

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13-06-2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20112 of 2004
W.P.M.P.No.24199 of 2004
W.M.P.No.6431 of 2016
W.M.P.No.21737 of 2017
and W.V.M.P.No.423 of 2005

The Management,
G.C.No.2304,
Elapakkam Primary Agricultural Co-operative Bank,
Elapakkam,
Madhuranthagam,
Chengalput District.

... Petitioner

Vs.

1.T.Kulothungan,
S/o.Late Thirugnanasambantham,
Bazaar Veethi,
Elapakkam Post,
Madhuranthagam Taluk,
Chengalput District.

2. The I Additional Labour Court,
Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the Award of the Labour Court made in I.D.No.439 of 1996 dated 10.03.2004 on the file of the First Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.R.Balasubramaniam

For Respondents : Mr.T.Kulothungan
Party in person- R1
R2-Labour Court

ORDER

The order of the Labour Court dated 10.03.2004 made in I.D.No.439 of 1996 on the file of First Additional Labour Court, Chennai is challenged in this writ petition. The writ petitioner is a Primary Agricultural Co-operative Society Bank registered under the Provisions of The Tamilnadu Co-operative Societies Corporation Act, 1983.

2. The first respondent workman was employed in the writ petitioner management as Salesman on 21.08.1987. The allegation against the first respondent workman is that he was un-authorisedly absent for many months and he was irregular in attending his duties. The writ petitioner management placed this writ petitioner under suspension on 10.11.1987. However, the disciplinary proceedings initiated was not proceeded in accordance with the procedures as contemplated. The management issued a charge memo dated 09.02.1988 to the first respondent setting out certain allegation. The writ petitioner was directed to submit the explanation and the first respondent workmen had not submitted any explanation in response to the charge memo issued by the writ petitioner management against him. The allegation against the first respondent is that he had committed an act of negligence in respect of distributing the essential commodities to the public under the Public Distribution System and was himself irregular in attending duties. However, the first respondent workmen submitted his representation to reinstate him on duty. The writ petitioner management also considered the representation and allowed him to join duty. The writ petitioner states that in spite of the revocation of the order of suspension, the first respondent workmen did not attend duty and failed to fullfil the promises made by him in his representations.

3. Learned counsel for the petitioner strenuously contended that no leniency would be shown to the first respondent workmen since he had not only remained absent from his duty but committed certain irregular activities under Public Distribution System. Under these circumstances, the writ petitioner management issued an order of termination in proceedings dated 21.02.1988. Even after the order of termination, the writ petitioner management permitted the first respondent workmen to join duty. However, it is contended by the first respondent workmen that he responded to the request made by the management and he was not permitted to perform his duties. Under these circumstances, the workman raised an Industrial Disputes under section 2(A) of the Industrial Disputes Act, 1947 before Labour Court, Chennai.

4. The Labour Court, Chennai passed an award dated 10.03.2004 setting aside the order of termination dated 21.02.1988 and order for reinstatement with continuity of service and backwages. Aggrieved against the same, the present writ petition is filed by the writ petitioner management.

5. The vital point on behalf of the first respondent workman is that he was terminated from service without even conducting any domestic enquiry. After issuance of the order of suspension, he was permitted to join duty. However, without conducting any enquiry, he was unilaterally issued with the order of termination and therefore, he was constrained to approach the Labour Court by raising a dispute.

6. Thus, this court is of the opinion that leaving all the other grounds raised by the writ petitioner, it is suffice that the employee had been terminated without conducting any enquiry. Conducting an enquiry is an important procedure to be followed for imposing major punishment of termination from service. No employee should be imposed with a major punishment without conducting an enquiry and without providing an opportunity to defend his case.

7. The first respondent workmen was punished without hearing. Thus, the order of termination, per se, is illegal and is in violation of principles of natural justice. The findings of the Labour Court in this regard is unambiguous; i.e., as per Ex.M1, order of removal from service was passed by the respondent without even conducting any enquiry. Thus, the order of removal was set aside by the Labour Court, Chennai and consequential relief was also granted. This Court is of an opinion that the writ petitioner was terminated by order dated 21.02.1988 on the ground that he was unauthorisedly absent on many occasions and irregular in attending the duties. However, the writ petitioner management had failed to conduct an enquiry which is required under the rule of law. Thus, the writ petition is devoid of merits.

8. However, taking into account the vital aspects that the first respondent workman had hardly served four(4) months in the writ petitioner management. There is no reason to award 100% backwages. However, it is contended that the writ petitioner is a primary agricultural Co-operative Society and is not in a position to pay the huge amount of arrears. In view of the fact that the first respondent workman had not served, the learned counsel for the writ petitioner urged this Court that the principle of "no work no pay" should be applied in this case. This apart, the first respondent workmen has already attained the age of 58 years. Thus, the first respondent workman cannot be reinstated into service.

9. Admittedly, the first respondent-workman hardly served 4 to 5 months in the writ petitioner-Co-operative Society. Further it is stated that the first respondent-workman was allowed to continue in service after revocation of suspension, but he was irregular in attending his duties. Contrarily, the first respondent-workman pleaded that he was regularly attending the duty and the management had not permitted him to perform his duty. May that it be, this Court is of an opinion that the first respondent-workman is continuing the legal battle for more than two decades. Though the Labour Court passed an Award on 10.3.2004, the matter is pending for the past about 14 years.

10. In view of the fact that the writ petitioner has already attained the age of superannuation and continuing the legal battle for about 22 years, in respect of his service benefits, this Court consciously has to adopt a pragmatic approach and apply the principles of equity. As of now, it is not made clear that whether the services of the first respondent-workman was confirmed or not. However, those factors are not disputed by the writ petitioner-Management.

11. Considering the over all factual circumstances and by applying the principles of equity, this Court is inclined to restrict the backwages alone to 20%. In respect of the order of reinstatement and consequential service benefits granted by the Labour Court, the same are set aside as the workman had completed the age of 58 years. In respect of the full backwages awarded by the Labour Court, now it is confined to 20% of the backwages. Accordingly, the writ petitioner is directed to pay 20% of the backwages alone to the first respondent-workman, within a period of twelve weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands allowed partly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

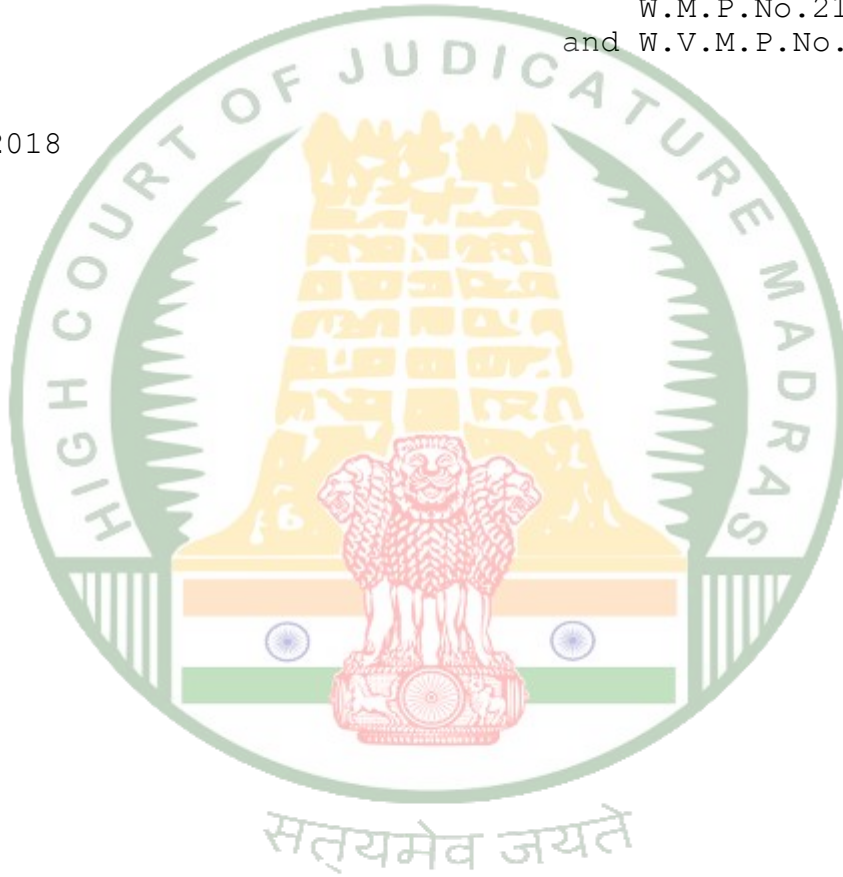
To

The I Additional Labour Court,
Chennai.

+1cc to Mr.R.Balasubramaniam, Advocate in sr.no.37222

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