

(2004) 03 MAD CK 0008
In the Madras High Court
Case No : Writ Petition No. 13535 of 1997

Subramaniyan S.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 LLJ 352

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; V.R. Kamalanathan, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—The petitioner was a watchman in the respondent-Corporation. He was terminated from service on the ground of

absence without leave. Therefore he raised an industrial dispute. The Labour Court found that the termination was illegal, but came to the

conclusion that it is not in the interest of the respondent-Corporation to continue to employ the petitioner and therefore, awarded a sum of Rs.

16,000 as compensation and awarded Rs. 20,000 towards gratuity. Against this, the present writ petition has been filed.

2. The learned counsel for the petitioner would submit that the Labour Court was not justified in not awarding reinstatement. He would also submit

that the conclusion of the Labour Court was coloured by certain misconceptions, which were not justified. The Labour Court appeared to have the

impression that the petitioner though residing at Kangeyam had deliberately gone to Coimbatore, to send a telegram indicating his illness, obtaining

a medical certificate from a doctor at Coimbatore. According to the learned counsel, this impression is totally wrong, since even as per the records

the petitioner's address is only at Coimbatore. He had always been residing at Coimbatore and had gone to Kangeyam, the place where he

worked for the respondent-Corporation everyday. On July 24, 1989, when he was assigned night-duty he could not attend to his work because of

high temperature and therefore, he sent a telegram from Coimbatore, which is evidenced by Exhibit M3 telegram receipt to show that he was

suffering from viral hepatitis. The Labour Court also finds that the absence for two days on July 24, 1989 and July 25, 1989, and the reasons

therefore are proved by the telegram. Thereafter, the petitioner had sent a telegram (sic) for leave to the Branch Manager, Kangeyam, by ordinary

post.

3. The Labour Court appears to think that a person who takes the precaution of taking a copy of the telegram receipt is not likely to send his leave

on medical grounds by ordinary post. Such presumptions have no basis. On August 18, 1989, the petitioner was issued a chargesheet. In his

explanation, dated September 7, 1989, the petitioner had enclosed the xerox copy of the telegram receipt, the leave letters and the medical

certificates. This explanation is marked as Exhibit M3. On January 30, 1990, there was an enquiry. Before that, the petitioner had addressed a

letter to the respondent for permission to be restored to duty. This is, dated March 20, 1990. On April 1, 1990, he was permitted to join duty

without prejudice to the disciplinary proceedings. It appears that the petitioner continued to serve the respondent until he was dismissed on

October 27, 1990. The petitioner is one among the three watchmen of the respondent-corporation. There are three shifts. In fact, before the

Labour Court neither party adduced oral evidence.

4. The petitioner did not mark any exhibits. It is only the respondent-Corporation which marked eight documents. Therefore, all the documents,

which were available with the petitioner had been marked during the enquiry. They were produced by the management before the Labour Court.

On November 24, 1989, the doctor at Coimbatore had certified that the petitioner was suffering from viral hepatitis and needs bed rest and

therefore, he may be granted leave of two months from July 24, 1989 onwards.

The telegram receipt which has already been referred to was sent along with a letter, dated July 25, 1989, and medical certificates marked as Exhibits M3. In the letter it was stated that on July 24, 1989, the petitioner had sent a telegram seeking two days leave on medical grounds and that, since he needs two months leave as per the medical certificate referred to above, he would request to sanction the two month's leave.

5. On August 3, 1989, the Branch Manager had addressed the letter to (sic) the General Manager referring to the unauthorised absence of the petitioner from July 25, 1989. On August 18, 1989, the charge memo is issued and it is relevant to note that this is addressed to the petitioner at his Coimbatore address. On September 22, 1989, the same doctor, who had issued the earlier medical certificate had after personal examination of the petitioner certified that the petitioner needs to stay away from duty of seventy five days from September 22, 1989 for restoration of his health. On September 7, 1989, the petitioner had addressed a letter to the Assistant Manager (Law) of the respondent-Corporation, setting out the fact that he had a telegram seeking leave for two days and that, he had sent by ordinary post on July 25, 1989, itself certificate application. Therefore, he had denied in this letter that he had not applied for leave or that he had stayed away from work without informing the respondent.

This letter had been marked as Exhibit M3.

6. The petitioner has also produced the certified copy of the telegram issued by the Telegraph Department to how that a telegram was sent on July 4, 1989, at Coimbatore, and delivered at Kangeyam to the respondent-Corporation on that day itself. On September 28, 1989, the petitioner had addressed letter to the Assistant Manager of the respondent-Corporation stating that he had given his explanation on September 7, 1989, and that, since he has totally been restored to health he would request to be permitted to join duty. This was accompanied by a fitness certificate by the same doctor certifying that the petitioner is fit to join service. On January 18, 1990, the petitioner was issued a notice calling upon him to attend the enquiry, which is fixed on January 30, 1990. The enquiry was conducted. On the enquiry, the witness has been examined on behalf of the management had denied the receipt of the telegram. This must be seen in the context of the certificate given by the Telegraph Department that the

telegram was delivered at the Jeeva Transport Corporation at Kangeyam. The enquiry officer had concluded that the telegram, dated July 24,

1989, was not sent, because, the petitioner had not produced the documents from the Telegraph Department. It is difficult to support its conclusion

when admittedly the petitioner has produced the telegram receipt before the enquiry officer. There is no reason to conclude that the telegram

receipt is a forged one. In fact, that is not the conclusion of the enquiry officer. The enquiry officer poses the question to whom the telegram would

have been sent. The fact that the telegram was received is sufficient to show that the petitioner had applied for leave and indicated his illness. It is

not for the petitioner to prove who received the telegram on behalf of the respondent and it ought to have been established by the management.

7. The enquiry officer has also come to the conclusion that it is not possible to accept that the leave letter would have been sent by ordinary post.

When the second show-cause notice had been issued, the petitioner had produced the certificate from the telegraph department to show that the

telegram had been served to the respondent-Corporation. In spite of this the disciplinary authority accepted the enquiry officer's findings and

terminated the services of the petitioner. The reason why the enquiry officer's findings are dealt with in detail in this order, is because the same is

almost identically dealt with by the Labour Court.

8. The Labour Court came to the conclusion that it is not natural for a person, who preserves the xerox copy of the telegram to send leave letters

by ordinary posts. If on the face of the materials on record, it is shown that the petitioner had sent leave letters and had also obtained medical

certificate from the doctor then there is no reason to disbelieve the case of the petitioner.

9. The learned counsel for the respondent would urge that on the basis of the reasoning of the Labour Court, the Labour Court ought to have

found that termination should have been confirmed. Therefore, even the award of compensation is excessive in a case of a watchman who has

failed to discharge his duty. The materials on record do not show that the respondent had stayed away from duty without obtaining leave. The

allegation that he was absent from duty without obtaining medical certificate or without obtaining permission cannot be sustained. Therefore, the

Labour Court rightly held that termination is illegal.

10. Next we come to the question of punishment. The Labour Court after setting aside the order of termination concluded that the interest of the

respondent would suffer if persons such as the petitioner are retained as watchman. According to the Labour Court the petitioner will not enjoy the

confidence of the respondent and the interests of the respondent would suffer if the petitioner is reinstated. There is no justification for this

conclusion. The moment the petitioner found that he was not well, he sent a telegram and at every stage the petitioner has informed the respondent

about his illness and only then stayed away from work. The medical certificate also indicates unfitness.

11. On November 28, 1989, the petitioner had sent Exhibit M6 seeking to be restored to duty. This has not been denied by the respondent. There

is nothing to show that Exhibit M6 was not received. Indeed it was marked on behalf of the management. Therefore, the submissions of the learned

counsel for the respondent that atleast from November 28, 1989 to April 2, 1990 there is no explanation for his absence from duty, is not correct.

There is nothing to show that the petitioner conducted himself in such a way as to lose the confidence of the petitioner.

12. The learned counsel for the respondent would submit that though the award was passed in 1994, the writ petition has been filed only in 1997

and that too with a delay. Once the petitioner is found to be entitled to reinstatement it is for the respondent to show how he has been prejudiced

by any delay that has been caused by the petitioner. In this case, the respondent has not even chosen to file an affidavit and therefore, the same is

not dealt with.

13. In these circumstances, when the order of termination has been rightly held to be illegal, the order of reinstatement ought to have followed. The

writ petition is allowed. The petitioner shall be reinstated together with back-wages less the amount that has been received by him. No costs.