

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.39116 of 2002

S.Arumugam

... Petitioner

Vs.

Pondicherry Agricultural Products
Food and Civil Supplies Corporation Ltd
(PAPSCO)

Represented by the Managing Director
Agriculture Complex, Thattachavadi-9
Pondicherry.

.... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the conduct of the Respondent Management in denying the petitioner work from September, 2000 onwards as illegal and consequently, direct the respondent to treat the petitioner as present for the said period and pay him wages from September, 2000 onwards as illegal and consequently direct the respondent to treat the petitioner as present for the said period and pay him wages from September 2000 onwards further direct the respondent management to permit the petitioner to discharge his duties as a Salesman in any Sales Centre or Section of the Respondent Corporation at Pondicherry.

For Petitioner : Mr.S.R.Balachandran

For Respondents : Mr.T.M.Naveen

सतयमेव जयते
O R D E R

The Petitioner, who had joined the Respondent, viz., Pondicherry Agro Products, Food and Civil Supplies Corporation Limited, on 03.11.1997, was initially engaged in its Vegetable Section and he had thereafter worked as salesman in the Kirumambakkam from the year 1988. In September 2000, shortage for a sum of Rs.42,000 was deducted by the Respondent at Egg Centre in Kirumambakkam of the Respondent and the Petitioner was called upon to make good that loss. In pursuance thereof, he had remitted a sum of Rs.10,000/- on 14.09.2000, but he was not allowed to work thereafter or sign in the attendance register although he had neither been placed under suspension nor disciplinary proceedings initiated against him. He had been

later orally informed that the monetary shortage was to the tune of Rs. 2,04,221 and he would be allowed to work if he remitted that entire amount. When he has asked for the basis of which the aforesaid amount was claimed, the authorities refused to furnish any details in that regard, and he was told that he would not be allowed to work. The Petitioner had sent a representation dated 05.03.2001 to the Managing Director of the Respondent requesting for issuing joining order so that he could be able to collect the amount due from the customers to whom he had sold eggs on credit, which was followed by reminder dated 17.03.2001. The Managing Director of the Respondent by a letter dated 17.03.2001 replied to the representation dated 05.03.2001 made by the Petitioner stating that a complaint had been lodged with the Kirumambakkam Police Station for the misappropriation of funds of the Respondent committed by the Petitioner and he has not yet made good that loss. He was further required not to make any representation regarding his employment till the issue regarding to the monetary loss to the extent of Rs. 2,00,000 caused by him had been resolved and he was advised to contact only the officials at Kirumambakkam Police Station regarding the offence. In spite of such enquiry taking place, the Petitioner claims to have made a reminder dated 28.07.2001, but the Respondent did not allow him to join duty. In such circumstances, he has on 21.10.2002 filed this Writ Petition for declaration that the conduct of the management of the Respondent in denying his work from September 2006 onwards was illegal and for the consequential direction to treat him as present for the period from 2000 onwards and permit him to discharge his duties as salesman in any of the sales centres or section of the Corporation of the Respondent and pay the wages due to him.

2. Though the Writ Petition was admitted on 23.01.2002 and this Court had directed the Respondent in the order dated 21.03.2003 to file Counter when the Petitioner was refused interim relief, the Respondent has filed their Counter Affidavit only on 20.06.2018 after seeking several adjournments from this Court for the same whenever the matter was listed for hearing in the interregnum. In the said Counter Affidavit, the Respondent contends that the Petitioner had been engaged from 03.11.1997 onwards on daily rated basis and when the Petitioner was posted at Kirumambakkam Egg Centre from August 1998, he had to receive the eggs from the Head Office godown of the Respondent to sell them and remit the sale proceeds in the bank account of the Respondent or in its cash section and obtain the bill for the same on day to day basis. It is emphasized that the Respondent had not encouraged credit sales and no oral or written instructions had been issued to any of its employees in that regard and no such practice had been followed in its business centres including its Egg Centres. It has been further claimed that if credit sales were made to the government or its departments, institutions, etc. credit bill would be raised and

submitted to the concerned Departments or Institutions immediately. According to the Respondent, during the inspection conducted at its Kirumambakkam Egg Centre on 01.07.2000 it was found that there was a shortage of egg stock to the value of Rs. 41,686 and in the enquiry, the Petitioner has admitted misappropriation of that amount and had agreed to pay the same along with interest aggregating the Rs.42,936/- within 30.09.2000 by his letter dated 06.09.2000. The Respondent had thereafter lodged a complaint dated 30.09.2000 before the Kirumambakkam Police Station requesting to register a criminal case against the Petitioner and to take necessary action against him for the money misappropriated by him. The Petitioner on 14.09.2000 had remitted a sum of Rs.10,000/- and agreed to remit the balance amount of Rs. 32,936/- in there installments. As the Petitioner was not a regular employee of the Respondent, it was not able to take any disciplinary action against him and stopped engaging him with a direction to remit the balance amount that has been misappropriated, which has not been done thereafter. The Respondent claims to have found after further perusal of records at Kirumambakkam Egg Centre for the period from 01.08.1998 to 31.02.2000 that the Petitioner has misappropriated the huge sum of Rs. 20,04,221/- and had lodged another complaint dated 05.02.2001 informing the Kirumambakkam Police Station about the said misappropriation committed by the Petitioner and requested for registering a criminal case against him and recover the same. The Respondent had conducted an internal audit of its Kirumambakkam Egg Centre on the direction of the Police (C.I.D., Puducherry). In the audit report dated 22.07.2002 it had been revealed that the total amount misappropriated by the Petitioner was Rs. 10,80,089.85 and the Deputy General Manager of the Respondent had requested the Police (C.I.D., Puducherry) to take necessary action against the Petitioner regarding the same and for recovering misappropriated amount from him. The Police (C.I.D., Puducherry) based on the details registered First Information Report against the Petitioner under Crime No. 21/2002 and launched criminal prosecution against the Petitioner in C.C. No. 230/2003 on the file of the Judicial Magistrate Puducherry, which culminated in the judgment dated 06.09.2010 convicting the petitioner for dishonest misappropriation and committing breach of trust and sentenced him to undergo a imprisonment for one year or fine of Rs. 5,000/- and simple imprisonment of one month. The Criminal Appeal bearing C.A.No.22 of 2010 before the Principal Sessions Judge, Puducherry filed by the Petitioner had been allowed by judgment dated 21.01.2001, only by giving benefit of doubt to the Petitioner and acquitting him. It has been submitted that even in case of regular employees, acquittal in criminal cases will not automatically entitle to reinstatement in service and that as the Petitioner was only employed on daily rated basis, he has no right to seek for continuous engagement or absorption from the Respondent.

3.Heard Mr. S.R.Balachandran for the Petitioner and Mr. T.M.Naveen for the Respondent and pursued the pleadings of the parties and the other materials placed on record.

4.Though the Petitioner, who is a 'workman' within the meaning of the Industrial Disputes Act, 1947, has an alternative remedy of raising an industrial dispute before the Labour Court under its provisions to ventilate his grievances of non-employment against the Respondent, no extenuating circumstance has been shown either in the affidavit filed in support of the Writ Petition or during the course of submissions made by the learned counsel for the Petitioner for having bye-passed the same and directly approached this Court qua this Writ Petition. It is also evident from the rival contentions of the parties as reflected in their respective pleadings that the matter involves several disputed questions of fact that cannot be effectually and completely adjudicated without recording evidence and examining witnesses. On the other hand, any endeavour made by this Court to proceed to examine the contentious issues following summary procedure in this Writ Petition may not result in satisfactory determination of the matter one way or the other and may instead cause either miscarriage or failure of justice, which would not be in the interest of the parties. Hence, it would not be appropriate for this Court to continue to entertain this case in the exercise of discretionary powers under Article 226 of the Constitution of India. This view is fortified by the binding decision of the Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti [(2008) 12 SCC 675], in which it has also been held that it cannot be laid down as a proposition of law that once a Writ Petition is admitted, it cannot be dismissed on the ground of alternative remedy.

5.In these circumstances, without expressing any opinion on the correctness or otherwise of the rival contentions of the parties, the Writ Petition is dismissed, leaving it open to the Petitioner to approach the proper forum in accordance with law to raise all contentions available for necessary relief and also to the Respondent to defend and support the action taken. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

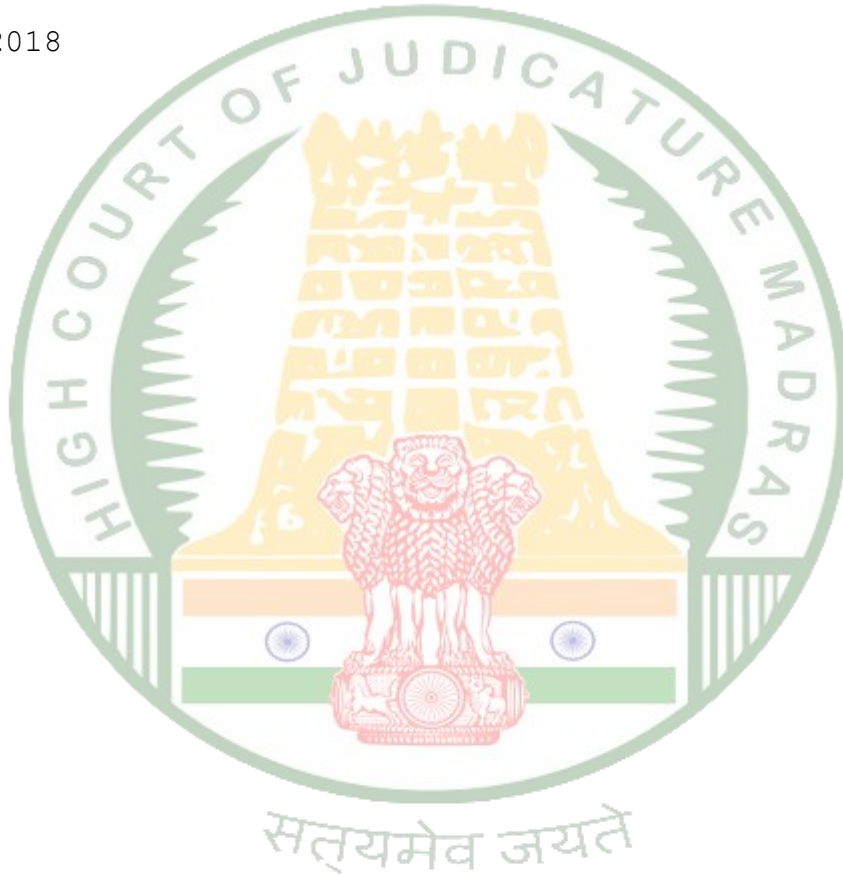
To

Pondicherry Agricultural Products
Food and Civil Supplies Corporation Ltd
(PAPSCO)

Represented by the Managing Director
Agriculture Complex, Thattachavadi-9
Pondicherry.

W.P.No.39116 of 2002

nr 11/08/2018



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