

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH  
and  
The Hon'ble Mr. Justice N.ANAND VENKATESH

W.A.No.1549 of 2010  
and  
M.P.No.1 of 2010

R719 Valasiramani Primary Agricultural  
Co-op. Bank Ltd.,  
Valasiramani Post, Musiri Taluk,  
Tiruchirappalli District  
621 224 rep. by its Special Officer ... Appellant

Vs

1.Presiding Officer,  
Labour Court, Tiruchirappalli.

2.T.Jeya ... Respondents

Appeal preferred under Clause XV of Letters Patent against  
the order dated 17.12.2009 made in W.P.No.1303 of 2004.

Prayer in W.P.No.1303 of 2004:-

Petition filed under Article 226 of the Constitution of  
India, for the issuance of Writ of certiorari to call for the  
records of the 1<sup>st</sup> respondent as contained in award in  
I.D.No.74/1999, dated 28.07.2003 quash the award regarding  
reinstatement of the Respondent No.2 in the petitioner - Bank  
with continuity of service.

For Appellant .. Mr.R.Parthiban

For Respondents .. R1 - Court  
No appearance for R2

## JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal is directed against the order dated 17.12.2009 made in W.P.No.1303 of 2004, whereby the learned single Judge directed the appellant/writ petitioner to reinstate the second respondent.

2.The second respondent herein was employed by the appellant as a Sales Woman from 22.12.1992 onwards. She was, at the time of the order of dismissal having been passed against her, receiving the salary of Rs.900/- per month. A charge memo was issued to the second respondent by the appellant on 23.07.1997 alleging certain lapses resulting in loss of Rs.217.55. Incidentally, it was found that there was a shortage of stock and fabrication of bills. After due enquiry, the charges were found to be proved.

3.The second respondent raised a dispute before the Labour Court. The Labour Court was pleased to set aside the order of dismissal inter alia holding that the enquiry was fair and proper and the second respondent has paid the amount apart from making good the deficit in shortage of stock. Incidentally, Ex.M39 was taken into consideration, by which, the appellant had agreed to reinstate the second respondent without continuity of service and backwages. Further, the Labour Court took into consideration Ex.M40 in which the appellant has stated that it would consider the granting of continuity of service and backwages after she had rejoined on a separate application. Thus the Labour Court did not go into the merits of the order of dismissal, which was put into challenge before it, while exercising the discretion under Section 11A of the Industrial Disputes Act, 1947.

4.The award was put into challenge before the learned single Judge by filing the writ petition. While confirming the award and while reiterating the settled principle of law, that this Court is not expected to reappreciate the evidence in exercise of power under Article 226 of the Constitution of India. The learned single Judge nonetheless modified the award by granting reinstatement without continuity of service and backwages. It is this modified order passed by the learned single Judge, which is put into challenge before us.

5.Heard Mr.R.Parthiban, learned counsel appearing for the appellant. Despite service of notice and the name of the respondent having been printed in the cause list, none appears for the respondent.

6.Learned counsel appearing for the appellant would submit

that having found that the enquiry was conducted in a free and fair manner, the Labour Court ought to have sustained the order of dismissal. Similarly, the learned single Judge has also committed an error in approving the discretion wrongly exercised by the Labour Court under Section 11 A of the Industrial Disputes Act. Exs.M39 and 40 are to be seen contextually having been made during the conciliation proceedings after the order of dismissal. The second respondent, despite the aforesaid document, did not evince interest in rejoining. To buttress the submissions, learned counsel appearing for the appellant placed reliance upon the following decisions:

(1) Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.,) etc., Vs. Secretary, Sahakari Nukara Sangh etc., (AIR 2000 SC 3129)

(2) Nilgiris District Consumers' Co-operative Wholesale Stores Ltd., Vs. Appellate Authority, Deputy Commissioner of Labour, Coimbatore. (2003(4) LLN 904)

7.A perusal of the award would clearly show that merits have not been gone into. While doing so, the Labour Court took into consideration the attending circumstances. We are dealing with the case of the second respondent, who is an illiterate lady, drawing the salary of Rs.900/- at the time of the order of dismissal passed against her. Exs.M39 and M40 are not in dispute. The contents of those documents are also not in dispute. In these two documents, the appellant itself has expressed its desire in unequivocal terms to take back the second respondent. The said stand taken by the appellant was available even during the proceedings before the Labour Court, which was rightly taken note of while passing the award. Therefore, in our considered view, the Labour Court was right in not going into the merits of the matter.

8.Learned single Judge in turn confirmed the award but nonetheless modified it as against the second respondent, which has become final. In such view of the matter, we do not find any error in the award passed, as modified by the learned single Judge. The decisions relied upon by the learned counsel for the appellant do not apply to the case on hand. We are dealing with the case where no finding on merit has been granted by the Labour Court as against the solemn statement, which was not disputed by the appellant itself. Therefore, in all fairness, the appellant ought not to have challenged the award.

9.In such view of the matter, we are of the considered view that the decisions relied upon by the learned counsel for the appellant cannot be pressed into service to be applied to be

present case. In those cases, on merits, the Labour Court itself had found that the charges were proved and the delinquent employee was found guilty, which is not the case before us. We do not find any merit in the appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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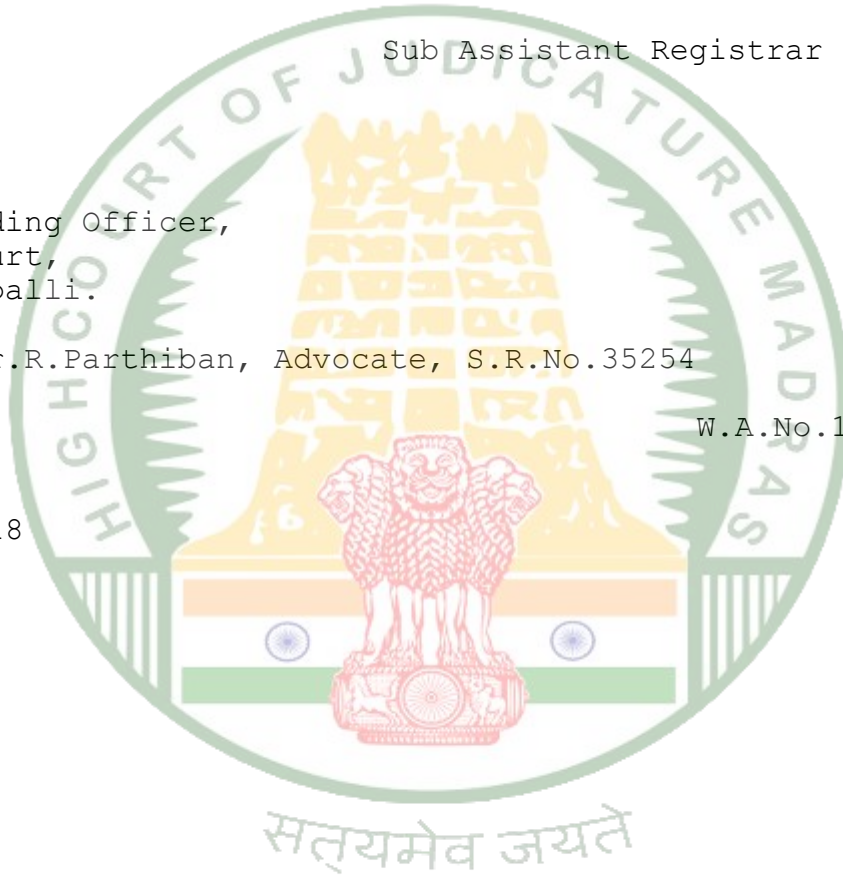
To

The Presiding Officer,  
Labour Court,  
Tiruchirapalli.

+1cc to Mr.R.Parthiban, Advocate, S.R.No.35254

W.A.No.1549 of 2010

NRL (Co)  
CS/21/06/18



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