
(2015) 03 MAD CK 0142
In the Madras High Court
Case No : Writ Petition (MD) No. 5632 of 2008

Vinothraj

APPELLANT

Vs

Bharath Heavy Electricals Limited and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 11-A

Citation : (2015) 146 FLR 586 : (2015) LLR 718

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : S. Anwar Samun for G.R. Swaminathan, for the Appellant; R. Vijayakumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V.M. Velumani, J.—This Writ Petition has been filed by the petitioner to quash the impugned order passed by the second respondent in I.D. No.12 of 2004, dated 06.12.2006 and consequently, direct the first respondent to reinstate the petitioner.

2. The case of the petitioner is that he joined the service of the first respondent as Semi- skilled Worker in the year 1977. He became an unskilled Worker on 18.07.1983 stating that he was unauthorisedly absent for 111 days. The petitioner has given medical certificate for the entire period. But, the first respondent regularised only 33 days and treated the remaining 78 days as unauthorised absence and domestic enquiry was conducted. The petitioner was found guilty and by the order, dated 04.07.1997, he was dismissed from service w.e.f. 05.07.1997. Aggrieved by the same, the petitioner has filed an appeal before the appellate authority and the same was dismissed. Hence, the petitioner raised an Industrial Dispute before the second respondent in I.D. No.12 of 2004. The second respondent considering all the materials on record and evidence, held that the charges levelled against the petitioner were proved. The second respondent accepted the contentions of the first respondent that because of the

unauthorised absence of the petitioner, the production of the first respondent was affected.

3. For the above reasons, the second respondent dismissed the Industrial Dispute raised by the petitioner.

4. Against the order of dismissal, the petitioner has filed the present writ petition challenging the award of the Labour Court, in I.D. No.12 of 2004, dated 06.12.2006.

5. Learned counsel for the petitioner submitted that the punishment of dismissal is disproportionate to the charges levelled against the petitioner. The petitioner has submitted Medical Certificate for the entire period of his absence. The first respondent without considering the said Medical Certificate for the entire period, regularised only 33 days and treated the remaining period of 78 days as unauthorised absence. Even if 78 days is treated as unauthorised absence, the order of dismissal passed by the first respondent, which was confirmed by the second respondent, must be set aside.

6. Per contra, the learned counsel for the first respondent contended that the petitioner is in the habit of absenting himself without any prior intimation and this has affected the morale of workers and affected the production of the first respondent. The first respondent has conducted a fair and proper enquiry and the petitioner fully participated in the enquiry. The punishment of dismissal is proportionate to misconduct. There is no error in the award of the second respondent warranting interference by this Court and prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the parties.

8. I have perused the materials on record and considered the arguments of the learned counsel for the parties.

9. The first respondent initiated disciplinary proceedings and proved the charges levelled against the petitioner. The second respondent has held that the domestic enquiry conducted by the first respondent is fair and proper and the first respondent proved the charges levelled against the petitioner. The second respondent elaborately dealt with this aspect in the award. According to the first respondent, the petitioner was unauthorisedly absented himself for 111 days and the first respondent regularised only 33 days and treated the remaining 78 days as unauthorised absence. The punishment of dismissal is definitely disproportionate to the misconduct of 78 days of unauthorised absence. The second respondent has not properly exercised his discretion under Section 11-A of the Industrial Disputes Act. The petitioner has worked for 20 years i.e., from 1977 to 1997 and he was dismissed from service on 04.07.1997. A dismissal of a person, who had put in 20 years of service, for unauthorised absence of 78 days cannot be termed as proportionate to the said misconduct.

10. In the result, the award of the Labour Court is set aside. At the time of filing

the writ petition, the petitioner was aged about 55 years and now, he could have attained the age of superannuation. Therefore, he will not be entitled for reinstatement as claimed in the Industrial Dispute. But, he is entitled to monetary compensation. The petitioner has worked for 20 years from 1977 to 1997 and his monthly salary was Rs. 2,924.11/- as per Ex.M12. He would have worked for another 13 years from 1997. Taking into consideration his length of service and further service upto age of 58 years, it will be just and proper to award compensation of Rs.3,00,000/- to the petitioner. The first respondent is directed to pay the said amount within eight weeks from the date of receipt of a copy of this order. The writ petition is accordingly disposed of. No costs.