

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.15143 of 2003
and W.M.P.No.18968 of 2003

Plantation Labour Association,
Reg.No.1659/52,
85, Jawaharpet,
Coonoor, The Nilgiris,
Rep. by its President,
T.Balakrishnan. ...Petitioner

V.

The Divisional Manager,
Nelliyalam Tea Division,
Tamil Nadu Tea Plantation Corporation,
Kolapalli - 643253,
Nilgiris District. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records made in Na.Ka.No.336/2002/Tho, passed by the Divisional Manager, Nilgiris, Nalliyalam Tea Division dated 12.04.2003 on the file of the respondent herein and to quash the same.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Ms.Devi Rudra
for M/S.T.S.Gopalan & Co.

O R D E R

The order under challenge in the present writ petition is for recovery of the value of certain stolen materials from the respondent plantation premises, from 7 of the petitioner's members who were engaged as Security Guards at the relevant point of time. According to the respondent, the theft had occurred due to the negligence on the part of the petitioner's members and therefore,

they are liable for payment of the value of the stolen materials.

2. The learned counsel for the petitioner submitted that the concerned Security Guards were either not present on duty at the relevant point of time nor had the access to the roof top and as such, negligence cannot be attributed to them.

3. The learned counsel for the respondent, on the other hand submitted that the order under challenge is only a recovery order and since the petitioner herein had not challenged the original Enquiry Officer's report, the writ petition cannot be maintained. It is her further submission that even otherwise, the concerned Security Guards were on duty at that relevant point of time and because of their negligence, the theft had occurred. The learned counsel submitted that the duty of the Security Guards is to prevent such action of thefts and since they had negligently allowed the theft to occur, they are liable to pay the value of the stolen materials. Since the petitioner has not challenged the enquiry report and also since the Enquiry Officer has found that these Security Guards had knowledge about the theft, there is no infirmity in the order of recovery passed.

4. I have given careful consideration to the submissions made by the respective counsels.

5. In normal circumstances, this Court would be constrained to grant liberty to the petitioner to challenge the Enquiry Report, which has culminated into the present impugned recovery order. However, it is seen that the alleged incident is claimed to have taken place on 20.12.2001, for which an enquiry was conducted and a report was filed on 05.07.2002, finding some of the employees' guilty of the charges. The impugned order of recovery was issued on 12.04.2003 and ever since, more than 16 years have passed. At this juncture, it would not be appropriate to grant such a liberty to the petitioner and open up the second round of litigation. In this view and in order to have a pragmatic approach to the entire issue, the Enquiry Report dated 05.07.2002 was perused. On a patent view of the report, it is seen that the report itself was not based on any sufficient evidence, either material or documentary, to establish that the petitioner herein were engaged in their duty, during the relevant point of time, owing to which the theft had occurred. All the Security Guards, had consistently stated that about 2½ years back, the materials that were stolen were found to have been dismantled, at which point of time, they were not on duty. After this, the materials were stored in the roof

top and the door leaving to the roof top was locked and the key was handed over to one Jagajothi. It is the statement of all the Security Guards that they had no access to the roof top and therefore, had indicated that they cannot keep a vigil on the materials lying in an area, to which they had no access. Some of the Security Guards have also stated that they were not on duty when the theft is alleged to have been taken place. It is also the statement of some of the Security Guards that the materials could have been taken at the time when the scrap from the factory premises were removed, at which point of time, they were not directed to keep a vigil over such removal of scrap. The Enquiry Officer has also accepted the statements of these Security Guards and held that the theft had been committed by some third persons and that these Security Guards were not in duty when the theft had occurred. The report also states that the Security Guards had no access to the roof top, where the materials were stored and the key to the roof top was with the Pump House operator namely Jagajothi. Having found all these aspects, the Enquiry Officer has opined that the theft had occurred due to the negligence of these Security Guards, which is unfounded.

6. I am unable to comprehend as to how the negligence can be attributed to the Security Guards, when there is absolutely no statement either from the Management or by the Security Guards to the effect that they were on duty and had access to the materials in the roof top. The negligence can be attributed only when the alleged stolen goods were in the sight or vicinity of the Security Guards that they were required to have vigil over the same. In the instant case, the stolen goods have been cordoned off and kept under lock and key with the Management, to which area the Security Guards had no access at all, which aspect has also been admitted by the Enquiry Officer in his findings. As such, the findings of the Enquiry Officer itself is not based on any acceptable evidences. Though the members of the petitioner's Union have not challenged the enquiry report, in my view, the report itself cannot be sustained, in view of the aforesaid discussions. As such, the consequent recovery order also would be illegal.

7. It is now brought to the notice of this Court that among the 7 Security Guards who is alleged to have been negligent in their duty, K.Sivasamy has retired from service, S.Arumugam has expired and R.Muthukrishnan has been dismissed from service in the month of February

8. In the light of the above observations, I do not find any justification on the part of the respondent herein in attempting to recover the value of the stolen materials from these 7 Security Guards, who are members of the Union. Hence, the order dated 12.04.2003 passed by the respondent in Na.Ka.No.336/2002/Tho, is quashed.

9. Accordingly, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS)

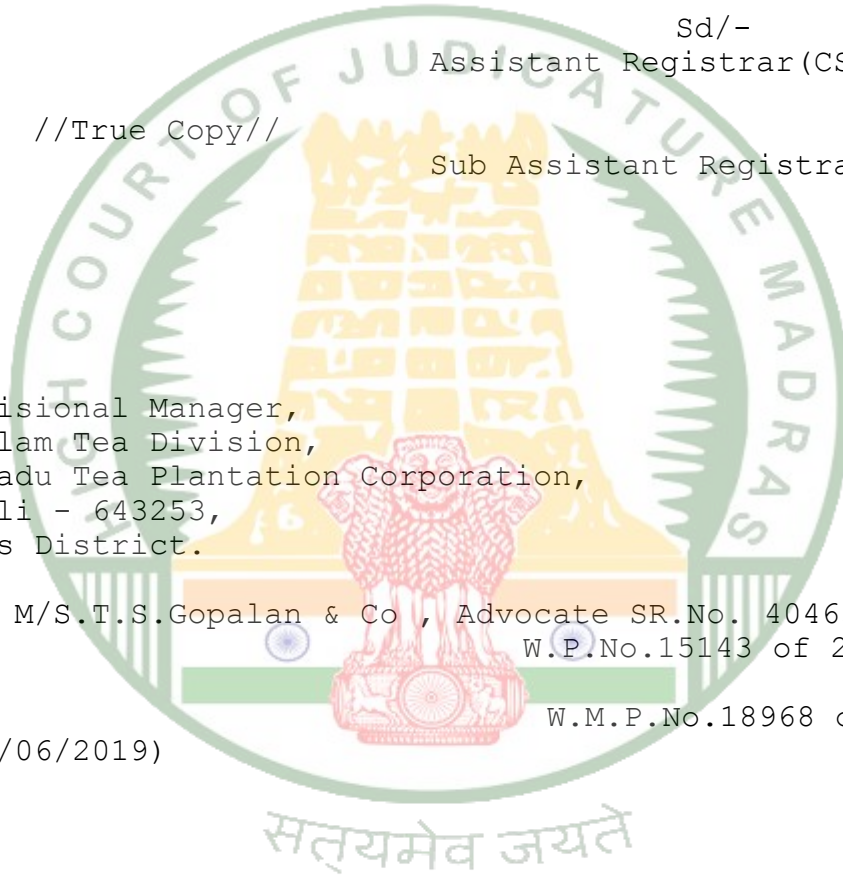
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Sub Assistant Registrar

hvk/DP
To

The Divisional Manager,
Nelliyalam Tea Division,
Tamil Nadu Tea Plantation Corporation,
Kolapalli - 643253,
Nilgiris District.

+1cc to M/S.T.S.Gopalan & Co , Advocate SR.No. 40465
W.P.No.15143 of 2003
and
W.M.P.No.18968 of 2003
A.SK(10/06/2019)



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