

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26996 of 2009

1.The Manager (S.S.)  
Tamil Nadu Co-operative  
Milk Producers  
Federation (Ltd.)  
Chennai.35

2.The Managing Director  
Tamil Nadu Co-operative  
Milk Producers  
Federation (Ltd.)  
Chennai.51 ... Petitioners

Versus

1.The Presiding Officer  
II Additional Labour Court  
High Court Campus  
Chennai 600 104.

2.A.M.L. Ali Khan ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call upon the production of the records relating to the award dated 21.5.2009 made in I.D.No.110 of 1999 passed by the first respondent herein and quash the same.

For Petitioner :Mrs.R.Radha  
for Mr.K.Tamil Vendan

For Respondents :Mr.S.Abdul Wahab -- R2

O R D E R

Heard Mrs.R.Radha, learned counsel appearing for the petitioner and Mr.S.Abdul Wahab, learned Counsel appearing for the second respondent and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is the Management of the Tamil Ndu Co-Operative Milk Producers Federation Limited and the challenge is to an Award passed by the II Additional Labour Court, Chennai, in I.D.No.110 of 1999 dated 21.05.2009.

3.The petitioner shall be referred to as the 'Management' and the second respondent as an 'employee'. The second respondent/employee was appointed by the petitioner/Management. The employee while working as Selection Grade Assistant, was removed from service by an order dated 20.10.1998. Challenging the same, the employee raised an Industrial Dispute before the Labour Court, which was taken on file as I.D.No.110 of 1999. The Management filed their counter statement and resisted the claim made in the Dispute and stated that the unauthorised absence of more than 540 days has not been explained and apart from that there is evidence to show that the employee was not in India.

4.The Labour Court initially took up for consideration the preliminary issue as to whether the domestic enquiry conducted by the Management was fair and proper. By an order dated 27.12.2001, the Labour Court held that the domestic enquiry was not conducted in a fair and proper manner and permitted the Management to lead fresh evidence. Accordingly, the Management as well as the employee lead both oral and documentary evidence before the Labour Court. The employee examined himself as W.W.1 and marked 16 documents as Exs.W.1 to W16 and the Management examined two witnesses and marked 21 documents as EXs.M1 to M21. The Labour Court framed two issues for consideration viz. (i) whether the petitioner is entitled for reinstatement in service with backwages and continuity of service and all other attendant benefits ? and (ii) to what relief the petitioner is entitled to?

5.The charge against the employee was that he was unauthorisedly absent for more than 540 days. The facts are that the employee applied for leave for the period from 10.10.1995 to 27.10.1995, stating that there was a family dispute regarding their ancestral property. Subsequently, by another application, he extended the leave upto 31.10.1995. Therefore, the employee had to report for duty on 01.11.1995, but, he did not report for duty. Therefore, the Management sent a telegram on 2.11.1995, directing him to report for duty. On 03.11.1995, the Management received a letter dated 01.11.1995 requesting the Management to grant leave from 01.11.1995 to 01.04.1996, once again stating the same reason.

6.The Management did not accept the application and on 14.11.1995, directed the employee to appear before the counseling committee. That was with a view to enquire into the matter as the Management was not inclined to accept the leave application. However, the employee did not appear before the said committee nor sent any reply. That resulted in issuance of a charge memo dated 16.03.1996, containing five charges regarding the unauthorised absence upto 17.03.1996. The charge memo which was sent by post to the last known address of the employee was returned with an endorsement 'party out of station'. After about 15 days, the Management received a letter sent by the employee dated 01.04.1996,

stating to be a leave application, requesting for extension of leave from 01.04.1996 to 31.10.1996 and subsequently, another undated letter was received by the Management from the employee for extension of leave upto 30.05.1997. In the said letter also, the employee stated the very same reason that because of the family dispute, he was under mental depression and visiting several shrines.

7. Those applications were ignored by the Management, since by then charge memo had been issued and domestic enquiry was commenced. Further, as the employee did not appear for the domestic enquiry, he was set exparte, the enquiry officer proceeded with the enquiry and submitted the enquiry report holding the charges proved. The matter was under the consideration of the disciplinary authority and on 09.04.1997, the Management issued a charge memo to the employee. The Management also issued a second charge memo for the period of absence beyond 17.03.1996. Parallely, the Management received an information that the employee was away from India without permission. When enquiry was conducted by the Vigilance Officer, the employee had given he copy of his Pass Port, which showed that he was abroad. However, before the Vigilance Officer, the employee produced a medical certificate stating that between 17.05.1995 to 08.04.1997, he was not keeping good health. In respect of the second charge memo, the enquiry proceeded, employee participated in the enquiry and ultimately, the charges were held proved. Thereafter, second show cause notice was issued and based on both enquiry reports, the employee was removed from service on 20.10.1998.

8.As pointed out earlier, the Labour Court having permitted the Management as well as the employee to lead evidence and they having placed oral and documentary evidence, the Labour Court was bound to appreciate those documents and the oral evidence and to give its reasoning, while passing the Award. The Labour Court did not grant the relief of reinstatement, but granted compensation which was directed to be calculated at the rate of 50% of the backwages.

9.The first and foremost issue to be considered is as to whether the Labour Court has assigned any reason for passing such an Award. As rightly pointed out by the learned counsel for the Management, the impugned award is totally a non-speaking award. Upto paragraph No.16, the Award only extracts the contentions of the employee, the stand taken by the Management, the extract of the depositions of the Management witnesses and the employee. In paragraph No.17, the Labour Court stated that the Court perused the oral and documentary evidence and gave a finding that the report of the enquiry officer cannot stand even a minute scrutiny.

10.The said finding is erroneous, since already the enquiry report has been scraped by the preliminary award passed by the Labour Court dated 27.12.2001. Therefore, what the Court was required to do was to examine as to whether the charge was proved on the evidence available before it. Therefore, the Labour Court misdirected itself in the manner in which it had to proceed and the findings rendered in paragraph No.17 is absolutely perverse. Paragraph Nos. 18 & 19 of the Award only refers to the various decisions of the Hon'ble Supreme Court and there was no discussion as to how those decisions were applicable and could be applied to the case before the Labour Court. In paragraph No.20, the Labour Court has rendered a finding that the Management prevented the employee from joining duty. No reason was assigned by the Labour Court as to how such a finding was arrived at and there should be some evidence to show that the employee was prevented by the Management from joining duty. Thus, it is clear that the observations made in paragraph No.20 of the Award is absolutely based on surmises and conjectures.

11.One more finding is with regard to the non-payment of subsistence allowance. The Labour Court failed to consider that it was never the case of the employee or the Management that the employee was placed under suspension. In fact on expiry of the leave, at the first instance i.e. on 01.11.1995, the Management sent a telegram to the employee to report for duty. Therefore, the question of payment of subsistence allowance does not arise. Thus, the observation made in paragraph No.20 of the Award are not only unsustainable but perverse. Paragraph No.21, is clearly a bald observation made by the Labour Court by referring to the decisions of the Hon'ble Supreme Court in stating that it squarely applies to the case. The Labour Court has not assigned any reason as to how the Judgement could be made applicable to the case before it. Therefore, such a finding is also untenable. While granting the relief in paragraph No.22, the reason given by the Labour Court was that as the employee attained the age of superannuation, he was not entitled for reinstatement, but, entitled for 50% of the backwages.

12.It is not clear as to whether the Labour Court had exercised its discretion under section 11-A of the I.D.Act and granted such a relief i.e. by reducing the punishment. Even if it is so, the Labour Court was bound to record reasons. The impugned Award is totally devoid of reasons, hence calls for interference.

13.Accordingly, the Writ Petition is allowed, the impugned award is set aside and the matter is remanded to the Labour Court for fresh consideration. The Labour Court may give priority to the matter since the Dispute is of the year

1999 and subject to the co-operation extended by the parties, the Labour Court shall make an endeavour to complete the entire proceedings within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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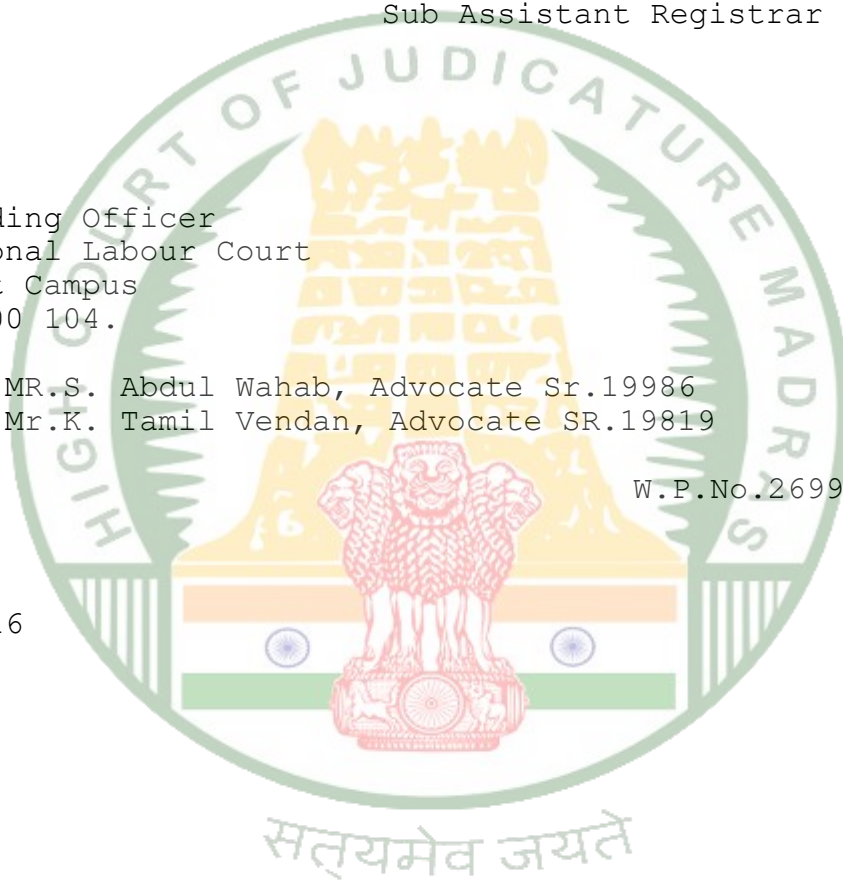
To

The Presiding Officer  
II Additional Labour Court  
High Court Campus  
Chennai 600 104.

+ 1 cc to MR.S. Abdul Wahab, Advocate Sr.19986  
+ 1 cc to Mr.K. Tamil Vendan, Advocate SR.19819

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KK(CO)  
Eu 15.04.16



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