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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21470 of 2016

and

W.M.P(MD)No.15342 of 2016

The Management,
Nanjil Milk Plant,
Mulagumoodu Post,
Kanyakumari District,
Represented by its Director.

... Petitioner

- Vs. -

1. The Presiding Officer,
Labour Court,
Tirunelveli

2. M.Jose Manoharan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari to call for the records on the file of the 1st respondent pertaining to its Order in I.D.No.23 of 2015 dated 17.08.2016 and to quash the same.



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For Petitioner : Mr.S.C.Herold Singh
For R-1 : Labour Court
For R-2 : Mr.C.Kishore

ORDER

This writ petition is filed challenging the ID order dated, 17.09.2016 in I.D.No.23 of 2015. The 2nd respondent joined the petitioner Management in the year 2007.

2. The 2nd respondent has involved in several misconduct and for one such misconduct he was imposed with a punishment of demotion by taking a lenient view. In spite of the same the 2nd respondent did not correct his activities.

3. On 21.04.2011, again he committed misconduct, hence a charge memo dated 11.08.2011 was issued for four charges. The 1st charge against the 2nd respondent is that he misbehaved. While the 2nd respondent was unloading the milk to one Agency by name Raj Milk, the agent has informed the 2nd respondent to take back the spoilage butter milk pocket to the petitioner's Company as



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instructed by ASO. But the 2nd respondent showed his anger to the said agency and had stated that he is not a servant of anybody. Likewise, the other charges also indicates that the petitioner has not executed the work as per the instructions. The petitioner has submitted an explanation for the charge memo on 10.09.2011. Thereafter, the enquiry was conducted.

4. The contention of the 2nd respondent is that he had participated in the enquiry. But the enquiry was conducted not properly, but in biased manner. The charge against the 2nd respondent was not proved. The petitioner Management did not produce any witness. The 2nd respondent relied on the documents filed before the Labour Court.

5. The allegation raised by the petitioner Management is that out of 690 liters of milk, there are bills for 549 liters and thereby 141 liters should be available. Whereas based on the inspection 137 liters were available. Therefore, the petitioner Management has come to the conclusion that the 4 liters of milk was sold and misappropriated. But the 2nd respondent had explained the same and the Tribunal had rendered a finding it is not proved.



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6. The Labour Court, after perusing the documents has come to the conclusion that all the charges were not proved. Moreover, the punishment is on higher side. Hence, the Labour Court has issued direction to reinstate the petitioner back into service with backwages and continuity of service.

7. After hearing the rival submissions, this Court is of the considered opinion that backwages cannot be paid on the principles of '*No work No pay*'. However, the 2nd respondent is entitled for reinstatement. The petitioner Management is directed to reinstate the 2nd respondent within a period of One week from the date of receipt of a copy of the order along with continuity of service.

8. Accordingly, this Writ Petition is partly allowed in above terms.
No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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30.06.2023
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To

The Presiding Officer,
Labour Court,
Tirunelveli



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No.21470 of 2016
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30.06.2023