

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.30311 of 2014
and
W.M.P.Nos.19237 & 19238 of 2017
& M.P.No.1 of 2014

The Management,
Triplicane Urban Co-operative Society,
156, Big Street,
Chennai-5. ... Petitioner

Vs.

1.M.Mohan
2.The Presiding Officer,
The III Additional Labour Court,
Chennai. ... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of certiorari to call for the records of the second respondent in award in I.D.No.185 of 2012 dated 05.06.2013 passed by the second respondent and dismiss the I.D.

For Petitioner ... Mr.N.Subramani

For R1 ... Mr.S.T.Varadharajulu

ORDER

The petitioner has approached this Court seeking the following relief:

"to issue a writ of certiorari to call for the records of the second respondent in award in I.D.No.185 of 2012 dated 05.06.2013 passed by the second respondent and dismiss the I.D."

2.The first respondent/workman was employed in the petitioner society as Sales Assistant from 1984 to 04.12.2001.

While he was working as Sales Assistant, a charge memo was issued to him on 15.12.1999 for certain acts of misconduct and his colleague Mr.K.Muthu. A joint enquiry was conducted into the charges and subsequently, the first respondent/workman along with the other employee, were dismissed from service by proceedings dated 04.12.2001. The first respondent/workman challenged the order of dismissal from service in W.P.No.7571 of 2002. The writ petition was disposed of on 17.03.2011, by directing the first respondent/workman to file a revision petition before the authority under Section 153 of the Tamilnadu Co-operative Societies Act, 1983. However, the first respondent/workman, instead of filing the revision petition under Section 153 of the said Act, filed a petition before Labour Officer, invoking the provisions of Industrial Disputes Act, 1947 by raising a dispute. However, the conciliation authority dismissed the petition by advising the first respondent/workman to approach the authority. The first respondent/workman challenged the order passed by the Labour Officer by filing another writ petition in W.P.No.4394 of 2012 and the said writ petition was disposed of on 02.03.2012 by directing the Conciliation Officer to initiate conciliation proceedings. Thereafter, a failure report was submitted on 04.06.2012 and subsequently, the first respondent/workman filed a petition before the Labour Court in I.D.No.185 of 2012.

3.The second respondent/ Labour Court, after advertng to the various evidence let in by the parties, had finally passed an award on 05.06.2013, by setting aside the order of dismissal passed by the petitioner/Management and directed the Management to reinstate the petitioner in service with continuity of service and backwages and all other attendant benefits. The award came to be passed taking note of the fact that during the pendency of litigation before this Court, the first respondent/workman had attained the age of superannuation on 31.05.2015.

4.As against the award of the Labour Court, the present writ petition has been filed by the petitioner/Management. Although the writ petition is filed against the award of the Labour Court, no tenable grounds have been raised for assailing the award of the labour Court.

5.The learned counsel for the petitioner would submit that there was a huge delay of more than 10 years in raising a dispute, which was not considered by the Labour Court while passing the impugned award.

6.On this, the learned counsel for the first respondent/workman would submit that the delay on the workman

was not intentional or deliberate, but it was due to the fact that the litigations were pending before this Court in two writ petitions and after the same attained finality, the industrial dispute was properly raised by the first respondent/workman. Therefore, he would submit that there was absolutely no delay in raising the dispute. The learned counsel would draw the attention of this Court to the detailed award passed by the Labour Court holding that the charges framed against the first respondent/workman had no substance and finally, the Labour Court hold that the dismissal order passed by the petitioner/management is illegal. The Labour Court had taken into consideration the admitted fact that initially, when the enquiry officer was appointed and the enquiry was conducted into the charges, the charges had been held not proved and a second enquiry was ordered without assigning any reasons by the Management and only in the second enquiry, the charges came to be proved.

7. There was no iota of explanation forthcoming from the Management as to what prompted the management to order second enquiry, when the first enquiry was conducted on the charges against the first respondent/workman which were held not proved. The Labour Court has given a detailed reason for its interference in the dismissal order passed by the Management as could be seen in paragraph Nos. 7, 8, 9 & 10 of the award dated 05.06.2013, which are extracted below:

''7. In this case, three charges were framed against the petitioner. The first charge is the society had given show cause notice to the petitioner and others questioning that why Rs. 3,22,136.25 should not be recovered from them for causing loss to the Society by selling the goods to the Chennapuri Annadhana Samajam. In judgement reported in AIR 1963 page 1719: AIR 1971 Supreme Court 752, the Hon'ble Supreme Court has held and given guide lines for issuing charge memo and holding domestic enquiry. But, in this case, those guide lines are not followed by the respondent society. In a show cause notice dated 24.06.2007, Ex.W2 is not clear and vague. It was alleged in the charge that the petitioner had abutted the misappropriation committed by one colleague, but in the counter it is stated that the petitioner had made false entries in the account books. As if he had sold goods to the credit of Annadhana Samajam for Rs. 3,22,136.25 and misappropriated the same. The petitioner is only a salesman, he has no role in recording the accounts in the account book, which is also

admitted by R.W1 in his cross examination. Hence, the charge is illegal and he cannot be said that it is proved.

8.The Enquiry Officer without finding out the nature of job allotted to the petitioner and without knowing his responsibilities, she had came to an conclusion that the charges were proved which is illegal.

9.The Enquiry Officer found the charges framed against K.Muthu, Accountant and M.Mohan, the present petitioner were not proved. But, again in the year 2001, an enquiry was ordered. Enquiry Officer given a findings that the charges framed against K.Muthu and M.Mohan are proved. They had not given any reason why the previous enquiry was not accepted by the Society. They have not given any reason why they ordered for re-enquiry. Hence, from the above discussion, it was concluded that the dismissal order passed by the respondent is illegal and the petitioner is entitled to get reinstatement and all other monetary benefits. With these above observations, the point is answered accordingly.

10.'Point No.2: In the result, the Industrial dispute is allowed by setting aside the dismissal order passed by the respondent and directed the respondent to reinstate the petitioner in service with continuity of service and backwages and all other attendant benefits. No costs'.

8. As observed above, the writ petition is completely bereft of any sustainable grounds and therefore, at the instance of the writ petitioner/Management, no interference is called for in respect of the impugned award passed by the second respondent herein. Even otherwise, this Court does not find any infirmity in the award passed by the second respondent/labour Court, as the Court has considered all relevant aspects, both factual and legal while coming to the conclusion in favour of the workmen.

9.In view of the above conclusion, the writ petition is devoid of merits and substance, and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10.The petitioner/Management is directed to implement the award forthwith and the benefit of the award shall be given to the first respondent/workman without any further delay, since the first respondent/workman was dismissed from service as early as 04.12.2001 and he retired.

11. It is represented by the learned counsel for the first respondent/workman that pursuant to the award passed by the Labour Court, some amounts have been deposited to the credit of the Industrial Dispute before the Labour Court. The first respondent/workman is permitted to withdraw the amount after filing an appropriate application before the Labour Court.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

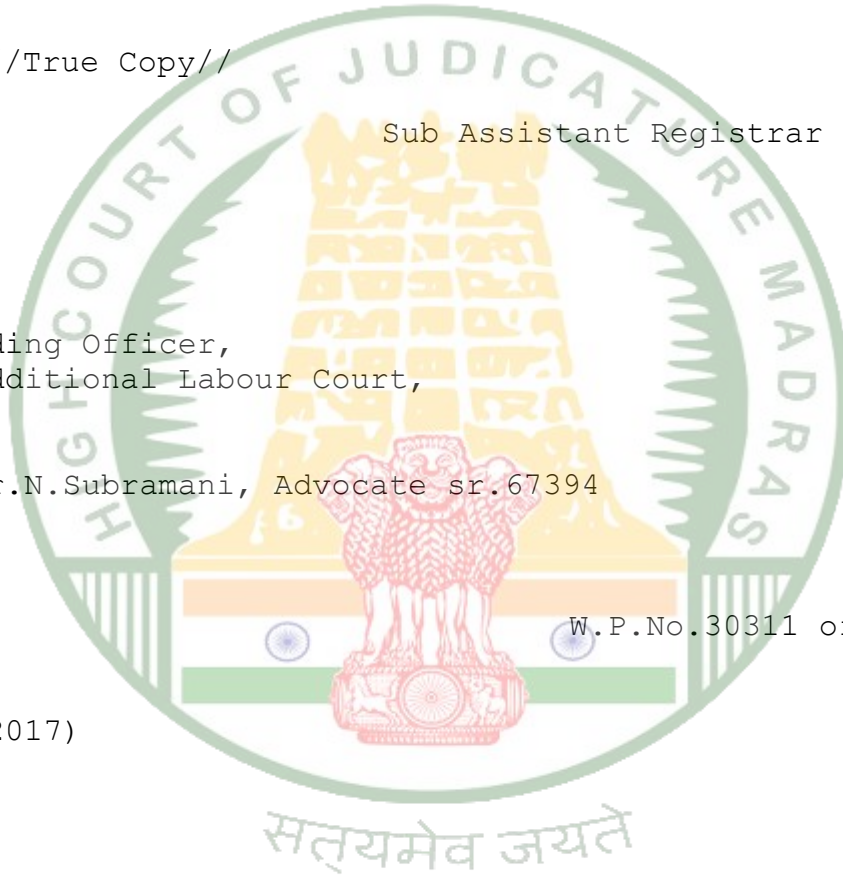
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To

The Presiding Officer,
The III Additional Labour Court,
Chennai.

+1cc to Mr.N.Subramani, Advocate sr.67394

W.P.No.30311 of 2014

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ss(26/10/2017)



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