Madras High Court
P.Venkatesan vs The Management on 23 February, 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.02.2012
CORAM:
THE HON BLE MR. JUSTICE K.CHANDRU
W.P.No.34004 of 2007
P.Venkatesan .. Petitioner
Vs.

1. The Management
Samco Metals and Alloys Limited
Kanniyambadi
Vellore District
632 102

2. The Presiding Officer
Labour Court
Vellore

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India praying for a Writ of C
portion of denying employment and other benefits and consequently direct the 1st respondent Mar

For Petitioner :: Mr.E.Srinivasan

For Respondent-1 :: Ms.G.Geethanjalai
for M/s.Sarvabhauman Associates

O R D E R

The Writ Petition is filed by the workman challenging an award passed by the 2nd respondent Labour Court in I.D.No.277 of 2010 dated 19.5.2007. By the impugned award, the Labour Court awarded a sum of Rs.20,000/- as compensation in lieu of his reinstatement and declined to grant any other relief.

2. The Writ Petition was admitted by this Court on 20.10.2007. Since the petitioner has not filed all the documents available before the Labour Court, this Court summoned the original records from the Labour Court. Accordingly, the Registry has summoned the records and circulated for perusal by this Court. On notice from this Court, the 1st respondent entered appearance through counsel and also filed a typed set containing the documents to show that the management has been never unfair with the petitioner.

3. It is seen from the records that the petitioner joined the 1st respondent management on 27.4.1994. The petitioner was suffering due to chronic illness and for sometimes he had unauthorisedly absented from duty. Subsequently with effect from 15.6.1998 he did not report for duty despite the management sent reminding letters on 26.6.1998.

4. Therefore, the charge memo was issued on 17.11.1998. Since no worthwhile explanation was forthcoming, an enquiry was ordered to be conducted by the management. The petitioner instead of attending the enquiry, wrote to the management that he was not in a position to travel to the enquiry at the Headquarters, since he did not have finance. Therefore, the management sent Rs.25/- towards travelling expenses for attending the enquiry. Even though the petitioner was receipt of the money, instead of attending the enquiry, he wrote that a further amount of Rs.500/- may be paid to him towards his meeting other expenditure by a letter dated 18.6.1999. The enquiry was adjourned on several dates, namely 10.7.1999, 10.8.1999, 28.8.1999, and 18.9.1999. Thereafter as the petitioner did not turn for for the enquiry, exparte minute was recorded and the enquiry officer gave his report dated 6.10.1999.

5. Based upon the report, the 1st respondent management issued a second show cause notice on 29.11.1999. The said document is marked by the petitioner himself as Ex.W.29. In that, the management after holding him guilty of the misconduct requested him to join duty as a last chance. It was thereafter the parties are at variance on the said issue. While the petitioner stated that he went to report for work but he was prevented from entering into the management premises, the management in the termination order dated 17.12.1999 took the stand that he never reported to work in the company on the specified dates. In any event, he was terminated from service by order dated 17.12.1999 and along with the termination order, one month pay was also issued to him.

6. The petitioner aggrieved by the order of termination raised an industrial dispute before the Government Labour Officer at Vellore. The Conciliation Officer, as he could not bring about mediation between the parties, gave a failure report dated 10.5.2000. On the strength of the failure report, the petitioner filed a claim statement before the 2nd respondent Labour Court dated 29.6.2000. The said claim statement was registered as I.D.No.277 of 2000 and notice was issued to the management. The management filed a counter statement dated 4.11.2000.

7. Before the Labour Court, the workman filed the entire enquiry proceedings and other documents, which were marked as Ex.W.1 to W.47. On the side of the management, 9 documents were filed and marked as Ex.M.1 to Ex.M.9. Ex.M.6 to Ex.M.9 are all Attendance Registers for the relevant period to show that the petitioner was absent and Ex.M.4 was the warning letter given to him for his previous misconduct.

8. The Labour Court on the basis of these materials came to the conclusion that the enquiry held against the petitioner was fair and proper. Thereafter, on the basis of the recorded evidence, the Labour Court recorded the finding that the unauthorised absence of the petitioner was proved in the enquiry. Though the petitioner was not able to discharge the work assigned to him and he was seeking for light work, the management could not find out any such light work. Therefore, on that context, the Labour Court held that it is not a fit case where any relief of reinstatement can be given

to him for unauthorised absence. Therefore, instead of reinstating him, the Labour Court computed the relief of reinstatement into one of compensation and directed the management to pay a sum of Rs.20,000/-, in lieu of all his claims. The amount of Rs.20,000/- reflects one year wages of the workman. Though the management offered the cheque, the workman refused to receive the same and filed the present Writ Petition as noted already.

9. The contention raised by the petitioner was that under Section 11-A of the Industrial Disputes Act, the Labour Court did not consider the grant of lesser punishment. The Labour Court also failed to note that the petitioner was suffering from illness due to frequent accident and hazardous nature of work. Therefore, the compensation ordered was not adequate. The Labour Court's finding that he has been receiving salary of Rs.830/- per month was erroneous and he has been actually drawing salary of Rs.1,624/- as last drawn salary.

10. In support of the contention, the learned counsel for the petitioner placed reliance upon the judgment of the Supreme Court in Shri Bhagwan Lal Arya vs. Commissioner of Police, Delhi and others reported in (2004) 4 SCC 560 for contending that absence for more than two months on medical grounds with sanction of leave cannot be regarded as a grave misconduct or continued misconduct. In that case, the matter was filed directly before the court, since the workman concerned was a Policeman in that case. The Supreme Court after referring to Delhi Police (Punishment and Appeal) Rules, 1980 and also considering the power of the Court under Article 226 of the Constitution to interfere with such penalty found that the penalty imposed on the Policeman was disproportionate. As a matter of fact, the court found that the Policeman in that case has made application for leave supported by medical certificates and therefore, it was contended that it cannot be held to be a willful absence without any information to the competent authority and it cannot be termed as grave misconduct. It is not clear as to how the said judgment will have any assistance to the petitioner.

11. The learned counsel for the petitioner placed reliance upon the judgment of the Supreme Court in Jagdish Singh v. Punjab Engineering College and others reported in AIR 2009 SC 2458 for contending that remaining absence without leave for 15 days on four occasions during two months especially when an employee was having good record and the absenteeism was necessitated due to settle the family problems between his daughters and her in-laws, was not a case of habitual absenteeism. Therefore, the imposition of dismissal was not valid. Even that case did not arise within any provisions of the Industrial Disputes Act and it is directly filed as Writ Petition before the Punjab and Haryana High Court and appeal was rejected, confirming the order of the High Court.

12. The learned counsel for the petitioner also placed reliance of the Division Bench judgment of this court in Tamil Nadu State Transport Corporation (Madurai) Limited, rep.by its Managing Director, v. the Presiding Officer, Industrial Tribunal, Madras and another. In that case, the authority constituted under Section 33(2)(b) of the Industrial Disputes Act rejected the approval sought for by the management in imposing the punishment of dismissal against the Conductor, as it was disproportionate and therefore held that the imposition of dismissal was not valid. That order was confirmed by a learned Single Judge. The Division Bench merely upheld the order of the learned single Judge, confirming the order of refusing to grant approval. The Division Bench also noted that

the Medical Certificate was filed only before the Tribunal. However, they declined to interfere with the penalty.

13. Contrary to the facts set out therein, in the present case, the management has given a long rope to the petitioner. In fact, Ex.M.1 to Ex.M.4 were all the memos given to the workman and also relating to the warning given to the workman. Further, in the present case, despite the management was willing to send money as travelling allowance, the petitioner did not choose to attend the enquiry but accepted the amount sent through money order by the management. Though he contended that he was afraid to go to the Headquarters, that cannot be a reason to refuse to attend the enquiry. Even during the second show cause notice proposing to impose the penalty, the management offered him employment but the workman contended that despite his assurance before the authority, he was not permitted to work, which was also denied by the management in the final order.

14. In any event, it is the admission of the petitioner that he was unable to discharge the work done by him earlier due to the accident took place earlier. In such circumstances, the request of the petitioner to offer him light work as a matter of right cannot be considered.

15. Under the provisions of Central Act, viz., Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, more particularly under Section 47(1), an employer cannot discharge a workman if he has acquired disability during the course of his employment. Unfortunately, the said provision is not made applicable to private sector. The Supreme Court had an occasion to consider the said issue in the case in Dalco Engineering Private Limited vs. Satish Prahakar Padhye reported in (2010) 4 SCC 378. In paragraphs 24 to 26, 30 and 31, it was observed as follows:

"24. There is an indication in the definition of establishment itself, which clearly establishes that all companies incorporated under the Companies Act are not establishments. The enumeration of establishments in the definition of establishment specifically includes a government company as defined in Section 617 of the Companies Act, 1956 . This shows that the legislature took pains to include in the definition of establishment only one category of companies incorporated under the Companies Act, that is, the government companies as defined in Section 617 of the Companies Act. If, as contended by the employee, all companies incorporated under the Companies Act are to be considered as establishments for the purposes of Section 2(k), the definition would have simply and clearly stated that a company incorporated or registered under the Companies Act, 1956 which would have included a government company defined under Section 617 of the Companies Act, 1956. The inclusion of only a specific category of companies incorporated under the Companies Act, 1956 within the definition of establishment necessarily and impliedly excludes all other types of companies registered under the Companies Act, 1956 from the definition of establishment .

25. It is clear that the legislative intent was to apply Section 47 of the Act only to such establishments as were specifically defined as establishment under Section 2(k) of the Act and not to other establishments. The legislative intent was to define establishment so as to be

synonymous with the definition of State under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than government companies) are clearly excluded from the establishments to which Section 47 of the Act will apply.

26. There is yet another indication in Section 47 that private employers are excluded. The caption/marginal note of Section 47 describes the purport of the section as non-discrimination in government employment. The word government is used in the caption broadly to refer to State as defined in Article 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as non-discrimination in employment and sub-section (1) of Section 47 would have simply used the word any employer instead of using the word establishment and then taking care to define the word establishment . The non-use of the words any employer and any employment and specific use of the words government employment and establishment (as defined), demonstrates the clear legislative intent to apply the provisions of Section 47 only to employment under the State and not to employment under others. While the marginal note may not control the meaning of the body of the section, it usually gives a safe indication of the purport of the section to the extent possible. Be that as it may.

30. The learned counsel next relied upon the following observations in Kunal Singh v. Union of India, where this Court, referring to the very section under consideration, observed thus: (SCC pp. 529-30, para 9) 9. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. The language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

31. We agree that the socio-economic legislations should be interpreted liberally. It is also true that courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of State under Article 12). Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself."

16. In the absence of legal and enforceable right to demand a different work from the employer and the employer not having any obligation to provide any such light work, the only other option is whether the employer has condoned the absence in this case. On the contrary, the employer did not condone the absence and the Labour Court agreed with the action taken by the employer. Under

Section 11-A of the Industrial Disputes Act, it is not in every case there is a requirement of modifying the penalty and convert the major penalty into one of minor penalty in case of proved charges. In fact, Section 11-A of the Act enables the Labour Court to modify the punishment into one of compensation in a given case. Considering the facts and circumstances of the case, the Labour Court converted the reinstatement into one of compensation.

17. The other alternate argument that the amount of compensation was not adequate, has also to be considered in the light of the amount ordered by the Labour Court. In the present case, admittedly the workman was employed for a period of three years and compensation ordered by the Labour Court on the basis of last drawn wages drawn by the workman worked out to nearly one year wages. In more than one occasion, the Supreme Court categorically held that in such cases, grant of one year salary is adequate.

18. Under the circumstances, this Court is not inclined to interfere with the impugned award passed by the Labour Court and the Writ Petition deserves to be dismissed. Since the workman did not receive the amount ordered by the Labour Court and returned the cheque, when the matter came up on 9.2.2012, this Court directed the management to produce the cheque representing the amount of Rs.20,000/- together with the added interest for the last five years so that the matter can be settled once for all before this Court. Accordingly, the learned counsel for the management produced a cheque for Rs.28,000/-, which includes Rs.8,000/- as interest for the relevant period and the cheque has also been handed over to the learned counsel for the management.

19. Hence, there is no case made out. Hence, the writ petition stands dismissed. No costs.

23.02.2012 Index:Yes/no Internet:Yes/no ajr To The Presiding Officer Labour Court, Vellore K.CHANDRU,J ajr W.P.No.34004 of 2007 23.02.2012