

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.16910 of 2004
and WPMP.No.321 of 2007

Shoukath Ali Khan

.. Petitioner

vs.

1.The Managing Director,
Indicarb Limited,
No.63, Sipcot Industrial Complex,
Hosur, Tamil Nadu.

2.The Presiding Officer,
Labour Court,
Salem.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records in I.D.No.754 of 1998 on the file of the second respondent and quash the order dated 24.4.2003 made therein.

For Petitioner : No Appearance

For Respondents : No Appearance

ORDER

Subject matter of the instant writ petition arises under the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act" for the sake of brevity). Writ petitioner, namely Shoukath Ali Khan is hereinafter referred to as "workman" for the sake of brevity, convenience and clarity. Respondent No.1, viz., the Managing Director, Indicarb Limited, No.63, Sipcot Industrial Complex, Hosur, Tamil Nadu is hereinafter referred to as "management company" and respondent No.2, viz., the Presiding Officer, Labour Court, Salem is hereinafter referred to as "said Labour Court", all for the sake of brevity, convenience and clarity.

2. The workman herein was appointed as helper in the management company way back in 1982. Somewhere in 1995, it is the case of workman that he made a representation to the management company that he is suffering from Asthma and is therefore, not able to work in powder section of the management company. The workman requested for transfer from the powder section to avoid dust pollution. This request was admittedly acceded to and the workman was transferred to personnel and administrative department on 10.05.1996. However, it is the say of the workman that thereafter, he was transferred to hard metal plant with effect from 01.4.1997 without assigning any reason. It is the further case of the workman that due to transfer to the hard metal plant of the management company, his health was affected and was forced to take leave. In such circumstances, the management company has issued a show cause notice dated 04.9.1997 and thereafter, terminated the services of the workman on 01.10.1997.

3. Alleging that the show cause notice is based on false allegations and that his termination is bad, the workman raised an Industrial Dispute and the same took shape as I.D.No.754 of 1998 on the file of the said Labour Court. After a detailed enquiry/trial, the said Labour Court in and by an order dated 24.04.2003 dismissed the workman's petition. Aggrieved, workman has filed the instant writ petition assailing the order dated 24.04.2003 made in I.D.No.754 of 1998 on the file of the said Labour Court, which is hereinafter referred to as "impugned order" for the sake of brevity, convenience and clarity.

4. To be noted, the writ petition was filed way back in 2004, on 09.04.2004 to be precise.

5. The writ petition was admitted and rule nisi was issued by this Court on 22.6.2004. The management company has been duly served on 25.02.2005 and the said Labour Court has also been served on 27.07.2004. This Court does not expect the said Labour Court to enter appearance and file a counter-affidavit. In my opinion, in cases of this nature, Labour Courts passing the Awards/Orders ought not to be arrayed as a respondent. However, I leave that question open for the present in the instant writ petition. However, the management company, which has been duly served on 25.02.2005, though has entered appearance through a counsel, has not even chosen to file a counter-affidavit until this day. When the writ petition was listed and called today, there was no representation for both sides. With a view to give an opportunity, the matter was passed over and called again. In the second call also, the position remained unchanged i.e., there was no representation for both sides. This writ petition is more than a decade and three years old. It has been pending in this Court for over 13

years now. Adjourning such writ petitions merely for the non-appearance of the counsel only contributes to avoidable delay in disposal of other cases besides adding on to the existing arrears which also in my opinion is avoidable. I, therefore, proceed to examine the matter on available records and dispose of the matter on merits.

6. To be noted, I proceed to do so also owing to the facts and circumstances of the instant case.

7. I have already set out the factual matrix in the initial paragraph of this order. That factual matrix explains in a nutshell the sequence of events that culminated in the impugned order of the said Labour Court. Therefore, I now proceed to examine the impugned order of the said Labour Court and the challenge to the same in the instant writ petition. A perusal of the impugned order of the said Labour Court reveals that two witnesses were examined, one each on the side of the workman and the management company. While the workman, who is the writ petitioner before me examined himself as P.W.1, one Thiru.Chandra Narayanan, who is the Executive Director of the management company has been examined as R.W.1. Two Exhibits viz., Ex.P1 and Ex.P2 were marked on the side of the workman and as many as 32 Exhibits being Exs.R1 to R32 were marked on the side of the management company.

8. On a detailed analysis of the oral and documentary evidence before it, the said Labour Court came to the conclusion that the records produced by the parties before it go to show that the workman was irregular in his attendance and had been frequently absenting himself from duty. To my mind, a reading of the impugned order reveals that the said Labour Court, on a clear and cogent analysis of the oral and documentary evidence adduced before it has also come to the conclusion that the workman is a habitual absentee from duty, more so, without any leave or intimation.

9. Most importantly and to my mind, the most crucial aspect of the matter is finding of the said Labour Court on cogent and clear analysis of the oral and documentary evidence alluded to supra that the workman was doing some other business. There is a specific reference to Ex.R20 from which the said Labour Court has returned a finding that the workman was in fact working as Government's Small Savings Agent. The District Collector of Dharmapuri District has written a letter to the management company stating that the services of the workman is required for mobilizing small savings in Dharmapuri District. Based on this, the said Labour Court has returned a finding that the workman was an agent for Small Savings Scheme in Dharmapuri District.

10. Ultimately, the said Labour Court came to the considered conclusion that the charges of frequent absentism from duty without any leave or intimation and acting as an agent for Small Savings Scheme in Dharmapuri District have been proved. The said Labour Court has also held that the workman had kept himself busy in other such aforesaid activities/ avocation. As a sequitur and to be precise, the workman cannot be retained in service of the management company and therefore, the management company in the instant case was right in terminating the workman is the finding returned. On that basis, the petition of the workman was dismissed.

11. There was also an industrial sabotage, which stood proved.

12. In the instant writ petition, a perusal of the affidavit of the workman assailing the impugned order reveals that the workman clearly admits the letter written by the District Collector, Dharmapuri to the management company (which has been alluded to supra). While admitting the letter, the workman has made an attempt to justify the same by saying that the said Labour Court failed to appreciate that the said letter (Ex.R18) shows the workman in good light as District Collector chose to write a recommendation letter to the management company. The relevant portion is found in ground (e) and that portion of ground (e) reads as follows:

"e. The Learned Trial Judge failed to appreciate that the true meaning and contents of management Ex.18, the said letter from the District Collector projects the petitioner in good light and that is why the District Collector chose to write a recommendation letter to the management."

13. May be the workman is correct in saying that his work as an agent in the Small Savings Scheme was good and that is what impelled the District Collector to write Ex.R18, but that is not the point for consideration either before the said Labour Court or in this Court. As the workman clearly admits Ex.R18 even in this Court, the sequitur that follows inevitably is that the workman was actually keeping himself busy in some other avocation and therefore, his absence without any leave or prior intimation is only as he kept himself busy in an other avocation as aforesaid.

14. The other grounds raised in the affidavit in the writ petition as well as the contentions in the writ petition are to my mind not tenable, much less acceptable and therefore, I find no ground to interfere with the well considered impugned order of the said Labour Court. As already mentioned by me, even a reading of the impugned order shows that the same is a well

considered order based on clear and cogent discussion of oral and documentary evidence in a trial.

15. Therefore, I have no hesitation in coming to the conclusion that the writ petition is devoid of merits and the impugned order of the said Labour Court deserves to be sustained.

16. Owing to all that have been stated supra, the writ petition is dismissed. Considering the nature of the case, there will be no order as to costs in this writ petition. Consequently, WPMP.No.321 of 2007 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

The Presiding Officer,
Labour Court,
Salem.

W.P.No.16910 of 2004

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