

The Manager vs General Secretary

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Court : Kerala

Decided On : Feb-01-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/38757/2015

Appellant : The Manager

Respondent : General Secretary

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL
WEDNESDAY, THE 1ST DAY OF FEBRUARY 2023 / 12TH MAGHA,
1944 PETITIONER: THE MANAGER LETCHMI ESTATE, OWNED BY
KDHP COMPANY PRIVATE LIMITED., MUNNAR - 685612,
REPRESENTED BY ITS MANAGER (IR) MR.PRINCE THOMAS
GEORGE. BY ADVS. SRI.P.BENNY THOMAS SRI.D.PREM KAMATH
RESPONDENTS: 1 GENERAL SECRETARY DEVIKULAM ESTATE
WORKERS UNION (AITUC), MUNNAR P.O.- 685 612. 2 INDUSTRIAL
TRIBUNAL IDUKKI - 685 531. BY ADV SMT.A.K.PREETHA SRI.JUSTIN
JACOB - SR. GP THIS WRIT PETITION (CIVIL) HAVING COME UP
FOR ADMISSION ON 01.02.2023, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

JUDGMENT

The present writ petition is directed against the award rendered in I.D.No.95 of 2010 dated 06.10.2014 whereby the respondent No.2 has been ordered to be reinstated in service with continuity of service only for the purpose of calculation of retirement and pensionary benefits.

2. Respondent - workman with Provident Fund No.5723

was employed as a worker in the management of the petitioner. He was undergoing a treatment for hepatitis for about seven (7) months from 1-9-2006 to 21.3.2007 as an inpatient and outpatient at Thankaraj Hospital, Sreevilliputhoor, Tamil Nadu. He was chargesheeted by the Management alleging the unauthorised absence on the following days:- December 2006 : 26 days January 2007 : 25 days February 2007 : 23 days March 2007 : 27 days Total : 101 days

3. An application was preferred for leave but the same was rejected. The management contested the claim and stated that

the workman was a permanent worker under them since 18.12.1993. He was a regular absentee and had been warned and suspended previously. There was no improvement in his conduct. A show cause notice was issued to him by registered post to his last known address which was returned with an endorsement No such addressee. Since no explanation was received, was charge- sheeted as per Clause (e) of the Standing Order No.22 applicable

to the workman. Pursuant to the charges, an enquiry was conducted complying with principles of natural justice. Charge sheet along with the list of documents were sent by registered post with acknowledgment to his last address which was also returned with the same report no such addressee. A notice was published in the news paper dated 07.12.2007 but despite that the workman did not attend the domestic enquiry and was proceeded

ex-parte resulting into dismissal from the service. Labour Court framed the following issues:

1. Whether the enquiry conducted by the management was in compliance with the principles of natural justice?
2. Whether the findings of the enquiry officer can be characterized as perverse?
3. Whether the punishment of dismissal awarded to the workman is justifiable or not?
4. If not justifiable, the relief to which the workman is entitled to?

4. Workman brought on record Ext.W1 medical certificate

dated 21.3.2007 issued by the concerned doctor attached to Thankaraj Hospital whereas Ext.M1 the file containing the show cause notice, charge sheet, deposition of witnesses, copies of the documents and enquiry report was brought on record by the management. Labour Court on examination of the aforementioned documents found that there was no defect by the respondent in conducting an enquiry against the workman as the principles of natural justice were followed but differed with the punishment by observing that the punishment was too onerous ie., the dismissal should not have been passed but of a lesser gravity and ordered for reinstatement.

5. Learned counsel appearing on behalf of the petitioner

submitted that once the workman was absent from the duty and no application of leave was submitted, the question of rejection of leave did not arise. No additional documents have been placed on record in support of their counter or before the Labour Court regarding the same except the medical certificate. Workman has been reinstated immediately after the award of the Labour Court

and has been working. But the fact remains the continuity in service be construed from the date he remained absent ie., with effect from December 2006 and this direction is to be modified.

6. On the other hand, learned counsel appearing on behalf

of the workman countered the aforementioned argument that since the workman has been denied the backwages, it would be also a punishment and therefore there cannot be any deviation or modification of the award. The award is perfectly legal and justified. In support of the contention has relied upon the

judgment of this Court in Workers Congress v. Industrial

Tribunal [(2018) 158 FLR 316].

7. I have heard the learned counsel for the parties and appraised the paper book.

8. The facts as noticed above are not in dispute. No doubt

workman has been denied the backwages and denial of the same would also be a punishment. The question which arises for consideration is that during the period of the absence whether the workmans services can be considered to be continuing service for the purpose of pensionary benefits. Once the backwages have been denied, there cannot be any calculation of pension and gratuity for that period.

9. I am in agreement with the argument of the workman

that denial of the backwages is a punishment. I do not find any justification in differing with the order of the Labour Court in ordering the continuity of service as the benefit of the backwages has already been interfered with. For the reason aforementioned, the order of the Labour Court is perfectly legal and justified. Writ petition is accordingly dismissed.

Sd/- AMIT RAWAL JUDGE nak APPENDIX OF WP(C) 38757/2015 PETITIONER EXHIBITS EXT.P1: TRUE COPY OF THE AWARD IN I.D.NO.95 OF 2010 DATED 06.10.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

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