

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-1151 of 2012

Present:-
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Amjad Ali Sahito

Date of hearing: 29.08.2019 and -----09.2019

Date of decision: .09.2019

Petitioner: M/s Dadex Eternit Ltd.
Through Syed Muhammad Saulat Rizvi, Advocate.

Respondent No.3 Muhammad Rashid
Through Mr. Mumtaz Alam Laghari, Advocate.

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ORDER

MUHAMMAD IQBAL KALHORO J:- Petitioner, which is a private concern, has filed this petition impugning the orders dated 10.02.2006 and 25.05.2012 passed by Sindh Labour Court No.VI, Hyderabad at Hyderabad and Sindh Labour Appellate Tribunal, Karachi, whereby an order dated 29.05.2004 dismissing respondent No.3/Muhammad Rashid, who was working as a helper with petitioner, from service due to his alleged unauthorized absence from duty, was set-aside and he was ordered to be reinstated in service with full back benefits.

2. Syed Muhammad Saulat Rizvi learned Counsel for petitioner has argued that the impugned orders are based on surmises and conjectures; that the impugned orders are a result of misreading and non-reading of evidence; that learned Labour court has erred in holding that the charge sheet was time barred and issued beyond statutory period of thirty (30) days; that the courts below have not appreciated the fact that assertion of petitioner in affidavit in evidence that the inquiry against respondent No.3 was properly conducted was not challenged by him in his cross-examination, and which therefore is unquestionable; that in the inquiry respondent No.3 was given a full opportunity of hearing but he could not justify long periods of his absence from duty; that respondent No.3 had taken a plea that he was indisposed in the relevant periods and relied upon medical certificates which are false and fabricated. He in support of his argument relied on a case of **Chief Election Commissioner of Pakistan and others b Vs. Miss Nasreen Pervez (2009 PLC (C.S.) 650)**.

3. On the other hand, learned counsel for respondent No.3 has submitted that there are concurrent findings against the petitioner which the petitioner has not been able to show are a result of non-appreciation of facts and law; that no proper inquiry was conducted against respondent and even the complainant / reporting officer was not examined; that the respondent was not given an opportunity to defend himself adequately and was only made to reply questions asked from him in the inquiry; that charge sheet issued against him on 17.03.2004 was time barred beyond the statutory period of 30 days as it contains different periods of alleged absence of respondent from July 2002 to February, 2004.

4. We have considered submissions of the parties and perused relevant record. Record reflects that respondent was issued a charge sheet on 17.03.2004 for misconduct as defined under section 15 (3) (e) of the West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968 (the Ordinance, 1968) for remaining absent without leave. It charges respondent for his alleged absence not only in March 2004 but his absence on different dates in the years 2002 and 2003, which is apparently time barred being issued beyond the statutory period of one month provided for charging a workman for such misconduct. Argument of learned counsel that mention of such absence in the charge sheet has been given only as a reference to strengthen actual charge of 17 days' absence of the respondent in March 2004 is not factually correct. The enquiry proceedings, available in the file, show that the respondent was asked as a whole to explain his absence of 107 days occurring from July 2002 to March 2004. No independent or separate question regarding his alleged absence in March 2004 was either asked from him or made sole subject of the inquiry to lend credence to contention that respondent was charged only for his absence in March 2004 and that the enquiry was held in respect of that period only. Under 15 (4) of the Ordinance, 1968, the workman is to be informed in writing of the alleged misconduct within one month of the date of such misconduct or the date on which alleged misconduct comes to the notice of the employer and is given an opportunity to explain the same. But in this case, as is clear from above discussion, the respondent was not informed of his alleged misconduct, regarding which the inquiry was conducted, within statutory period of one month nor given an opportunity to explain the same. We therefore do not find any illegality in the finding recorded by both the forums below that the charge sheet was time barred.

5. Next we have noted that the proper course to conduct inquiry was not followed in this matter, and the inquiry officer in hasty manners in just three (3)

questions wrapped up the entire enquiry. Neither statement of the complainant, etc. was recorded, nor was the respondent allowed to present his case. The respondent was asked only three questions to which he urged his illness as the reason of his absence and submitted relevant documents to support his case, but the same was discarded by the petitioner without any cogent justification. Further, the evidence of inquiry officer has made the inquiry report highly doubtful in that he in his cross examination has stated that he had received the report and signed it, which would imply he had not prepared it. Such belief is strengthened by his further statement on the point that he does not remember whether the report was written in Urdu or in English or it was typed or hand written. We therefore are of the view that on the basis of such improper inquiry and inquiry report, dismissal of the respondent cannot be justified.

6. Further it may be stated that that absence of the respondent was not continuous and it was punctuated by long periods of his being on duty. His absence was due to health-issues has not been rebutted adequately, and in fact the witness of the petitioner has admitted in his evidence that respondent remained under treatment in Social Security Hospital. For absence like that imposing major punishment of dismissal from service on respondent was harsh and did not commensurate with the nature of charge. The absence from duty due to illness would not constitute a case of willful insubordination or indiscipline warranting imposition of major penalty on the workman.

7. Lastly we must observe that there are concurrent findings on facts and law recorded by both the forums below against the petitioner. The jurisdiction of this court to disturb/reverse the same under Article 199 of the Constitution is narrow. Such jurisdiction would be invoked only when it is apparent on the face of record that the concurrent findings are a result of an apparent irregularity and are based on consideration of extraneous material, or that the courts below had no jurisdiction in the matter or have completely failed to appreciate facts and law in reaching the same. As discussed above, no such case has been pleaded before us. Both the forums below have duly considered and properly appreciated the facts and relevant law and their findings are based on cogent reasons and in accordance with law, which do not warrant interference by this court. Consequently, the petition in hand is dismissed.

JUDGE

JUDGE

