

(2012) 12 MAD CK 0118
In the Madras High Court
Case No : Writ Petition No. 24162 of 2003

A. Aruldoss

APPELLANT

Vs

General Manager, Southern Railway and Others

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 2 LLJ 304

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : P. Rajendran, for the Appellant; J. Hari Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The prayer in the writ petition is for issuance of a writ of certiorarified mandamus, to quash the award passed by the Central Government Industrial Tribunal cum Labour Court, (hereinafter referred to as the "Labour Court") in I.D. No. 669 of 2001, dated 6.3.2003 and for a consequential direction to the Respondents 1 and 2 to reinstate the petitioner in service with all attendant benefits. The facts as they emerge from the record fall within a very narrow compass. The petitioner was initially engaged by the railways as casual labour on daily wages from 1980. He was granted temporary status from August 1980 and was subsequently, confirmed as Khalasi with effect from 1.10.1991. While working under the control of the Assistant Mechanical Engineer, Basin Bridge, the petitioner absented himself from duty unauthorisedly from 6.7.1995 to 7.11.1995, without proper authority and without adhering to Railway Medical Rules. A charge sheet dated 29.12.1995, was issued to the petitioner calling upon him to submit his explanation for the said unauthorised absence. The petitioner by his explanation dated 19.1.1996, stated that he was suffering from severe jaundice and fever and therefore, he could not attend duty and requested to treat the period of unauthorised absent as leave due on his account. The

petitioner enclosed a medical certificate issued by the Private Medical Practitioner. The petitioner was referred to the Railway Medical Officer, who issued a fitness certificate dated 8.11.1995, but declared the period of absence not covered under sick leave as per Railway Medical Leave Rules. The said order was passed under Rule 521 of the Railway Establishment Code, Vol. I, which deals with Railway Medical Attendance Leave Rules. The Railway Administration was not satisfied with the explanation given by the petitioner and enquiry was conducted and opportunity was given to the petitioner to defend himself. However, the communication sent to the petitioner from the enquiry officer has returned with the postal endorsement "addressee not found" and subsequent communication sent, was also returned with the same postal endorsement. Thereafter, the enquiry advice was pasted in the notice board and another letter was handed over to the petitioner in person under acknowledgment and the petitioner did not appear. Subsequently, the enquiry was adjourned and the petitioner appeared in the enquiry and admitted the charges levelled against him and the enquiry officer submitted a report accordingly. The disciplinary authority accepted the report and removed the petitioner from service with effect from 28.8.1997. The appellate authority as well as revisional authority confirmed the said punishment. The petitioner raised an industrial dispute in I.D. No. 699 of 2001, challenging the order of dismissal from service.

2. Before the Labour Court, the petitioner examined himself as W.W. 1, but no documents were marked. On the side of the management, there was no oral evidence, but eight documents were marked as Exhibits M-1 to M-8. The Labour Court then decided the question as to whether the punishment of dismissal passed against the petitioner was justified. After considering the entire facts as well as taking note of the fact that the petitioner was chronic absentee, dismissed the claim petition. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner confined his argument only as regards the proportionality of penalty and submitted that for the charge of unauthorised absence, the petitioner should not have been removed from service.

4. Per contra, the learned counsel appearing for the Railways submitted that the petitioner was a chronic absentee and it was not a solitary instance, but several charge memos were issued to the petitioner and in all those charge memos, punishment was imposed, yet the petitioner did not mend his ways and therefore after considering all the facts, the petitioner was dismissed from service and the Labour Court after properly appreciating the oral and documentary evidence, dismissed the claim petition. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in State of Rajasthan and Another Vs. Mohammed Ayub Naz,

5. I have considered the submissions on either side and perused the materials available on record.

6. It is a settled legal position that this Court while exercising jurisdiction under Article 226 of the Constitution while considering the correctness of an award passed by the Labour Court will not act as an appellate Court over the said award and re-appreciate the factual findings recorded by the Labour Court. All that is required to be seen is as to whether there is any perversity or irrationality in the award. Admittedly, the petitioner has not challenged the findings of the Labour Court on any technical grounds or pointed out any perversity or irrationality. The only contention raised by the petitioner is with regard to proportionality of the punishment imposed.

7. It is true under normal circumstances in case of unauthorised absence, the punishment of dismissal is not imposed. However, the case on hand is different, since it has been established that the petitioner was a chronic absentee. In the domestic enquiry conducted, the petitioner admitted the charge of unauthorised absence as contained in the charge memo dated 29.12.1995. That apart, before the Labour Court the petitioner's past conduct was also considered. It is seen from counter statement filed before the Labour Court by the Railways that the petitioner has been imposed with several punishments for his unauthorised absence and it would be worthwhile to take note of the averments made in the counter statement, which is extracted hereinbelow:

16. It is submitted that the petitioner was a regular absentee and had the habit of taking leave without observing rules. A casual glance of his service register will reveal the fact about his past record and that he was a chronic absentee and was punished several times for his act of unauthorised absence and staying away from work, without adhering Railway Leave Rules. His one set of privilege pass was withheld during the year 1989 for unauthorised absence of 39 days. Further, he was punished with withholding of increment for a period of twelve months during the year 1991 for his unauthorised of about 40 days and his increment was postponed by 12 months, which is normally due on 1.10.1990.

17. Further, his pay was reduced from Rs. 898/- to Rs. 750/- in the time scale of pay of Rs. 750-940 for a period of 24 months with effect from 13.12.1992 for his unauthorised absence of 73 days. Further, his one set of privilege pass was withheld as a punishment for his unauthorised absence of 32 days during 1992.

18. Further, his annual increment from Rs. 926/- to Rs. 940/- in scale Rs. 750-940 was withheld for a period of six months which was due on normal course on 1.10.1995, as a punishment for having absented from duty unauthorisedly for a total period of 87 days.

19. Further, the petitioner's pay was reduced to the scale of Rs. 750 in scale Rs. 750-940 for a period of 24 months from 13.12.1992 for a period of 24 months was further extended for a period of 6 months as a punishment for having absented from duty for 134 days.

20. It is further submitted that the petitioner's pay which was already reduced to the lowest stage at Rs. 750/- in scale Rs. 750-940/- for a period of 30 months

with effect from 13.12.1992 was further extended for a period of 6 months, since the petitioner absented from duty for 53 days from 27.12.1991 to 17.2.1992, without following Leave Rules.

21. It is further submitted that his pay which was already reduced to the lowest stage for a period of 36 months with effect from 13.12.1992 was further extended for a period of twelve months for having absented from duty from 25.11.1994 to 4.1.1995.

22. It is further submitted the petitioner who was punished on so many occasions for the unauthorised absence had never changed his caliber and nature and continued to be absent without showing any improvement, which clearly proves beyond doubt that he never bothered nor cared for his job and duty and his family as well. Had he cared for his family and children, he would have changed his attitude and would have attended duty regularly.

23. Railways which is an public transport department, cannot rely upon a person, who is a chronic absentee for duty, which will affect the movement of passenger trains and goods train, thereby causing loss to Railway revenue and thereby attracting public criticism.

8. From the above facts, it is evidently clear that the petitioner inspite of having been imposed punishment for unauthorised absence did not mend his ways, but continued to repeat the same delinquency. As held by the Hon'ble Supreme Court in the case of State of Rajasthan and Another v. Mohd. Ayub Naz (supra), absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services.

9. In the absence of any material produced before the Labour Court to establish that the punishment is shockingly disproportionate, the Labour Court rightly refused to exercise its discretion u/s 11-A of the I.D. Act. The disciplinary authority as well as appellate authority are vested with discretion to impose proper punishment keeping in view the magnitude or gravity of misconduct and while exercising the powers of review, Courts cannot normally substitute its own conclusion on the penalty imposed unless its shocks the conscience of the Court. However, in the instant case, what is impugned in this writ petition is an award of the Labour Court and the Labour Court after considering the entire facts did not find the punishment to be disproportionate rather commensurate with the repeated misconduct committed by the petitioner. The Labour Court has given reasons in support of the conclusion, which are neither perverse or illegal. Therefore, this Court does not propose to interfere with the impugned award. In the result, the writ petition being devoid of merits, is dismissed. No costs. Consequently, connected miscellaneous petition is closed.