

W.P. No.9624 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2025
PRONOUNCED ON : 02.04.2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 9624 of 2020
and
W.M.P.No.11755 of 2020

Ponnurangam,
S/o. Kannan,
No.22-A, Manakula Vinayagar Nagar,
Managalam, Villianur Post,
Puducherry. ...Petitioner

Vs.

The Plant Head,
MRF Limited, P.B.No.1,
Eripakkam, Nettapakkam Commune,
Puducherry. ...Respondent

Prayer in W.P.

To issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ, calling for the records relating to the order dated 09.10.2019 made in ID.(L) No.40 of 2015 on the file of the Industrial Tribunal, Puducherry and the order of termination dated 30.03.2012 passed by the respondent and quash both as illegal and consequently direct the respondent to reinstate the petitioner with all attendant and mandatory benefits with back wages and pass such



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further or other order as this Hon'ble Court may deem fit and proper in the circumstances of this case.

Prayer in W.M.P

To dispense with the production of the original termination order dated 30.03.2012 issued by the respondent, at present and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Appearance of Parties:

For Petitioner : Ms. V.Pavithra Devi, Advocate

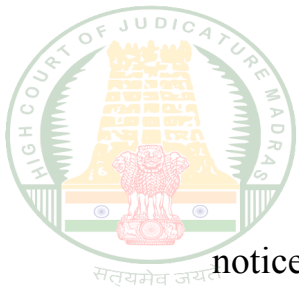
For Respondent : Mr.Ananda Krishnan Gopalan, Advocate
For M/s. Agam Legal, Advocates

J U D G M E N T

Heard.

2. The Petitioner is a workman. In the present writ petition, he challenges the award dated 09.10.2019 passed by the Industrial Tribunal, Puducherry in I.D. (L) No. 40 of 2015, whereby the Tribunal held that the Petitioner is not entitled to any relief and upheld the punishment of termination as proper and not disproportionate.

3. When the writ petition was taken up on 27.07.2020, this Court ordered notice to the Respondent Management. Pursuant to the said



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notice, the Respondent entered appearance through counsel and filed a counter affidavit dated 05.07.2022. The Petitioner's case is that he was appointed as a Machine Operator in the Respondent Company with effect from 15.07.1998 and had been discharging his duties diligently. However, owing to the nature of his work, he developed stomach pain, eye problems, and other health issues arising out of his employment. He underwent continuous treatment at the ESI Hospital in Puducherry, located approximately 20 kilometres from the Respondent Company.

4.In the meantime, the Respondent issued a charge memo dated 06.08.2011 (Ex.R17), alleging that the Petitioner had been absent from duty without leave or prior intimation since 30.07.2011. The charge memo further recorded that over the preceding five years, the Petitioner had remained unauthorisedly absent on multiple occasions—specifically, for 74 days in 2006, 20 days in 2007, 46 days in 2008, 44 days in 2009, 106 days in 2010, and 74 days in 2011 up to 31.07.2011. The show cause notice also referred to earlier warnings and suspensions issued to the Petitioner. It was alleged that the Petitioner was guilty of misconduct under Clauses 25.6, 25.12, and 25.67 of the Standing Orders. The



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annexure to the charge memo contained details regarding the prior suspensions.

5. The Petitioner submitted his explanation dated 19.08.2011 (Ex.R13), stating that he was suffering from various ailments, including back pain. Not satisfied with the explanation, the Respondent initiated a domestic enquiry and issued an enquiry notice dated 07.09.2011 (Ex.R14). The Enquiry Officer, after conducting the proceedings, submitted his report dated 24.10.2011 (Ex.R20), wherein he held that the Petitioner had failed to offer any satisfactory explanation for his absence and was clearly guilty of the charges of misconduct. During the enquiry, the Respondent marked 52 documents and examined one Yacoob Sheriff, Area In-charge, Tyre Building Section, as Management Witness No.1 (MW1). The Petitioner, however, did not step into the witness box.

6. Based on the findings of the Enquiry Officer, a second show cause notice dated 02.11.2011 (Ex.R38) was issued to the Petitioner, calling upon him to show cause as to why he should not be dismissed from service. In response, the Petitioner, by his letter dated 07.11.2011

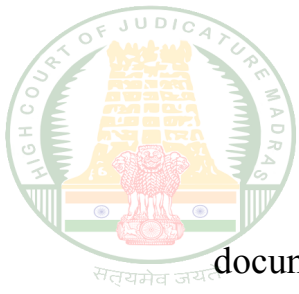


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(Ex.R16), stated that he had recovered from his ailments and requested an opportunity to resume duty. However, by order dated 30.03.2012 (Ex.R22), the Petitioner was dismissed from service. Aggrieved by the dismissal, the Petitioner raised an industrial dispute before the Government Labour Officer (Conciliation), Puducherry, by petition dated 10.02.2014 (Ex.R41). As no settlement could be arrived at, the Conciliation Officer issued a failure report dated 18.05.2015 (Ex.R42).

7. The Government of Puducherry, by order in G.O. Rt. No. 80/AIL/LAB/J/2015 dated 13.07.2015 (Ex.R43), in exercise of its powers under Section 10(1) of the Industrial Disputes Act, referred the dispute relating to the non-employment of the Petitioner for adjudication before the Industrial Tribunal, Puducherry. The Tribunal registered the dispute as I.D. (L) No. 40 of 2015 and issued notices to both parties. The Petitioner filed his claim statement dated 21.01.2016, and the Respondent filed their counter statement dated 27.06.2017. During the enquiry before the Tribunal, the Petitioner examined himself as PW1 and produced seven documents marked as Exs.P1 to P7. On behalf of the Management, Yacoob Sheriff was examined as RW1, and forty-three



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documents were filed, which were marked as Exs.R1 to R43.

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8.The Petitioner contended that the Enquiry Officer was an advocate under the control of the Management and had acted with bias by denying him the opportunity to be represented by a co-worker. However, the Industrial Tribunal, in paragraph 12 of the impugned award, held that the enquiry was conducted in a fair and proper manner and found no merit in the Petitioner's allegations. With regard to the charges levelled against the Petitioner, the Tribunal, in paragraph 15, assigned reasons and held that the charges stood proved. On the issue of proportionality of the punishment, the Tribunal concluded that the penalty of termination was not excessive and accordingly rejected the reference.

9.In the affidavit filed in support of the writ petition, the Petitioner reiterated the very same contentions that had already been rejected by the Industrial Tribunal. In the counter affidavit filed by the Respondent, it was pointed out that 43 documents had been marked during the enquiry, and that the Petitioner had effectively admitted to the charges levelled against him, further asserting that he was a habitual absentee.



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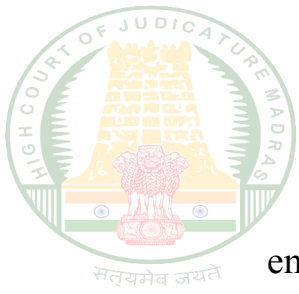
10.

The learned counsel for the Respondent also relied on two judgments of the Supreme Court. The first case cited was **Delhi Transport Corporation v. Sardar Singh**, reported in (2004) 7 SCC 574, with specific reliance placed on the following excerpts:

“When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.”

.....

“Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the



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employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para 4 of the Standing Order shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized.”

11. The second judgment relied upon is **L&T Komatsu Ltd. vs. N. Udayakumar**, reported in (2008) 1 SCC 224. In that case, the Supreme Court, after referring to several earlier decisions concerning habitual absenteeism and the limited scope of judicial interference with the punishment imposed, reversed the findings of both the Labour Court and the High Court in paragraph 12. The Court held as follows:—

“12. When the factual background is considered in the light of principles indicated above, the inevitable conclusion is that the Labour Court and the High Court were not justified in directing the reinstatement by interference with the order of termination. The orders are accordingly set aside. The Order of termination as passed by the concerned authority stands restored. The appeal is allowed with no orders as to costs.”

12. In view of the foregoing, no grounds have been made out to interfere with the impugned award. Accordingly, the writ petition in W.P. No. 9624 of 2020 stands dismissed. Consequently, W.M.P. No. 11755 of 2020 is also dismissed. There shall, however, be no order as to costs.



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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

The Industrial Tribunal
Puducherry



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 9624 of 2020
and
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