

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.Nos.17133 and 28621 of 2003

& WPMP Nos.21420 and 34944 of 2003

The Management
(Nellai Cooperative Supermarket)
Tirunelveli District Consumer
Cooperative Wholesale Stores Ltd.,
Tirunelveli -1
Rep.by its Assistant Secretary

.. Petitioner in W.P.No.17133/2003

The Management
(Nellai Cooperative Supermarket)
Tirunelveli District Consumer
Cooperative Wholesale Stores Ltd.,
Tirunelveli -1
Rep.by its Special Officer

.. Petitioner in W.P.No.28621/2003

Vs.

1. The Deputy Commissioner
Appellate Authority under the
Tamilnadu Shops and Establishments Act, 1948
Tirunelveli

2. S.Peermohamad .. Respondents in W.P.No.17133/2003

1. The Assistant Commissioner of Labour
Labour Court
Authority under the Payment of
Subsistence Allowance Act
Tirunelveli

2. S.Peermohamad .. Respondents in W.P.No.28621/2003

Prayer in W.P.No.17133/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent made in TNSE Appeal No.07/2002 dated 13.3.2003 and quash the same.

Prayer in W.P.No.28621/2003: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent made in P.S.A.No.9/2002 dated 21.7.2003 and quash the same.

For Petitioner
in both W.Ps. .. Mr..S.Silambanan

For Respondents
in both W.Ps. .. Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1
Mr.M.Muniruddin Sheriff
for R2

COMMON ORDER

Peermohamad was working as Assistant Salesman in Tirunelveli District Consumer Cooperative Wholesale Stores Limited (petitioner in both writ petitions), hereinafter would be referred to as "management" for the sake of brevity.

2. It appears that the Tahsildar conducted inspection at the Ration Depot, where Peermohamad was working and found certain irregularities. A criminal case was registered against him under the Essential Commodities Act and he was arrested and remanded to custody. Therefore, the management placed him under suspension with effect from 11.7.1988. The management issued a charge memo dated 29.7.1988 alleging that Peermohamad had made certain bogus entries in the records and had also falsified the accounts. According to the management, Peermohamad did not receive the charge memo, but according to Peermohamad, he had shifted his residence and therefore, he did not receive the charge memo.

3. From the available records, both sides are not able to say with certainty as to whether domestic enquiry was conducted against Peermohamad or not. However, the police completed the investigation against Peermohamad and filed a final report in STC No.107/1988 before the Special Court for Essential Commodities Act cases, Madurai and after trial, he was convicted and sentenced to undergo two years imprisonment and to pay a fine of Rs.1,000/-. Peermohamad filed an appeal before the High Court in C.A.No.545 of 1989. The High Court dismissed the appeal on 15.6.1998 and confirmed the conviction and sentence imposed on Peermohamad by the Special Court. After the conviction and sentence were confirmed by the High Court, Peermohamad filed an application before the High Court for remitting the sentence of imprisonment imposed on him based on the various remission Orders issued by the Government from time to time. This Court remitted the sentence by applying the

relevant Government Orders, pursuant to which Peermohamad was not required to physically undergo the two year sentence of imprisonment.

4. In the mean time, since the conviction and sentence imposed on him became final, he was dismissed from service on 9.4.1999. Two years later, Peermohamad filed an appeal under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1948 before the Deputy Commissioner of Labour, Tirunelveli (appellate authority) in TNSE No.7/2002, challenging his dismissal from service. In this, the management entered appearance and filed their counter, wherein they had taken a specific stand that Peermohamad was dismissed from service after due enquiry and further the appeal under section 41(2) of the Act was barred by limitation.

5. Peermohamad also filed a petition in P.S.S.No.9 of 2002 before the Assistant Commissioner of Labour, Tirunelveli under the Payment of Subsistence Allowance Act, claiming subsistence allowance from the management for the period from 11.7.1988 (date of suspension) to 9.4.1999 (date of dismissal), amounting to Rs.37,927/-. In this, the management entered appearance and contested the claim.

6. The appellate authority under the Tamil Nadu Shops and Establishments Act allowed the appeal of Peermohamad on 13.3.2003, challenging which the management has filed Writ Petition No.17133 of 2003.

7. At the time of admission of writ petition No.17133 of 2003, this Court passed the following order:

"As against the order of suspension made on 11.7.88 and the consequential dismissal order of the year 1999, the second respondent has filed a petition before the Shops Authority only during the year 2002. The delay is on the part of the second respondent. Hence, the question of directing the writ petitioner to deposit the amount representing the period from the date of suspension till the date of the order of reinstatement does not arise. However, the petitioner shall continue to pay the last drawn wages from the date of the order in challenge till the end of December, 2003 on or before end of December, 2003 on or before end of December, 2003. Subject to the above conditions, there will be a stay of the impugned order."

8. Coming to the petition filed by Peermohamad, claiming subsistence allowance, the Assistant Commissioner of Labour passed the final order in P.S.S.No.9 of 2002 on 21.7.2003, directing the management to pay him the subsistence allowance

for the period from 11.7.1988 to 9.4.1999, challenging which the management filed Writ Petition No.28621 of 2003.

9. At the time of admission of Writ Petition No.28621 of 2003, this Court passed the following order on 14.10.2003:

"Interim stay on condition that the petitioner deposits a sum of Rs.20,000/- within two weeks from today, failing which the interim order shall stand automatically vacated. Notice."

10. Heard Mr..S.Silambanan, learned senior counsel for the management, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the first respondent and Mr.M.Muniruddin Sheriff, learned counsel for Peermohamad.

11. The short point that falls for consideration is whether the appeal filed by Peermohamad under section 4(2) of the Shops and Establishments Act is barred by limitation?

12. To recapitulate the facts, Peermohamad was arrested by the police and therefore, he was placed under suspension on 11.7.1988. Criminal proceeding was initiated against Peermohamad in STC No.107/1988 and he was convicted and sentenced to undergo two years imprisonment by the Special Court for Essential Commodities Act cases, Madurai. His appeal in C.A.No.545 of 1989 before this Court was also dismissed on 15.6.1998. This Court had only remitted the sentence based on the remission G.Os that were in vogue at the relevant point of time.

13. It is trite that grant of remission in exercise of power under section 432 of Cr.P.C will not efface the conviction imposed by a criminal court. The management is a cooperative society and by virtue of Rule 149 of the Tamil Nadu Cooperative Societies Rules, the Fundamental Rules applicable to Government servants would also apply to employees working in the Cooperative Societies. If a person suffers conviction and sentence for an offence involving moral turpitude, he would be automatically dismissed from service. Only in those circumstances, Peermohamad was dismissed from service on 9.4.1999. Further, this Court confirmed his conviction and sentence in C.A.No.545 of 1989 on 15.6.1998. Under the said circumstances, the appellate authority ought not to have interfered with the order passed by the management.

14. That apart, under Rule 9(2) of the Tamil Nadu Shops and Establishments Rules, 1948, an appeal under section 41(2) of the Act should be filed within 30 days from the date of termination of service. Of course, under the proviso to the said Rule, the appellate authority has the power to condone the delay, if sufficient cause for not preferring the appeal is

shown.

15. In this case, Peermohamad had not filed any condonation delay application under proviso to Rule 9(2) of the above Rules and even without that, his appeal has been entertained and final order has been passed by the appellate authority. On this score also, the order passed by the appellate authority requires to be set aside.

16. In fine, Writ Petition No.17133 of 2003 is allowed and the order passed by the appellate authority is set aside.

17. Coming to Writ Petition No.28621 of 2003, admittedly Peermohamad was placed under suspension on 11.7.1988 and he was ultimately dismissed from service only on 9.4.1999. It was the contention of the management before the authorities under the Subsistence Allowance Act that, Peermohamad has changed his address and he also did not seek subsistence allowance as he was gainfully employed elsewhere. Unfortunately, having taken the stand, the management had failed to establish that Peermohamad was gainfully employed. Just because Peermohamad did not make a claim for subsistence allowance, the Management cannot be absolved of its statutory liability to pay the same.

18. In the result, Writ Petition No.28621 of 2003 is dismissed and the management is directed to pay a sum of 37,927/- to Peermohamad after deducting Rs.20,000/-, if already paid in compliance with the interim order granted by this Court, as stated above. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ajr

(Note: Registry is directed to dispatch back the records in W.P.Nos.17133 and 28621 of 2003 immediately before the concerned Departments.)

To

1. The Deputy Commissioner
Appellate Authority under the
Tamilnadu Shops and Establishments Act, 1948
Tirunelveli

2. The Assistant Commissioner of Labour
Labour Court
Authority under the Payment of
Subsistence Allowance Act, Tirunelveli

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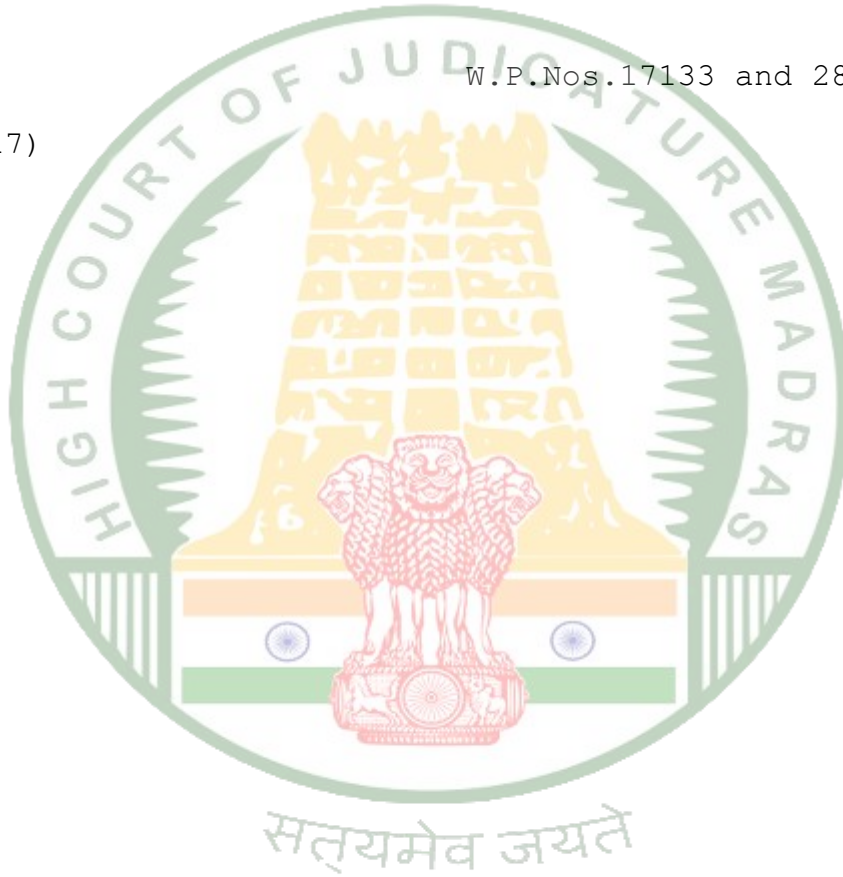
The Section Officer, ER Section, High Court, Madras.

+1cc to M/s.M.Muniruddin sheriff, Advocate sr.9840

+1cc to government Pleader sr.10473

W.P.Nos.17133 and 28621 of 2003

mp(co)
ss(1/3/2017)



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