from service. The respondent therefore submitted that after due enquiry and after giving ample opportunity to the petitioner, the petitioner was terminated for the proved misconduct and therefore there was no merit in the dispute raised by the petitioner.

4. The Labour Court framed a preliminary issue on the validity of the domestic enquiry and held that the domestic enquiry was not properly conducted. The Labour Court thereafter permitted the respondent to adduce evidence before it to prove the misconduct. Based on the evidence on record filed on both sides, the Labour Court concluded that the dispute was without merit and rejected the same. Aggrieved by the Award of the



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Labour Court, the petitioner has filed the above writ petition.

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5. The learned counsel for the petitioner submitted that the Labour Court failed to appreciate that the complaint based on which the dismissal order was passed and the alleged Meme posted in the whatsapp group were not filed either before the enquiry committee or before the Labour Court and therefore the Labour Court ought to have set aside the termination order. The learned counsel further submitted that the punishment of dismissal from service for posting a Meme was disproportionate to the misconduct and therefore the order of the Labour Court deserved to be set aside.

6. The learned counsel for the respondent on the other hand submitted that on the basis of the evidence on record, the Labour Court returned the finding on facts and hence in the absence of any perversity, the said findings could not be interfered with by this Court. The learned counsel further submitted that the petitioner was in habit of quarrelling with the senior officials and was on earlier occasion warned and



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suspended for his in-disciplinary behaviour. The learned counsel submitted that taking into account the past conduct of the petitioner and also the demeanour of the petitioner before the labour Court, the Labour court confirmed the termination order. The learned counsel therefore submitted that there were absolutely no merits in the writ petition and same deserved to be dismissed.

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

8. The Labour Court rejected the contention of the petitioner that in the absence of the compliant and the copy of the Meme, termination order was bad, by relying on the evidence of M.W.2 who was specific about the knowledge of Meme floated by the petitioner. M.W.2 spoke about the Meme by stating that the picture of Vadivelu was depicted with certain words denigrating the superior. The Labour Court in the absence of any material to discredit the evidence of M.W.2 accepted the same. The Labour Court further relied on Ex.M2, the apology letter dated 28.05.2016 sent



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through e-mail to Ms. Chitra (MW1). It is pertinent to note that Ex.M1 and

Ex.M2 were marked by the petitioner himself during his cross examination.

Ex.M1 is the e-mail sent by the petitioner for the dispute which took place on 07.10.2014, wherein the petitioner offered explanation for not responding to his superiors instruction. It is pertinent to note here that M1 was marked to the HR Manager, Chitra who was also examined as witness before the Labour Court. Ex.M1 reads as follows:

"Owing to the comment I had posted on cameramen WhatsApp group on 20.05.2016, I seriously apologize. I hadn't posted with the notion of hurting or abusing anyone. Since this was a common chat group started by one of us and not of official concern so far, we used to chat informally. Only on this ground I had posted such comment and not for spoiling any one's reputation.

I also deeply regret and feel sorry for the annoyance made out to the company in this regard. I assure you to maintain the decorum in the WhatsApp group in future."

The explanation given by the petitioner to Ex.M1 was not that it did not amount to an admission of misconduct, but that it may have been sent by



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the management as it had access to the official email. The said explanation was rejected by the labour Court on the premise that there was absolutely no motive for the management to send the email.

9. The learned counsel for the petitioner relied on the constitutional bench Judgment reported in *2001 (5) SCC 433* in support of his submission that in the absence of leave to lead evidence before the Labour Court, in the written statement itself, the Labour Court ought not to have permitted the respondent to adduce evidence before it. I reject the said submission on the simple ground that the petitioner did not take such a plea either before the Labour Court or in the grounds of writ petition.

10. The Labour Court considering the various instances like denial of the apology e-mail, receipt of the termination order and the inconsistent pleas taken by the petitioner found that the conduct of the petitioner was not above board. The Labour Court went to the extent of recording that "the previous conduct and the present conduct and the conduct of the



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petitioner even in the official proceedings in taking different stands which are not yielding the credibility of this Court, this Court is of the considered view that the petition needs no mercy". The Labour Court on appreciation of the evidence concluded that the respondent had proved the misconduct. It is trite that this Court exercising jurisdiction under Article 226 of the Constitution of India does not sit as an appellate Court to reappraise evidence, but will interfere only if perversity or error apparent is established.

11. In my view, the Labour Court considered all the aspects in proper perspective and therefore I find no justifiable reason to interfere with the finding of the Labour Court.

12. In view of the above, writ petition is dismissed. No costs.

05.04.2024

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Index:Yes/No

Speaking Order: Yes/No

Neutral Citation:YesNo



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To
The Labour Court,
Chennai.

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N.MALA.J.

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PRE-DELIVERY ORDER IN

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ORDER DELIVERED ON

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