



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22582 of 2018

and

W.M.P(MD).No.20463 of 2018

ASISI Off set Press,
rep., by its Manager,
R.C.Diocese of Kottar,
ASISI Complex,
Nagercoil-629 001.
Kanyakumari District.

..Petitioner

Vs.

1. The Deputy Commissioner of Labour,
Tirunelveli,
Tirunelveli District.

2. D.Christ Edwin Raj

... Respondents

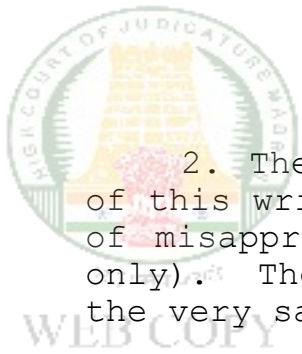
PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, call for the records relating to the impugned order in TNSEA 1/2015 dated 18.06.2018 on the file of the first respondent and quash the same.

For Petitioner : Mr.R.Manimaran

For R1 : Mr.Ayiram K.Selvakumar
Additional Government Pleader

ORDER

The second respondent herein was employed in the writ petitioner establishment. The Management issued a charge memo against the second respondent containing three articles of sub-charge. Domestic enquiry was conducted. The second respondent was finally dismissed from service. Questioning the same, the second respondent filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishment Act before the first respondent herein. The Appellate Authority, by order dated 18.06.2018, allowed the said appeal and set aside the order of dismissal. Challenging the same, this Writ Petition has been filed.



2. The specific stand taken in the affidavit filed in support of this writ petition is that the second respondent was found guilty of misappropriation of a sum of Rs.3,00,000/- (Rupees Three Lakhs only). The learned counsel commenced his submission by reiterating the very same contention.

3. This Court posed a specific question to the learned counsel for the petitioner as to where the charge of misappropriation has been made against the second respondent herein. The charge No.3 was read out. The said charge only reads that on account of the acts of the second respondent, a sum of Rs.3,00,000/- could not be recovered from the customers and thus, loss has been caused to the Management. Loss is one thing and misappropriation is entirely another. Since a false case has been projected before this court in the affidavit filed in support of this writ petition, I am of the view that the discretionary jurisdiction of this Court does not deserve to be exercised in favour of the petitioner herein. That apart, what is under challenge is the order passed by the Appellate Authority. It has been held in more than one decision of the Madras High Court that findings of fact rendered by the Appellate Authority under Section 41 of the Tamil Nadu Shops and Establishments Act, cannot be assailed in writ jurisdiction.

4. In this case, the Appellate Authority has given a categorical finding that the charges levelled against the second respondent have not been established. Further finding has been given that the punishment of dismissal is grossly disproportionate to the charges framed against him. The charges against the second respondent are:-

1. He was not punctual in reporting for duty.
2. He was not obedient in the discharge of his duty.
3. A sum of Rs,3,00,000/- had to be returned.

5. None of these charges has been established and in any event they did not warrant dismissal from service. I am of the view that the order passed by the Appellate Authority does not warrant any interference.

6. This Writ Petition is dismissed accordingly. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)



To

The Deputy Commissioner of Labour,
Tirunelveli,
Tirunelveli District.

+1 cc to Spl.Govt.Pleader, SR.No.94759

rmk

SS/RSK/SAR 2/17.12.2018/3P/3C

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