

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.38448 of 2003
and
W.P.M.P.Nos.31411 & 31412 of 2004

The Special Officer,
M/s.Kallakurichi Co-operative Sugar Mills,
Moongilthuraipet,
Kallakurichi. ... Petitioner

Vs.

1.M.Velu,
Socialist Employees Union,
No.5, Kendapodi Lane,
Salem Road,
Kallakurichi, Villupuram District.

(R1 amended as per order of this Court dated 17.01.2005 in
W.P.M.P.No.31410 of 2004 in W.P.No.38448 of 2003)

2.The Presiding Officer,
Labour Court,
Cuddalore. ... Respondents

(R2 amended as per order of this Court dated 03.11.2004 in
W.P.M.P.No.25458 of 2004 in W.P.No.38448 of 2003)

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorari to call for the records relating to the Order dated
10.06.2003 passed in I.D.No.49/1992 passed by the 2nd Respondent,
quash the same.

For Petitioner : Mr.S.Patrick
for Mr.K.Rajasekaran

For R1 : Ms.Ritachandrasekar
for M/s.Aiyar & Dolia

O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the second respondent dated 10.06.2003 made in I.D.No.49 of 1992.

2.While the first respondent was working as Junior Assistant in the petitioner Mill, he was suspended from service on 05.03.1982 and the petitioner Mill issued charge memo containing charges especially causing monetary loss to the petitioner Mill by making wrong entries in the Register in collusion with other employees. After conducting domestic enquiry, the first respondent was dismissed from service on 05.08.1982 as charges levelled against the first respondent were held to be proved in the domestic enquiry.

3.The first respondent raised Industrial Dispute in I.D.No.49 of 1992 before the second respondent. The petitioner contested the same. The second respondent by the Award dated 10.06.2003 set aside the order of dismissal and allowed the I.D. by ordering reinstatement with continuity of service and back wages. Against the said award, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner contended that the second respondent without appreciating the facts and circumstances of the case and without appreciating the evidence in proper perspective, passed the impugned award. The second respondent erred in shifting the burden on the petitioner to prove the guilt of the first respondent, in spite of the same was established and the first respondent has not rebutted the same. The second respondent failed to take into consideration the principles laid down by the Hon'ble Apex Court in the judgment reported in 1999 I MLJ and 1973 2 LLJ 278 in the case of M/s.Firestone Tyre & Rubber Company Vs. the Management. The second respondent failed to consider the evidence let in before the Enquiry Officer which was reiterated before the second respondent and prayed for setting aside the award of the second respondent.

5.Per contra, the learned counsel appearing for the first respondent contended that the petitioner did not conduct the domestic enquiry in a fair and proper manner and no opportunity

was given to the first respondent to put forth his case to establish that he has not committed any misconduct. The second respondent by the preliminary award dated 03.12.1993 held that the domestic enquiry conducted by the petitioner was not fair and proper and gave an opportunity to the petitioner to prove the charges levelled against the first respondent in the Industrial Dispute. The petitioner did not prove the charges levelled against the first respondent. The second respondent considering the materials on record placed before it, held that the petitioner has failed to prove the charges levelled against the first respondent and set aside the order of dismissal and ordered reinstatement, continuity of service and back wages. There is no error in the said award passed by the second respondent and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the first respondent and perused the entire materials on record.

7. From the materials placed on record, it is seen that the petitioner levelled charges against the first respondent that in collusion with other employees, he has made wrong entries in the register as far as supply of sugarcane weighing 9.690 tonnes, when the petitioner's father did not supply the said quantity. After the second respondent held, by the preliminary award, that domestic enquiry conducted by the petitioner was not fair and proper, the petitioner examined 4 witnesses and marked 10 documents as Exs.M1 to M10. The second respondent considered the evidence of the witnesses examined by the petitioner who admitted that first respondent's father was a member of petitioner Mill and he has registered himself within the Kallakurichi limit to supply sugarcane to the petitioner Mill. According to the petitioner, the petitioner's father was given cutting order for supply of only 5 loads of sugarcane and he supplied only 5 tonnes, whereas the first respondent in collusion with other employees made entries as though the first respondent's father supplied 6 loads of sugarcane weighing 9.690 tonnes.

7(a). The petitioner produced Ex.M7/Mill token register to show that the entry made by the first respondent in the Mill token register as Ex.M8, was that the first respondent had made five entries in the Mill token register. A person who made entries at the entrance of the Mill, was examined as M.W.4, who has stated that he made entries in Ex.M9 at serial No.7 with regard to issue of token to lorry belonging to first respondent's father. He has deposed that at the request of the

first respondent, no entry can be inserted at serial No.7 and after serial No.7 he did not make any entry. The second respondent verified Ex.M9 and has found that after entry of first respondent's father at serial No.7 in Ex.M9 there are four continuous entries on the same date after first respondent's father was issued entry of his vehicle bearing No.TNF 9140. Considering Exs.M6 to M10, the second respondent has concluded that petitioner has not produced any evidence to show that vehicle of father of the first respondent did not bring any sugarcane on 22.11.1980 at 6.15 P.M. M.W.2 examined by the petitioner has stated that the procedure for delivery of sugarcane by members of the petitioner's Mill, who have registered for supply of sugarcane. According to M.W.2, at the point of entry, token will be given to the vehicle driver who has to take the vehicle to the weighing machine. After weighing the vehicle, the driver of the vehicle will have to unload the sugarcane at the grinding section. After the driver unloaded the sugarcane, the vehicle will be again weighed and weight of the vehicle would be entered in the card and a copy of the card will be given to the driver. By these two entries, the petitioner would come to know the total quantity of the sugarcane supplied by the member of the sugar Mills. Only when the vehicle driver hands over the card, out pass will be given for leaving the Mill premises.

7(b).The petitioner has not denied the said procedure and the registers and evidence of witnesses examined by the petitioner shows that vehicle of the father of the first respondent was permitted to enter into the Mills on 22.11.1980 at 06.15.P.M. It is unbelievable that without a vehicle entering the Mill, entry was made in the register as though the vehicle has entered. Further if such registers are maintained with regard to entry, the weight of the vehicle and out pass issued for leaving the premises, the petitioner has not proved that all the persons in those places colluded with the first respondent and made false entries. The contention of the learned counsel for the petitioner that the second respondent erred in placing the burden of proof on the petitioner when the petitioner has proved the charges levelled against the first respondent and the first respondent has not rebutted the charges levelled against him is without merits. When the domestic enquiry was held not to be fair and proper, it is for the petitioner to prove the charges levelled against the first respondent before the second respondent. The second respondent has appreciated all the materials in proper perspective and by giving cogent and valid reason held that petitioner failed to prove the charges levelled against the first respondent. There is no error in the award of the second respondent.

8.In the result this Writ Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

krk

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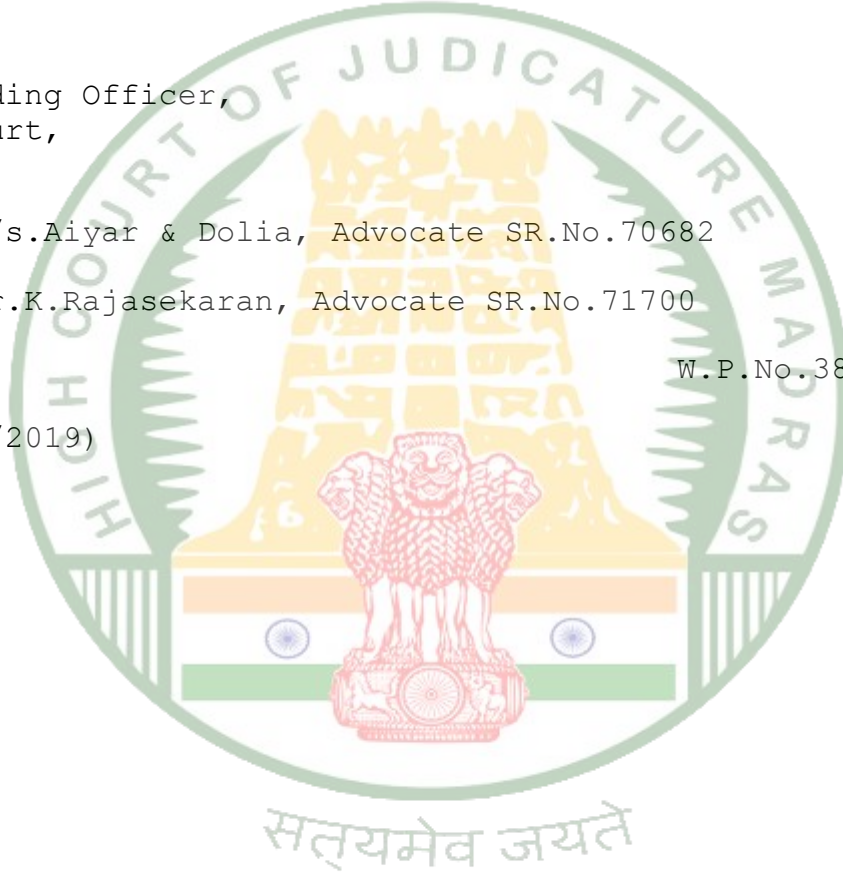
The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to M/s.Aiyar & Dolia, Advocate SR.No.70682

+1cc to Mr.K.Rajasekaran, Advocate SR.No.71700

W.P.No.38448 of 2003

SPD (CO)
GMY (07/11/2019)



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