

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.11123 & 11124 of 2013

& MP.No.2 of 2013 in W.P.No.11124 of 2013

The Special Officer,
Salem Co-operative Press,
No.6, Sankaralayam Road,
Salem - 636 001.

... Petitioners in both WPs

Vs

1.The Deputy Commissioner of Labour,
The Appellate Authority under the Shops &
Establishment Act, Office of the
Deputy Commissioner of Labour, Salem.

... 1st Respondent in both WPs

2.R.M.Velayudham (Deceased)

... 2nd Respondent in WP.No.11123 of 2013

3.V.Meenachi

4.V.Priyadarshan

5.V.Varunkumar

(Respondents 3 to 5 are substituted in the place
of the deceased R2-R.M.Velayutham as per order dated
16.12.2015 in MP.No.1 of 2015 in WP.No.11123 of 2013)

... Respondents 3 to 5 in WP.11123/2013

6.A.Dharmalingam

... 2nd Respondent in WP.No.11124 of 2013

Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari
calling for the records relating to the order passed by the
first respondent in TS.E.Appeal No.15 of 2009 and TS.E.Appeal
No.14 of 2009 respectively dated 12.11.2012 and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram
(in both WPs) Spl Govt Pleader (Co-op.)

For Respondent 1 : Mr.R.Rajeswaran
(in both WPs) Special Government Pleader

For Respondents 3 to 5 : Mr.C.K.Chandrasekar for
(in WP.No.11123 of 2015) Mr.V.Ravichandran

For Respondent 2 : Mr.C.K.Chandrasekar for
(in WP.No.11124 of 2015) Mr.V.Ravichandran

ORDER

Heard Mr.L.P.Shanmugasundaram, Special Government Pleader (Co-operative Society) appearing for the petitioner and Mr.R.Rajeswaran, Special Government Pleader appearing for the first respondent and Mr.C.K.Chandrasekar on behalf of Mr.V.Ravichandran, counsel on record appearing for the respondents 2 to 6 and by their consent, the Writ Petition is taken up for final disposal.

2. In both these Writ Petitions, the Special Officer, Salem Co-operative Press is the petitioner and the challenge is to the order passed by the first respondent, the Appellate Authority under the Shops and Establishment Act 1947. It is an admitted fact that both the employees namely the second respondent in the respective Writ Petitions were permanent employees of the petitioner organisation and they have completed 25 to 30 years of service. However, by an order dated 31.12.2005, both the second respondent employees were discharged from service of the petitioner, on the ground that they have lost confidence of the Management. Challenging the order of the petitioner-Management, the employees preferred an appeal before the first respondent. Before the first respondent, the workmen examined themselves and marked the documents as Exs.W1 to W14 and the Management examined itself, furthermore, the Special Officer was examined as MW1 and marked seven documents as Exs.M1 to M7. The first respondent herein, after considering the oral and documentary evidence, as well as Bye-Law produced by the Management, especially No.15 read with Appendix III of the Bye-Law held that the order of discharge was illegal and unsustainable and set aside the same.

3. During the pendency of these Writ Petitions, the second respondent workmen in W.P.No.11123 of 2014 died, and the legal heirs were brought on record. The second respondent workmen in WP.No.11124 of 2014 has already attained the age of superannuation.

4. After hearing the learned counsel for the parties and perusing the materials placed on record, it is seen that the first respondent has given cogent reasons for setting aside the orders of discharge passed by the petitioner.

5. The learned Special Government Pleader appearing for the petitioner has drawn the attention of this Court to the fact that there is oral evidence to substantiate that both the employees viz., R.M.Velayutham and A.Dharmalingam have conspired together and had a conspiracy to plant a bomb in Society premises, with a view to teach a lesson to the Special Officer, as he would be roped into problems. Therefore, it is submitted that when there is evidence that the conduct of the employees was against the interest of the Society, the management having lost confidence in them, is entitled to remove them from services.

6. The learned counsel appearing for the second respondent workmen/employee submitted that since the workmen had formed a Trade Union and represented to the Joint Registrar of the concerned area about certain misdeeds committed by the Special Officer, the Special Officer hatched a plan to dispense with the services of the workmen, who have put in about thirty years of unblemished service. He has also submitted that the said Officer has no authority to pass such an order without issuing any show cause notice and without following the due procedure of law as contemplated under the Bye-Laws of the Society.

7. On a perusal of the impugned order, it is seen that the first respondent has not only taken into consideration the oral evidence and the documentary evidence but also the Bye-Laws of the Society. In terms of Appendix III of the Bye-Law, which relates to dispensing with the services of the employees of the Society, which states that the service of any employee of the Society who is employed continuously for a period of not less than six months shall not be dispensed with except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice. The Proviso states that such notice shall not be necessary where the services of such employee are dispensed with on a charge of

misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. Therefore, if the petitioner proposed to dispense with the service of an employee, who is employed continuously for a period of not less than six months, it could be done so, after giving one month notice or wages in lieu of notice. Admittedly, this is not done in the case of the respondent-workmen. If the petitioner take a stand that on account of certain activities of the workmen, they have lost confidence in them, then this would necessitate disciplinary proceeding being initiated. Therefore, to dispense with the services, without giving one month notice or wages in lieu of such notice, could have been done only on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for that purpose. It is evident from the order of dismissal that the procedure required to be followed in terms of Proviso has also not been followed.

8. In the light of the above, the first respondent was fully justified in passing the impugned order, setting aside the order of discharge. The first respondent, being a final authority on facts, examined the same. That apart, there is no perversity in the approach of the first respondent for this Court to interfere in the matter. It is worthwhile to point out that this Court, while exercising jurisdiction under Article 226 of the Constitution, will not examine the correctness of the order passed by the first respondent, as if acting as an Appellate Authority. All that is required to be seen is as to whether the order passed by the first respondent is a reasoned order; whether it is passed based on the evidence on record; and whether there is any error apparent on the face of the record. Since none of these parameters are attracted in the instant case, the impugned order do not call for any interference.

9. Accordingly, these Writ Petitions fail and they are dismissed. Since one of the workmen was already superannuated and other workmen had died, the petitioner shall compute the monetary benefits of each of the workmen, consequently upon the order passed by the first respondent dated 12.11.2013 and disburse the same to the workmen/legal heirs within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar (CCC)

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Sub-Assistant Registrar

ds

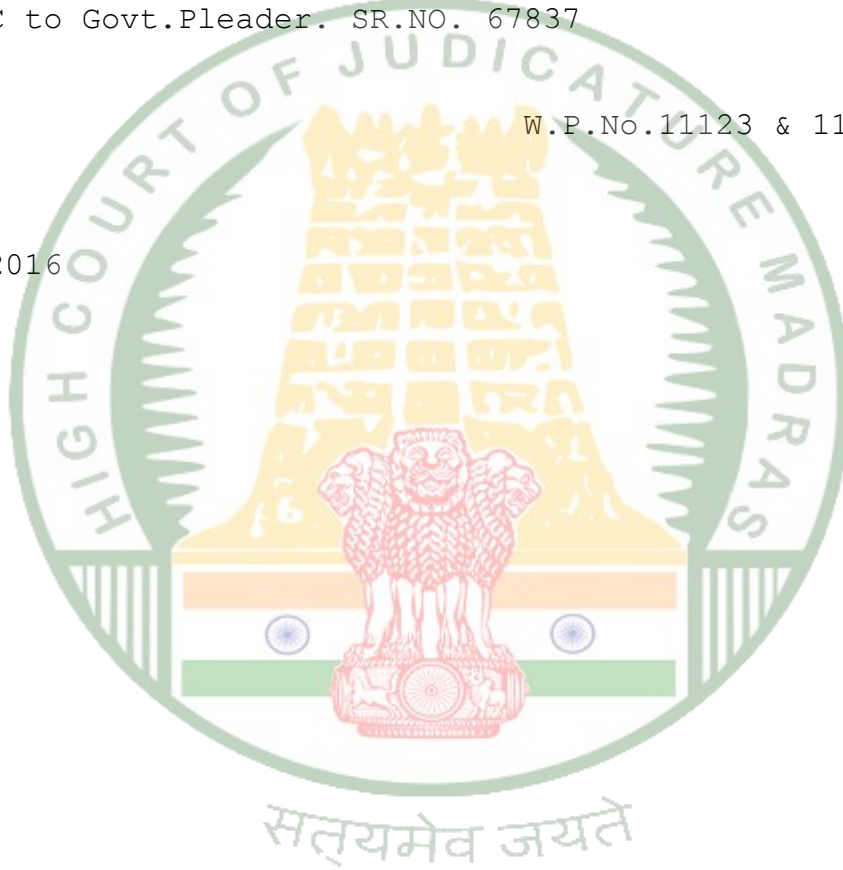
To:

The Deputy Commissioner of Labour,
The Appellate Authority under the Shops &
Establishment Act,
Office of the Deputy Commissioner of Labour,
Salem.

+2 CC to MR.V.Ravichandran Advocate. SR.NO. 67944 , 67945
+1 CC to MR.L.P.Shanmugasundaram Advocate. SR.NO. 67918
+1 CC to Govt.Pleader. SR.NO. 67837

W.P.No.11123 & 11124 of 2013

CO-VD
JD 20/01/2016



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