

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

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

W.A.No.63 of 2016

R.Deivasigamani ...Appellant/1st Respondent

Vs

1.The Management of Tamil Nadu Co-operative
Milk Producers' Federation Ltd.,
Rep. by its Managing Director
Madhavaram, Chennai 600 051. ... Petitioner/1st Respondent

2.The Presiding Officer
Second Additional Labour Court
Chennai 600 104. ...2nd Respondent/2nd Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent
Act, to set aside the order dated 03.04.2013 passed by this
Court in W.P.No.30114 of 2003.

The Writ petition is filed to quash the award dated 07/02/2003
passed by the II Additional Labour Court, Chennai in ID.No.464
of 1999.

For Appellant : Mr.K.M.Ramesh

JUDGMENT

P.VELMURUGAN, J.

This intra Court appeal is directed against the order dated
03 April, 2013 passed by the learned Single Judge in W.P.
No.30114 of 2003.

2 The appellant joined the services of the first
respondent Management as Junior Assistant on 12 June, 1986 and
while he was working in the Transport Unit at Madhavaram Milk
Colony, Chennai, it was found that there was a shortage of 9,000
litres of diesel between the period 30 April, 1989 and 27 May,
1989 and that the appellant had also committed forgery of the
signature of the then Senior Deputy Manager (Transport) in the
official records to cover up the said shortage of 9,000 litres

of diesel and thereby, caused loss to the tune of Rs.32,580/- to the first respondent Management. Therefore, he was placed under suspension by order dated 18 October, 1989 pending disciplinary proceedings.

2.1 The first respondent Management issued a charge memo dated 20 October, 1989 calling upon the appellant to explain for the shortage of 9,000 litres of diesel and for the forgery of signature. The appellant denied the charges by his explanation dated 16 November, 1989 and requested to conduct an enquiry. Thereafter, an Enquiry Officer was appointed and the appellant also participated in the enquiry. The Enquiry Officer submitted his report dated 10 October, 1995 to the disciplinary authority holding that the charges levelled against the appellant were proved.

2.2 The disciplinary authority issued second show cause notice to the appellant and thereafter, imposed the punishment of removal from service. The appellant raised an industrial dispute before the second respondent Labour Court, Chennai, which was registered as I.D.No.464 of 1999. The second respondent Labour Court, finding that the enquiry conducted against the appellant was not fair and was also against the principles of natural justice, set aside the dismissal order of the appellant and directed the first respondent Management to reinstate the appellant with continuity of service and back wages, with all other attendant benefits. Feeling aggrieved, the first respondent Management filed the writ petition in W.P.No.30114 of 2003.

3 The learned Single Judge, set aside the award passed by the second respondent Labour Court and remanded the matter back to the second respondent Labour Court to conduct the trial afresh. The appellant is before this Court, challenging the order passed by the Writ Court.

4 The main contention of the learned counsel for the appellant is that no adequate opportunity of hearing was given to the appellant and hence, the award passed by the second respondent Labour Court ordering reinstatement of the appellant with continuity of service and back wages, with all other attendant benefits, warrants no interference.

5 It is a matter of record that during trial before the second respondent Labour Court, the alleged forged signatures of the appellant were sent to the Forensic Science Laboratory and the Forensic Science expert has given a report stating that no opinion could be given with respect to the alleged forged signatures with the available materials. Further, the learned Single Judge, while setting aside the award of the second

respondent Labour Court, remitted the case to the second respondent Labour Court with a direction to dispose of the matter within a period of three months. That apart, the first respondent Management was given liberty by the learned Single Judge to produce witnesses before the second respondent Labour Court and to examine those witnesses orally by producing the necessary documents to prove the charges levelled against the appellant. As pointed out above, the Forensic Science Laboratory has stated that there were no sufficient materials to give any opinion as to the alleged act of forgery committed by the appellant. Thus, when an expert body itself has given such a clear opinion, it is very difficult to prove that the appellant has forged the signatures of the then Senior Deputy Manager (Transport).

6 Be that as it may, as has been found by the learned Single Judge, though the appellant was initially terminated from service, subsequently, he had retired on attaining the age of superannuation. Since he has already attained the age of superannuation, the question of reinstatement does not arise. Even if the matter is remitted back to the second respondent Labour Court and the opinion of the Forensic Science Laboratory is obtained, no purpose, much less any useful purpose, is going to be served. Under such circumstances, this Court is of the considered view that the order passed by the learned Single Judge remitting back the matter to the second respondent Labour Court warrants interference.

7 In the result, the order dated 03 April, 2013 is set aside. The writ petition in W.P.No.30114 of 2003 is dismissed.

8 Since the appellant has attained the age of superannuation, the order of removal from service passed by the first respondent Management is set aside. At the same time, the direction given by the Labour Court for payment of back wages to the appellant is also set aside. In short, the appellant is not entitled to back wages for the entire period. The award passed by the Labour Court is modified into one of reinstatement in service without back wages, for the purpose of pensionary benefits.

In the upshot, we allow the intra court appeal to the extent indicated above. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

gms

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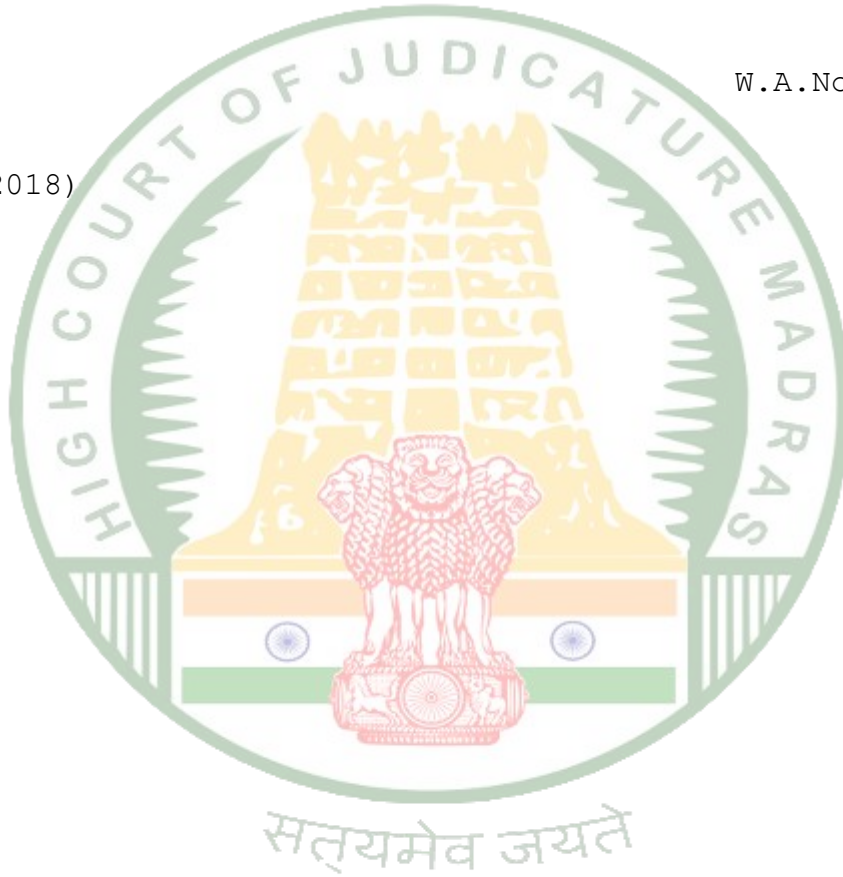
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+lcc to Mr.K.M.Ramesh, Advocate SR.No.6789

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SKS (CO)
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