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W.A.No.31 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.04.2024

Pronounced On : 04.06.2024

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P. DHANABAL

W.A.No.31 of 2024

R.Parthiban

... Appellant/Petitioner

Versus

1.POS HYUNDAI

Steel Manufacturing India Private Limited
No.5, Kem Tower
North Usman Road
Thiyagaraya Nagar
Chennai-600 017

2.POS HYUNDAI

Steel Manufacturing India Private Limited
Rep. By its Assistant General Manager
F-70, Sipcot Industrial Estate
Irungattukottai, Sriperumbudur
Kanchipuram District

3.The Presiding Officer

II Additional Labour Court
Chennai

... Respondents/Respondents.

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to
set aside the order in W.P.No.30841 of 2018 dated 10.10.2023.



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For Appellant : Mr.K.Sanjayan

For R1 & R2 : No appearance

R3 : Court.

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J U D G M E N T

Per J. NISHA BANU, J.

This writ appeal has been preferred by the appellant/employee as against the order passed in W.P.No.30841 of 2018 dated 10.10.2023, wherein, the learned Single Judge dismissed the writ petition filed by the employee.

2. The appellant/employee filed Claim Statement in I.D.No.16 of 2014 praying to set aside the termination order dated 27.03.2012 and to direct the respondents 1 and 2/Hyundai Management to reinstate the petitioner in service with full backwages, continuity of service and with all other attendant benefits.

3. The averments in the claim petition is that the petitioner who was appointed as an Operator and thereafter as Carpenter sustained grievous injuries on his left hand in the course of employment. After treatment, the petitioner was posted in the Packing Department, but was doing Crane Operator work, but he was experiencing much pain on his hand. The petitioner



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therefore requested the Management to post him in other departments, but the respondents refused the request. The respondents 1 and 2 by an order dated 27.03.2012 terminated the services of the petitioner on the ground he was absent from 09.11.2011 to 17.11.2011, from 21.11.2011 to 29.11.2011 and further from 06.01.2012 to 29.01.2012 and again 09.03.2012 to 14.03.2012 and from 20.03.2012 continuously absent.

4. The respondents filed counter and denied the averments in the claim petition, stating that when the petitioner met with an accident, the Management admitted him in Ramachandra Hospital and bore all the expenses of his treatment and paid compensation of Rs.47,512/-. Even after the accident, on humanitarian grounds, he was continued to be employed on same wages and he was assigned the work in packing section. However, his attendance, performance, behaviour to his work and towards his superiors invited the Management to take disciplinary action. The company gesture of sympathy for him, leave with wages for the period of his absence for treatment and compensation did not reap any good attitude but was expecting a non performance employment till his retirement. After putting on notice to the employee, the Management decided to put an end to the employment of the petitioner for a reasonable cause.



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5. Before the Labour court, the petitioner/employee was examined as W.W.1 and marked exhibits W.1 to W.27; on the side of Management, M.W.1 was examined and M.1 to M.18 were marked. The Labour court framed the following issues for determination:-

- (i) Whether without issuing charge memo, conducting domestic enquiry, the termination order issued is valid under law?
- (ii) Whether the claim of petitioner for an order of reinstatement with continuity of service and backwages with all other benefits shall be granted?

The Labour court, after discussing the issues in the light of the facts of the case and the provisions of Section 25F of the Industrial Disputes Act, held that the management has given sufficient opportunity to the petitioner to conduct himself regularly but it was not utilized by him; in such circumstances, the non issuing of charge memo, receiving explanation, proceeding with domestic enquiry and issuing 2nd show cause notice is no matter mandatory and it will not prejudice the right of the petitioner. The Labour court cited the decision of the Hon'ble Apex Court in the case of **M/S. L&T Komatsu Ltd vs N. Udayakumar [(2008) 1 SCC 224]** wherein it was held that the chronic unauthorized absenteeism is a gross indiscipline and a serious misconduct. The Labour court, dismissed the claim petition filed by the petitioner/employee by



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pointing out that punishment of termination should not be a wrong signal to the other employees but also jeopardize the discipline prevailing in the factory.

6. As against the dismissal of the claim petition, the petitioner/employee filed W.P.No.30841 of 2018 and the learned Single Judge, by order dated 10.10.2023, noted that the employee had admitted in his deposition before the Labour court that he absented himself and the management did not receive the leave applications. The learned Single Judge further noted that the petitioner has a habit of continuously remaining absent; his misconduct with superiors resulted in his suspension for three days. Based on the requisition letter submitted by the petitioner, warning letters were given to him on 14.12.2006 and 31.12.2011 (Ex.M.17 and Ex.M.18) and even after that the petitioner continued to be irregular to work; the petitioner had not also worked continuously for 240 days. In the aspect of termination of the petitioner without conducting any domestic enquiry is concerned, the learned Single Judge cited the decisions of Honourable Supreme Court in the subject and held that the management has adduced evidence to prove genuinity in holding the job for petitioner; the absence of petitioner started from 2006 and it continued till 2012 and for the six years, petitioner have not proved that he worked continuously for 240 days. The learned Single Judge, found that there was no infirmity in the



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order passed by the Labour court.

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7. In the present intra court appeal, the contention of the learned counsel for the appellant/employee is that the learned Single Judge ought to have taken note of the service rendered by the appellant and would have modified the punishment.

8. Under the facts and circumstances of the case, while looking into the past history of the appellant/employee, the order of dismissal of the writ petition passed by the learned Single Judge, is perfectly in order.

9. Habitual absenteeism is gross violation of discipline. In the present case on hand, there is no doubt that the appellant/employee is found of misconduct of habitual absenteeism, indiscipline towards superiors and irregular to work. The discretion of Labour court can be exercised under [Section 11-A](#) only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. The learned Single Judge



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appreciated the factual background of the case in the light of principles of the Honourable Supreme Court on the issue and come to the inevitable conclusion not to interfere with the Labour Court decision.

10. In our considered view, the order of the learned Single Judge does not call for interference. Accordingly, this Writ appeal is dismissed. No costs.

(J.N.B, J.) (P.D.B, J.)

04 .06.2024

Index : Yes /No

Speaking order : Yes /No

Neutral Citation Case : Yes /No

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To

1.The Presiding Officer
II Additional Labour Court
Chennai



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**J. NISHA BANU, J.
and
P.DHANABAL,J.**

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Judgment in
W.A.No.31 of 2024

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