

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2017

Coram:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.6612 of 2003

Chidambaranar District Consumer
Co-operative
Wholesale Stores Ltd.,
No.134, Great Garden Road,
Tuticorin-1

... Petitioner

Vs.

1. The Presiding Officer,
The Labour Court,
Tirunelveli.

2. Amudhavalli

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the first respondent made in I.D.No.88 of 1993, dated 28.11.2001 and quash the same.

For Petitioner : Ms.Kaavya Silambanan

For Respondents : Mr.K.S.Narayanan for R2

ORDER

Amudhavalli was working as a Packer in the petitioner Society and it is alleged by the petitioner that she was transferred from one division to another division by order dated 8.05.1987, in the place of one Mrs.Sowcarjohn, who had gone on maternity leave. Not happy with the transfer, it is alleged by the petitioner that Amudhavalli gave a leave letter, dated 11.5.1987, seeking leave for two days and again on 14.05.1987 (she gave another leave letter Ex.M3), seeking further leave. She gave a letter dated 1.6.1987 (Ex.M4), seeking leave from 1.6.1987 to 31.07.1987 on medical grounds and thereafter she did not report to duty. The petitioner issued a letter dated 7.6.1987 to Amudhavalli, calling upon her to report to duty within seven days, despite which, Amudhavalli did not report to duty and thereafter, she was dismissed from service, by order

dated 10.06.1988 (Ex.M11). Thereafter, Amudhavalli raised an industrial dispute on 2.11.1992 before the Labour Officer and on the failure of conciliation proceedings, the Government referred the matter to the Labour Court, Thirunelveli, where the case was adjudicated in I.D.No.88 of 1993.

2. Before the Labour Court, Amudhavalli was examined as M.W.1 and nine exhibits were marked. On behalf of the petitioner/Management, two witnesses were examined and 18 documents were marked.

3. After considering the evidence adduced by both sides, the Labour Court, by the impugned award dated 28.11.2001, directed that Amudhavalli should be re-instated into service in the junior most position as Packer without back wages and continuity of service, challenging which, the Management is before this Court.

4. Heard Ms.Kaavya Silambanan, the learned counsel for the petitioner/Management and Mr.K.S.Narayanan, the learned counsel for the second respondent/employee.

5. The learned counsel for the petitioner Management submitted that the Labour Court ought not to have set aside the order of dismissal imposed by the petitioner Management and in support of her contention she placed strong reliance upon the judgement of the Supreme Court in Chennai Metropolitan Water Supply and Sewerage Board and Others (Civil Appeal No.1941 of 2014, dated 10.2.2014)

6. The learned counsel for the second respondent/employee strongly refuted the said contention.

7. This Court gave its anxious consideration to the rival submissions.

8. According to the learned counsel for the second respondent/employee, after giving two leave letters, she was on the family way and therefore, for better treatment she had joined her husband, a serving Military personnel at Jansi and after confinement, when she reported to duty, she was denied employment. The evidences adduced by the Management shows that neither the show cause notice dated 7.8.87(Ex.M9) nor the order of dismissal dated 10.06.1988 (Ex.M11) were served on Amudhavalli in a manner known to law. Even the evidence of Thayappan, who was examined as M.W.2 on behalf of the Management admitted that he did not serve the two documents on Amudhavalli. Under such circumstances, it is clear that Amudhavalli was dismissed from service even without holding domestic enquiry and only in those circumstances, the Labour Court has held that she

should be re-instated in service without any benefits. In the considered opinion of this Court, the order passed by the Labour Court does not suffer from any infirmity, warranting interference.

9. In the ruling relied upon by Ms.Kaavya, the employee was a Junior Engineer, working in the Metro Water Board, who was on un-authorized absence and after domestic enquiry, he was dismissed from service by the Water Board, which order of dismissal was set aside by the High Court. Under those circumstances, the Hon'ble Supreme Court interfered with the order passed by the High Court holding that the employee therein was in the rank of a Junior Engineer and he ought not to have gone on unauthorized absence. Only in those circumstances the order passed by the High Court was interfered with. In this case, admittedly, there was no domestic enquiry conducted against Amudhavalli nor did the petitioner Management seek leave of the Labour Court to adduce evidence in support of their contention. On facts, the Labour Court has found that the two important documents, namely, Ex.M9 and Ex.M11 were not served on Amudhavalli and therefore, the Labour Court has held that her dismissal from service was illegal.

10. Ms.Kaavya Silambanan, the learned counsel for the petitioner Management submitted that the Industrial District was raised by Amudhavalli belatedly and therefore, the Labour Court ought not to have interfered with the punishment awarded by the Management.

11. Per contra, the learned counsel appearing for the second respondent/employee submitted that the Management had not taken this plea before the Labour Court and therefore, they cannot raise the same in writ jurisdiction.

12. There appears to be force in the submission of the learned counsel for the second respondent/employee.

13. In the result, this Court does not find any infirmity in the order passed by the Labour Court, warranting interference. Therefore, the writ petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Msk

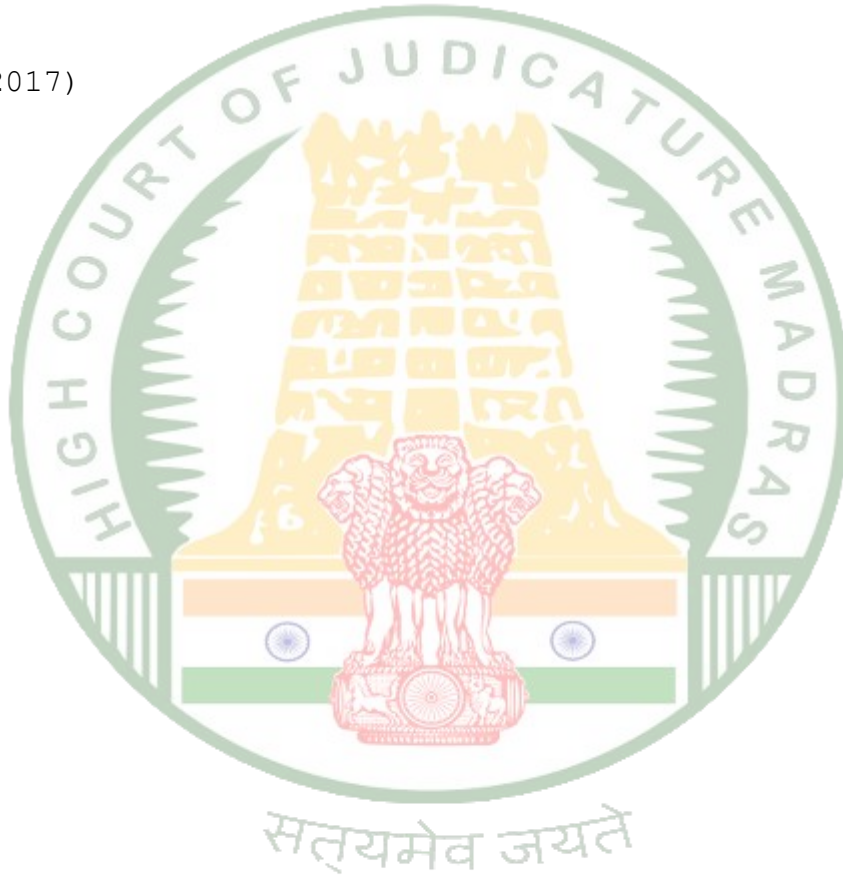
To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1cc to Ms.Kaavya Silambanan, Advocate, S.R.No.8961
+1cc to Mr.K.S.Narayanan, Advocate, S.R.No.8552

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TM(CO)
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