

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:22.02.2018
CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.2133 of 2012

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Nagapattinam.Appellant

Vs

1. S.Vedaraj
2. The Presiding Officer,
Labour Court,
Cuddalore.Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 05.03.2012 passed in W.P.No.17439 of 2004.

WP.No.17439/2004:Writ petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records of the presiding officer, Labour Court, Cuddalore, the Second respondent herein passed in I.D.No.34 of 1996 dt.25/6/03 and quash the same and direct the first respondent to reinstate the petitioner with back wages and continuity of service.

For Appellant : Mr.C.Munuswamy

For Respondents : Mr.Sadasivam (R1)
R2 - Court

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra Court appeal is directed against the order dated 05 March 2012 in W.P.No.17439 of 2004 whereby and whereunder, the learned single Judge after setting aside the order dated 25 June 2003 in I.D. No.34 of 1996 directed reinstatement with 25% of back wages and other attendant benefits. Feeling aggrieved, the Tamil Nadu Civil Supplies Corporation has come up with this intra court appeal.

2. The learned Standing Counsel appearing for the appellant contended that the respondent was involved in a serious misconduct by dealing with the ration commodities in

the open market and as such, action was rightly taken by the Corporation. There was clear admission on the part of the first respondent, resulting in passing an order of dismissal. According to the learned counsel, the learned single Judge was not correct in setting aside the award passed by the Labour court. It was further contended that the learned single Judge ought to have dismissed the writ petition on the ground of delay and laches.

3. The learned counsel for the first respondent justified the impugned order. According to the learned counsel, there was no enquiry conducted by the disciplinary authority before dismissing the first respondent from service. According to the learned counsel, the Labour Court has proceeded as if there is a clear admission on the part of the first respondent. However, there was no such admission. The first respondent only submitted an explanation to the allegation made against him.

4. The first respondent was an employee of the ration shop at Amudham Angadi, Athanoor Village. The disciplinary authority issued a charge memo to the first respondent on 25 August 1983 containing three charges. The Management alleged that the first respondent supplied kerosene in open Market without making entries in the ration card. It was alleged that the first respondent made entries in the drawal register as if he sold the Kerosene to the public, but no corresponding entries were found in the family cards. The first respondent in his explanation stated that due to over work, there has been omission in making entries in the ration card. The circumstances explained by the first respondent in his reply was taken as a factum of admission by the disciplinary authority and the same resulted in dismissing him from service by order dated 18 August 1983.

5. The first respondent raised an industrial dispute before the Labour Court in I.D.No.34 of 1996. The Labour Court framed three issues for consideration. The issue raised by the appellant with regard to the limitation was taken as a third issue. The issue of limitation was answered by the Labour Court against the appellant and the other issues were decided as against the first respondent. The Labour Court confirmed the order passed by the disciplinary authority.

6. The first respondent initiated the Writ Petition challenging the award passed by the Labour Court. Before the Writ Court, the first respondent contended that enquiry was not conducted by the disciplinary authority, before dismissing him from service. It was further contended that there was violation of the principles of natural Justice and as such, the award passed by the Labour Court is illegal and not sustainable. The first respondent further contended that enquiry was not conducted by the disciplinary authority and as such, contra observation made by the Labour Court has no

basis.

7. There was no enquiry conducted by the disciplinary authority before dismissing the first respondent from service. The question relating to the fairness of the proceedings was discussed by the learned single Judge in detail. The admission of the first respondent, with regard to the misconduct alleged, was referred to by the learned single Judge by reproducing the explanation given by him. There was no clear cut admission with regard to the misconduct alleged against him. The learned Judge quashed the order dismissing the appellant from service. The learned Judge also directed the appellants to pay 25% of the back wages to the first respondent.

8. We have perused the award passed by the Labour Court and the order passed by the learned single Judge.

9. We are of the considered view that the learned Judge was justified in the observation that the disciplinary authority violated the principles of natural justice, while passing the order of dismissal. The authority, who earlier issued the Charge Memo, himself conducted the namesake enquiry. There was no full fledged enquiry conducted at all. The disciplinary authority issued notice to the first respondent and on the basis of his explanation, passed an order dismissing him from service. There was no examination of consumers with regard to the contention that first respondent supplied kerosene in open Market and he made entries in the drawal register as if he sold Kerosene to the public, but no corresponding entries were found in the family cards. The enquiry should have been conducted by appointing an enquiry officer. In the subject case, the officer who framed charges against the first respondent acted as an enquiry officer. Such being the factual position, the learned single Judge was correct in setting aside the award passed by the Labour Court.

10. The next question regarding the delay in initiating the proceedings before the Labour Court was answered by the Writ Court against the management. There was no challenge by the Management to the said finding.

11. The other question is as to whether the single Judge was correct in directing the appellant to pay 25% of the backwages to the first respondent. There is no dispute that the first respondent was not in service during that period. There should be exceptional circumstances to award backwages. However, no such grounds were pleaded by the workmen. We are therefore, of the view that the direction to pay backwages to the first respondent should be set aside.

12. The order passed by the learned single Judge setting aside the order of dismissal is confirmed. The further

direction to pay 25% of the backwages to the first respondent for the period from 14.07.2006 to 15.01.1996 is set aside. The first respondent appears to have retired from service on 14.06.2006. We direct the appellant to pay the retirement benefits to the first respondent taking into account the order passed by the learned single Judge, within a period of three months from the date of receipt of a copy of this Judgment.

13. The intra court appeal is allowed in part as indicated above. No costs.

Sd/-
Assistant Registrar(Cs IX)

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.C.Munusamy, Advocate Sr.No.13715
+1cc to Mr.S.Sadasivan, Advocate Sr.No.13651

SS(CO)
sm:10.4.2018

W.A.No.2133 of 2012

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