



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2018

CORAM:

THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM
AND

THE HONOURABLE Mrs. JUSTICE R. THARANI
W.A. (MD) .No.447 of 2018

K.Muneeswaran

... Appellant/2nd Respondent

Vs.

1. The Management,
A-2478 Melur Agricultural Producers
Co-operative Marketing Societies Ltd.,
through its Special Officer,
Melur Post, Madurai District. ... 1st Respondent/Petitioner

2. The Presiding Officer,
Labour Court,
District Building, Madurai. ... 2nd Respondent/1st Respondent

PRAYER: This Appeal is filed under Clause 15 of the Letters Patent,
to set aside the order dated 28.06.2016 made in W.P. (MD) No.2894
of 2009 on the file of this Court.

Prayer in WP (MD). 2894/ 2009 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue Writ of
Certiorari calling for the records of the 1st respondent made in
I.D.No.150/98 dated 16.4.2008 and quash the same.

For Appellant : Mr.V.O.S.Kaaliselvam

For Respondents : Mrs.P.Jessi Jeeva Priya for R1

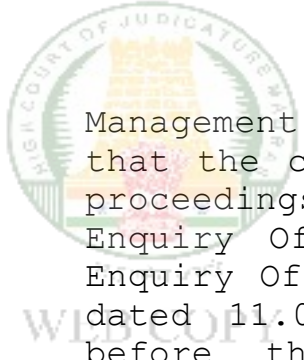
JUDGMENT

(Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**)

Heard Mr.V.O.S.Kaaliselvam, learned counsel for the
appellant and Mrs.P.Jessi Jeeva Priya, learned counsel for the
first respondent.

2. This appeal by the workman is directed against the order
dated 28.06.2016 made in W.P. (MD) No.2894 of 2009.

3. The appellant workman was employed as a Godown Keeper by
the respondent Management and came to adverse notice of the
Management, resulting in charge proceedings being initiated
against him for stock deficit. The appellant was placed under
suspension. But, however not paid subsistence allowance. But the



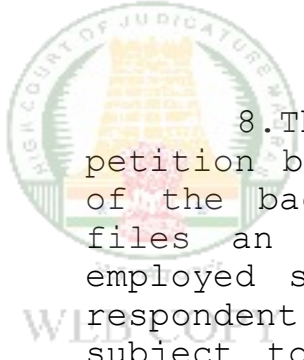
Management commenced domestic enquiry and the Enquiry Officer held that the charges proved. The enquiry proceedings is an exparte proceedings since the appellant failed to appear before the Enquiry Officer. The Management accepted the findings of the Enquiry Officer and dismissed the appellant from service by order dated 11.02.1998. The appellant raised an industrial dispute before the Labour Court, Madurai in I.D.No.150 of 1998, challenging his order of dismissal. The Labour Court, by award dated 16.04.2008 held that the appellant was not paid subsistence allowance and therefore, he was prevented from effectively defending himself in the domestic enquiry and that apart in the domestic enquiry, charge against the appellant was not proved beyond probabilities. Thus, the Labour Court concluded that the departmental enquiry was vitiated and consequently held that the order of dismissal was not sustainable. However, the Labour Court exercised the discretion and restricted the payment of back wages to 25%.

4.We find that the Labour Court did not give any specific reason for restricting the back wages to 25%. The Management challenged the award passed by the Labour Court by filing the writ petition. The writ petition was partly allowed, by the impugned order, confirming the award of reinstatement, but, setting aside the award of 25% back wages. The Management was directed to pass formal order reinstating the appellant in service, but enable him to join duty on 01.07.2017. The Management has not filed any writ appeal against that portion of the order passed by the Writ Court confirming the award of reinstatement. The workman is before us contesting the denial of 25% back wages.

5.Considering the factual matrix of this case, we find that the period during which the appellant was out of employment if calculated upto date is more than 20 years. The learned counsel for the appellant vehemently contends that the appellant was out of employment after he was dismissed from service by the Management on 11.02.1998. However, there is no specific evidence let in by the appellant before the Labour Court on this aspect.

6.Therefore, we are of the view that it is for the appellant to prove that he was not in employment since February 1998. However, we do not wish to foreclose his right in this regard, though he might not have specifically given any oral or documentary evidence to substantiate his contention that he was out of employment for all these years.

7.The learned counsel for the appellant submits that the appellant will file an affidavit to the said effect and the Management can verify the correctness of the said affidavit. However, considering the facts and circumstances of the case, we



8. Therefore, we modify the order passed in the writ petition by directing that the appellant will be entitled to 15% of the back wages subject to the condition that the appellant files an affidavit to the effect that he was not gainfully employed since 11.02.1998. On such affidavit being filed, the respondent Management is entitled to cause verification and subject to satisfactory proof, the appellant shall be paid 15% back wages. As directed by the Writ Court, the respondent Management is directed to pass a formal order reinstating the appellant into service on or before 16.04.2018. On receipt of such order, the appellant shall immediately report for duty and after joining duty, shall submit the affidavit as per the above direction, the correctness of which shall be verified by the Management.

9. With the above direction, this writ petition stands partly allowed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
District Building, Madurai.

+1cc to Mr. N. Subramanian, Advocate Sr. No. 57502

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VB/SV/MMS/SAR1/03.04.2018/3P/3C

W.A. (MD) .No. 447 of 2018
22.03.2018