

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2017

PRONOUNCED ON : 11.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1047 of 2002

Tamil Nadu Electricity Board,
Vellore Electricity Distribution
Circle, Vellore - 6 by the
Superintending Engineer. ... Appellant/Defendant
Vs.

T.P.Krishnan ... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of the Civil Procedure against the Judgment and decree dated 31.12.2001 made in A.S.No.51 of 2000 on the file of the Additional District Judge, Vellore, confirming the judgment and decree dated 30.08.2000 made in O.S.No.10/1997 on the file of the Additional District Munsif Court, Vellore.

For Appellant : Mr.V.Viswanathan

For Respondent : Mr.S.Senthilnathan

JUDGMENT

This Second Appeal is directed against the Judgment and decree dated 31.12.2001 passed in A.S.No.51 of 2000 on the file of the Additional District Judge, Vellore, confirming the judgment and decree dated 30.08.2000 passed in O.S.No.10/1997 on the file of the Additional District Munsif Court, Vellore.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that he is a employee under the defendant's Corporation and put in more than 25 years of service with unblemished record and the plaintiff, while employed at Ranipet office as stores custodian, Grade - I, was one of the officers in charge of the concerned stores

section and the discrepancies in the maintenance of the stocks, if any, would be settled only by a detailed reconciliation by all the members concerned and while so, the plaintiff was issued two notices dated 07.03.1990 and 16.03.1990 calling upon him to pay the sum of Rs.18, 118/- and Rs.14,019/- and the plaintiff submitted the interim reply dated 23.03.1990 stating that reconciliation would have to be done for the discrepancies in the stores and sought for a reasonable time with reference to the same. Meanwhile, the plaintiff was transferred from Ranipet to Gandhi Nagar, Vellore and the plaintiff has also submitted the interim explanation dated 30.04.1990 through the proper channel and however, without advertent to the plaintiff's reply and the interim explanation above stated, the defendant has issued the order dated 28.05.1990 directing the recovery of the amount from the Salary of the plaintiff, which is being impugned in the suit and the plaintiff's request for reconciliation and verification of the stock concerned have not at all been considered by the defendant and without effective reconciliation and verification of the stocks, the discrepancies could not be explained and the defendant should have ordered or permitted the plaintiff to reconcile the account and the defendant, without giving reasonable opportunities to the plaintiff to explain the discrepancies in the shortage of stocks, in gross violation of the principles of natural justice, had passed the impugned order directing the recovery of the amount from his salary and hence, the impugned order is capricious, arbitrary, illegal and liable to be set aside and the plaintiff is not at all liable to pay the amount mentioned in the impugned order and hence, the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. The plaintiff, while working as S.C. Grade - I, Ranipet Section, was not maintaining the stores properly and accordingly, pursuant to the surprise inspection conducted and verification of the records, shortage of materials was detected and as the plaintiff was the custodian of the stores concerned, he was directed to give explanation by the issuance of memos dated 07.03.1990 and 16.07.1990 and although the plaintiff acknowledged the receipt of the above said memos, he has not given any proper explanation and though the plaintiff was given one month time to set right things, even thereafter he had not submitted any proper explanation in the shortage of the materials as detected and the plaintiff being solely responsible for the same and as no explanation was given, there is no need for conducting any enquiry and accordingly, the defendant has passed the impugned order directing recovery of the value of the shortage of materials from the salary of the plaintiff and hence, the same is not liable to be challenged and further, the civil suit laid for challenging the above said order is barred and there is no

cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A10 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B10 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the relief of declaration and negatived the relief of permanent injunction sought for by the plaintiff. On appeal, the first appellate Court also concurred with the judgement and decree of the trial Court and impugning the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(i) Whether the Civil Courts have jurisdiction to try the suit in view of the provisions contained in the Payment of Wages Act providing adequate remedy to the party aggrieved?

(ii) Whether the conclusion of the Courts below that principles of natural justice had been violated can be sustained in view of the evidence on record to indicate that notice had been given to the plaintiff and opportunity had been given?"

9. Inasmuch as the defendant, during the surprise inspection of the stores division of Ranipet, where, the plaintiff was employed as stores custodian, Grade - I, found shortage of materials and as the same had not been properly explained at that time by the plaintiff, the defendant had issued two memos to the plaintiff dated 07.03.1990 and 16.03.1990 directing him to offer his explanation, if any, for the shortage of materials found therein. It is found that with reference to the same, the plaintiff has sent an interim reply dated 23.03.1990 seeking 30 days time to submit his explanation, after the reconciliation of the accounts. It is further found that by way of reply/explanation dated 30.04.1990, the plaintiff has sought for further time for the purpose of carrying out the reconciliation work. These facts are not in dispute. Meanwhile, it is found that the defendant issued the impugned order holding that inasmuch as the plaintiff had not submitted any explanation for the shortage of materials found therein, the plaintiff is solely responsible for the same and directed recovery of the value of the shortage of materials from the plaintiff's salary and impugning the same, the present lis has come to be laid by

the plaintiff.

10. The main contention put forth by the plaintiff for impugning the order is that he had not been provided with an opportunity to submit his explanation and without providing him an opportunity to submit his cause of the shortage of materials, thus, according to the plaintiff, the principles of natural justice has been violated in this matter and therefore, it is the case of the plaintiff that he has been necessitated to lay the suit for appropriate reliefs. Per contra, it is the case of the defendant that though sufficient time was afforded to the plaintiff to give his explanation, inasmuch as the plaintiff has not offered any explanation at all for the shortage of materials noticed, it is stated that the impugned order is perfect and the defendant is entitled to recover the amount for the shortage of materials from the salary of the plaintiff.

11. The defendant has raised a plea that the civil Court has no jurisdiction to entertain the suit. However, as rightly found by the Courts below, after taking into consideration the various decisions of the Supreme Court and the High Court, it is found that inasmuch as the plaintiff has challenged the impugned order on the ground of violation of the principles of natural justice, as having been passed without hearing him or affording him time to submit his explanation, the Courts below have held that the plaintiff is entitled to invoke the civil court's jurisdiction. With reference to the above determination of the Courts below, no valid point has been placed by the defendant's counsel to thwart the same and it is thus found that the Courts below have rightly determined that the civil Court has jurisdiction to entertain the suit laid by the plaintiff as the suit laid by the plaintiff does not fall under the purview of the Industrial Dispute Act or barred under any other Act and such being the position, I do not find any error in the findings of the Courts below that the civil Court has jurisdiction to try the suit laid by the plaintiff.

12. The plaintiff has been called upon to give explanation within 7 days for the shortage of materials by way of memos dated 07.03.1990 and 16.03.1990. On 23.03.1990, the plaintiff has sent an interim reply seeking 30 days time for submitting his explanation after carrying out the reconciliation work. That apart, by a requisition dated 30.04.1990, the plaintiff has referred to his earlier interim reply above stated also and prayed for further time for completing the reconciliation work so as to enable him to effectively submit his explanation with reference to the alleged shortage of materials. These facts are not in dispute. However, it is found that the defendant has on an arithmetic calculation finding that the plaintiff has failed to submit the explanation from the date of issuance of the memos

dated 07.03.1990 and 16.03.1990 proceeded to hold that the plaintiff has not submitted any explanation at all and accordingly, passed the impugned order dated 28.05.1990 directing the recovery of the amount from the salary of the plaintiff. That apart, it is also found that even prior to that, the defendant sent a communication to the plaintiff dated 21.04.1990 reminding the plaintiff that he has not submitted his explanation in time and they intend to proceed further. It is thus found that as determined by the Courts below, prior to the conclusion of the extension of time sought for by the plaintiff, on 21.04.1990 itself, the defendant has made up its mind that the plaintiff should be proceeded further for not submitting the explanation when the plaintiff has sought for 30 days time to give explanation by his interim explanation dated 23.03.1990 and also reiterated his request by his further explanation dated 30.04.1990, the request of the plaintiff seeking extension of time for submitting his explanation is only for enabling him to complete the reconciliation thereof so as to give a detailed and effective explanation with reference to the alleged shortage of materials, on the other hand, when as seen from the materials placed, the defendant has not properly considered the request of the plaintiff seeking extension of time to submit his explanation and when it is found that meanwhile the plaintiff having been transferred from Ranipet Section to Gandhi Nagar Section, it is seen that the plaintiff was unable to carry out reconciliation work as requested by him.

13. In the light of the above position, when it is found by the Courts below, on the basis of the materials placed, that the impugned order has come to be passed by the defendant without affording reasonable opportunity to the plaintiff to submit his explanation after carrying out the reconciliation work, the determination of the Courts below that the impugned order has been passed in violation of the principles of the natural justice without hearing the plaintiff is not liable to be set aside. The contention put forth by the defendant's counsel that the plaintiff cannot take his own time in submitting the explanation and hence, the defendant had issued the impugned order only after giving a reasonable opportunity and hence, the impugned order is not liable to be set aside, as such, cannot be countenanced, when as seen from the above facts, the plaintiff's request for extension of time to submit the explanation after reconciliation was not at all properly considered by the defendant, that apart, the impugned order also does not refer to the requests made by the plaintiff seeking for extension of time to submit his explanation and the same had been suppressed one way or the other in the impugned order. Be that as it may, as rightly argued by the plaintiff's counsel, at least, the defendant should have taken into consideration the requests made by the plaintiff dated 23.03.1990 and 30.04.1990

and based on the same, the defendant should have conducted a domestic enquiry against the plaintiff as regards the shortage of materials. On the other hand, it is found that without making any reference about the requests of the plaintiff seeking extension of time to submit his explanation and also without conducting a domestic enquiry as required by law, the action of the defendant in straight away issuing the impugned order directing the amount to be recovered from the salary of the plaintiff for the shortage of materials, as rightly found by the Courts below cannot be sustained in the eyes of law.

14. The Courts below have rightly found that the civil Court has jurisdiction to entertain the suit laid by the plaintiff on the basis of the challenge made by the impugned notices as being violative of the principles of natural justice and as the reliefs sought for by the plaintiff do not fall under the purview of the Industrial Dispute Act and the Payment of Wages Act. Similarly, the Courts below are also justified in coming to the conclusion that the principles of natural justice had been violated by the defendant in the issuance of the impugned order without affording reasonable and adequate opportunity to the plaintiff to submit his explanation after carrying out the reconciliation work and therefore, the judgement and decree of the Courts below do not call for any interference. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiff and against the defendant.

Resultantly, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Additional District Judge, Vellore,
2. The Additional District Munsif Court, Vellore.

Copy to

The Section Officer, V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.S.SENTHILNATHAN, Advocate, S.R.No. 2780

Pre Delivery Judgment made in
S.A.No.1047 of 2002

VD (CO)

TR(28/02/2018)