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W.P. No.34184 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2025

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.34184 of 2012

C. Elavazhagan S/o. A.M. Chockalingam .. Petitioner

vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai-600 104.

2. The Management,
Tamil Nadu Electricity Board,
802, Annal Salai, Chennai-600 002. .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records from the 1st respondent in I.D. No.438 of 2005 and to quash its impugned award made therein dated 12.09.2012 in so far as the 1st respondent has negatived the claim of the petitioner for reinstatement in service, with continuity of service, with back wages and with all other attendant and consequential benefits.

For Petitioner : Mr. K.M. Ramesh

For Respondents : R1 - Court.
Mr. David Sunder Singh,



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Standing Counsel for TNEB - R2.

ORDER

This Writ Petition has been filed by the petitioner as against the order passed by the II Additional Labour Court, Chennai in I.D. No.438 of 2005 dated 12.09.2012, wherein the Writ petitioner herein has raised an industrial dispute challenging the order of Management of removal of service. The Labour Court dismissed the said industrial dispute. Challenging the said order, now the present Writ petition is filed.

2. The short facts necessary to dispose the Writ petition are as follows:-

The petitioner joined in the 2nd respondent's Management as temporary Office Assistant on 11.08.1981 and his service was regularized on 30.06.1983 and thereafter, he got promotion and worked upto 10.05.1998. While so, due to his illness, he absented in his duty with effect from 11.05.1998 to 16.05.1998. The wife of the petitioner informed to the Management, about the absent of the petitioner, through telegram and thereafter, leave was extended for a further period of 15 days and medical certificate was also sent to the Management. While so, on 12.05.1999, the petitioner went to the office to join duty, but the 2nd respondent Management did not allow him to enter into



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the office. Thereafter, the 2nd respondent Management issued a Charge Memo dated 09.07.1999 stating that the petitioner was unauthorizedly absent for duty. When the petitioner repeatedly tried to join duty, the 2nd respondent Management did not give any permission to join duty. Thereafter, the Management again issued a Charge Memo dated 19.04.2003 and the petitioner was suspended from service temporarily on 08.02.2004. Thereafter, a domestic enquiry was conducted by the 2nd respondent Management and thereafter, an order of termination from service was passed on 08.02.2004. Therefore, the petitioner raised an industrial dispute before the Assistant Commissioner of Labour, Chennai and he submitted his failure report on 30.05.2005. Thereafter, the petitioner raised an industrial dispute before the Labour Court, Chennai, challenging the order of termination. The Labour Court, after hearing both sides, dismissed the industrial dispute. Challenging the said order, now the present Writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner was working as Record Clerk, Ponneri Revenue Branch. While so, from 11.05.1998 to 16.05.1998, the petitioner was unable to go for work due to his illness and the same was informed to the 2nd respondent Management through telegram and thereafter, the leave period was extended for a further period of 15 days and medical certificate was also produced



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before the 2nd respondent Management. While so, the Management has issued charge memo and the petitioner was suspended from service temporarily on 08.02.2004 and thereafter, domestic enquiry was conducted without following any principles of natural justice and thereafter, the 2nd respondent Management passed an order of termination of service of the petitioner on 08.02.2004. Therefore, the petitioner raised an industrial dispute. Before the Labour Court, the petitioner was examined as WW1 and marked Ex.W1 to Ex.W.38. On the side of the Management, MW1 was examined and Ex.M1 to Ex.M.9 were marked. The Labour Court, without considering the evidence of the petitioner and without considering that no opportunity was given to the petitioner in the disciplinary proceedings and also the punishment is disproportionate to the charges levelled against the petitioner, erroneously dismissed the industrial dispute, instead of ordering reinstatement with backwages, continuity of service and all other attendant benefits. Therefore, the order passed by the 2nd respondent is liable to be set aside.

4. The learned Standing counsel appearing for the 2nd respondent would submit that the petitioner was unauthorizedly absent from 11.05.1998 onwards and hence charge memo was issued to him and he has not submitted any reply to the charge memo. Thereafter an enquiry officer was appointed and enquiry



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was conducted. The petitioner also participated in the enquiry. After perusing the records, the enquiry officer submitted his findings that the charge of misconduct was proved. Therefore, the disciplinary authority passed an order by removing the petitioner from service. The charges are grave in nature. Therefore, the order passed by the Labour Court is in order. Therefore, the present Writ petition is liable to be dismissed.

5. Heard both sides and perused all the materials available on record.

6. In this case, there is no dispute that Writ petitioner worked under the 2nd respondent's Management for 17 years. While so, it is also an admitted fact that the petitioner had not attended duty from 11.05.1998 to 16.05.1998. According to the petitioner, due to his illness, he was unable to attend duty and the same was duly informed to the 2nd respondent's Management. According to the Management, the petitioner was unauthorizedly absent. Therefore, charges were framed and enquiry was conducted and in the enquiry proceedings, the petitioner also participated. Thereafter, the disciplinary authority passed an order by removing the petitioner from service. The Labour Court, in its order, referred findings that *it is established by the respondent Management that the petitioner was unauthorizedly absent for*



*duty from 11.05.1998 to 16.05.1998 till the date of removal from service on 08.02.2004. The petitioner also failed to establish the fact that he was absent for duty on medical ground and also failed to produce the medical documents and referred judgments of **Bombay High Court reported in 2011 (8) SLR (Bom)** and judgment of **Punjab and Haryana High Court reported in 2012 SLR pg 480** and held that the petitioner was unauthorizedly absent and therefore, he deserves for punishment of dismissal from service.*

7. This Court perused the entire records. In this case, according to the petitioner, he was absented due to his illness and he also submitted Ex.W.1 leave letter dated 26.05.1998 with medical certificate and thereafter, copy of medical certificate for 7 months/Ex.W.6 dated 11.05.1999. However, the charges are that from 11.05.1998 onwards, without any valid reasons and without obtaining any prior permission, he absented for duty. Thereafter, one Murugammal, Wife of the petitioner, sent a leave letter for 15 days from 11.05.1998. While so, he ought to have reported duty on 27.05.1998. But without joining duty on that date, he absented for duty till 09.06.1998. Thereafter, on 10.07.1998, he filed a medical certificate. From 10.06.1998 to 09.07.1998, without submitting any leave application, he was unauthorizedly absent. Therefore, he was unauthorizedly absent from 27.05.1998 onwards.



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Even after receipt of notice from the Management, no reply was submitted by the delinquent and thereafter, enquiry officer was appointed and enquiry was conducted. In the enquiry proceedings also, the petitioner participated and thereafter, termination order was passed by the disciplinary authority. Therefore, the petitioner's unauthorized absence was proved by the 2nd respondent Management.

8. However, punishment was awarded by the Management is not proportionate to the charges levelled against the petitioner. That was the first time, the petitioner was unauthorizedly absent, that too he already filed leave application for some period and thereafter, he has not submitted any leave application. According to the petitioner, after some time, he went to join duty, but the 2nd respondent Management did not allow him to join duty. Therefore, the punishment awarded by the 2nd respondent Management is disproportionate, thereby award of dismissal from service is to be set aside. The Labour Court failed to consider that after accepting the leave application for some period and only for some period, the petitioner failed to produce leave application and that alone is not sufficient to award major punishment of removal from service. Therefore, the order passed by the Labour Court by confirming the order of disciplinary authority is liable to be set aside. Further,



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the petitioner worked in the 2nd respondent Management for 20 years. Since the petitioner attained the age of superannuation, it is not possible for reinstatement. However, considering the long service rendered by the petitioner, punishment of removal from service is too harsh, this Court is inclined to modify the order of the Disciplinary Authority, Management, that the petitioner is entitled to continuity of service without any backwages for the purpose of calculating retirement benefits.

9. Accordingly, this Writ petition is partly allowed. The order passed by the Labour Court is set aside and the petitioner is entitled to continuity of service without any backwages for the purpose of calculating retirement benefits including pension.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To

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