

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.13461 of 2004 and
W.P.M.P.No.37684 of 2004 &
W.V.M.P.No.1210 of 2004

The General Officer,
Commanding CSD Canteen,
HQ AINKK & G Area (Abr)
Chennai -9. Petitioner

Vs

1. K.Kalyanasundaram
2. The Central Govt. Industrial
Tribunal cum Labour Court,
1st Floor B8 wing,
26, Haddows Road,
Sastri Bhavan,
Chennai - 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for the records of the 2nd respondent herein in Industrial Dispute No.6 of 2002 and quash the award therein dated 10.12.2003.

For Petitioner : Mr.R.Jagadeesan, for
Mr.K.V.Subramanian Associates

For Respondents : Mr.S.Ravi for R1

O R D E R

The award under challenge in the present writ petition is to a reinstatement of the first respondent herein together with 50 % of back wages.

2. The facts of the case are that the first respondent was engaged as an Assistant Manager in the petitioner's canteen. While in service, it is alleged that he had remitted a sum of Rs.86,894/- in the Bank of India, as against the total sale proceeds of Rs.96,893/-.

Since he had deposited a sum of Rs.10,000/- short of the total amount, after a lapse of twelve days of the collection, he was initially suspended from service from 20.06.2000 and ultimately terminated on 09.07.2000. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the first respondent herein was temporarily appointed as an Assistant Manager through appointment letter dated 20.10.1994, on condition that the service can be terminated at any time without any prior notice. Pursuant to the appointment, the first respondent had also given an affidavit dated 03.04.1999, undertaking to continue as a casual labour temporarily for a period of ten months commencing from 01.02.1999 to 30.11.1999 and that the petitioner can relieve him from his service during that period, without any notice. Since the petitioner had deposited the sale proceeds to the tune of Rs.86,894/- after a lapse of twelve days from the actual collections, his case was investigated and the investigation report also revealed that the first respondent had admitted to the misuse of an amount of Rs.10,000/- and therefore, based on the suggestion of the Investigation Officer that his service can be terminated, the impugned order dated 09.07.2000 came to be passed. It is further submitted that since the first respondent herein was appointed purely on temporary basis and the terms of his appointment also states that he can be relieved from service without any prior notice or show cause notice, no enquiry was conducted in his case. According to him, such a principle has been laid down in various decisions of the Hon'ble Supreme Court of India. The learned counsel also submitted that as per the documents produced before the Industrial Tribunal, it is established that the first respondent had misappropriated the funds for a temporary period by wrongly filling up the challan, and therefore, the punishment of dismissal, does not suffer from any infirmity. Since the Industrial Tribunal has also observed that an enquiry was conducted by the management, there is no violation of principles of natural justice.

4. The learned counsel for the first respondent, on the other hand, submitted that the first respondent herein had never misappropriated money, but it is his clear case that he had wrongly filled up the challan before the Bank, while depositing the total amount, wherein he had inadvertently filled up a lesser amount. Thereafter, the first respondent had initiated several steps for retrieving the original challan from the Bank, which proved futile. Hence, he had filed a writ petition

in W.P.No.15005 of 2001, in which this Court by an order dated 29.01.2003, had recorded the statement of the bank authorities that the credit challan was not available with the bank and the concerned cashier of the bank was dismissed from service after a disciplinary proceedings were held against him in respect of this payment, where the original challan was involved. In view of the same, the learned counsel submitted that the first respondent had not indulged in any misconduct.

5. It is his further submission that before the impugned order of termination was issued, the principles of natural justice were not followed, in the sense, no show cause notice or charges or enquiry was conducted, thereby depriving the first respondent to put forth his objections. In view of the same, he has submitted that the termination order itself is illegal and, therefore, liable to be set aside. According to him, since he has also admitted that he had inadvertently committed a mistake of wrongly filling up the challan, the Industrial Tribunal ordered payment of only 50% of the back wages, which had also not been questioned by him. Thereby, he would submit that the facts of the case reveals that the punishment was not in consonance with the charges levelled against him.

6. I have given careful consideration to the submissions made by the respective counsel.

7. The first respondent's appointment as an Assistant Manager on 20.10.1994 in the petitioner's canteen is not in dispute. As per the terms of the appointment order, the first respondent was put on probation from 1.11.1994 to 30.04.1995, for a period of six months. It is seen from the documents submitted before the Industrial Tribunal, that the first respondent's services came to be extended through Ex.W5, dated 01.05.1995. One of the main grounds raised by the learned counsel for the petitioner is that the terms of his appointment are purely temporary in nature with a further condition that his service can be terminated at any time without prior notice.

8. The appointment was not a back door entry, but a regular appointment. Though the original appointment in the year 1994, intended to keep him on probation for six months, such a confirmation of services was never done until his punishment till July 2000 i.e., for almost six years. The extension of his probation period through Ex.W5, dated 01.05.1995 was also for a period of ten months with effect from 01.05.1995. Thereafter, it was claimed that the first respondent's service was not

extended after the expiry of 10 months. i.e. on or after 20th February 2006. In the absence of any such extension order of his probation, it can be construed that the petitioner herein had regularised the services of the first respondent herein. It is also not the case of the petitioner that the services of the first respondent herein were not satisfactory till such time.

9. In this background, it is seen that the case of the petitioner is that the first respondent has been termed as Assistant Manager and his case was dealt by the Industrial Tribunal cum Labour Court. There is a mention in the award questioning the jurisdiction of the Tribunal to handle the case, since the contract between the petitioner and the first respondent will not come under the Industrial or Labour law. The Industrial Tribunal had held that the petitioner herein had not produced any document to show that the canteen was exempted from the purview of the Industrial laws and other laws and therefore held that the petition was maintainable before the Tribunal. The jurisdiction of the Industrial Tribunal has not been questioned by the petitioner in the present writ petition. Hence, this Court does not intend to address this issue.

10. Insofar as the mode in which the termination order came to be passed is concerned, there was no show cause notice calling for explanation from the first respondent with regard to alleged incident. Neither any charges were framed against the first respondent nor any enquiry was conducted. The entire proceedings was based on the investigation report of the Canteen Officer dated 30.06.2000. Apparently, the enquiry report also clearly establishes that the first respondent was not given any opportunity when the report was made.

11. The suspension order passed against the first respondent was purely on the basis of the investigation report. Thereafter, without framing of charges, the termination order simplicitor was issued. The only defence taken by the learned counsel for the petitioner is that the terms of the appointment of the first respondent does not contemplate prior notice, since his appointment is purely temporary in nature.

12. I am unable to accept such a submission made. As observed earlier, the appointment of the first respondent was regular and the services after completion of the first term of probation was extended for ten months. There is nothing on the record to show that the first respondent's temporary appointment, was extended

thereafter. In this background, the petitioner should have been dealt like a regular employee and since the provisions of the Industrial laws were made applicable to the petitioner, a show cause notice, charge memo and an enquiry becomes mandatory. In the instant case, none of the procedures were adopted during the course of the enquiry. The investigation report, being a unilateral report of the Canteen Officer cannot be relied upon since the petitioner was not called for the enquiry nor was he permitted to raise his objections to the same. In the absence of these procedures, it can be clearly held that the entire proceedings are in violation of the principles of natural justice.

13. The learned counsel for the petitioner attempted to impress this Courts citing various decisions of the Hon'ble Supreme Court stating that the enquiry or show cause notice is not mandatory for taking action against a temporary employee. This Court in the above observations has held that the first respondent can only to be treated as a regular appointee, whose services were not confirmed after his completion of the probation period. The decisions cited by the learned counsel would only apply to the irregular appointments and the appointments through back door entry. As such, the decisions will not help the petitioner herein.

14. At this juncture, the learned counsel submitted that pending writ petition they had deposited the entire back wages of 50% of the first respondent's salary and the same has also been withdrawn by him. Such a deposit has been made till the first respondent herein reached the age of 58 years. According to the learned counsel, the age of retirement, as on the date of the first respondent's appointment was 58 and as such the payment of the 50% has already been complied with. The learned counsel for the first respondent submitted that as per the existing rules the retirement age is 60 years and not 58 years. As the amended rules regulated the terms and conditions of the service of civilian employees of unit run canteen, the age of superannuation is 60 years with effect from 28.04.2003. The first respondent herein has been ordered to be reinstated into services through the award of the second respondent dated 10.12.2003 and as such he is deemed to have put in service till the completion of 60 years. Now that the revised scales pertaining to canteen employees have been extended to 60 years, the first respondent would also be entitled to 50% of the back wages till the period he had attained the age of superannuation, i.e., till the completion of the age of 60 years.

15. In view of the above, this Court is also of the view that the alleged charges levelled against the first respondent is not in proportionate with the punishment imposed. Though the first respondent could be entitled for the entire back wages from the date of his termination / suspension, by applying the principle of 'no work no pay', if 50% of the back wages is ordered to be paid to the first respondent, the ends of justice would be secured.

16. In the light of the above observations, this Court is of the view that there is no infirmity in the finding of the award of the second respondent herein 10.12.2003, passed in Industrial Dispute No.6 of 2002. Accordingly, the award stands confirmed. Consequently, the order of termination dated 09.07.2000 is set aside and the petitioner shall pay 50 % of the back wages of the outstanding back wages, till the first respondent had attained the age of 60 years.

17. Nevertheless such a payment of 50% back wages should not effect the DCRG benefits of the first respondent and therefore, the petitioner herein while calculating the gratuity and other monetary benefits shall calculate the same on the full wages and not on 50 % of the payment made in this order.

18. With the above observations, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Central Govt. Industrial
Tribunal cum Labour Court,
1st Floor B8 wing,
26, Haddows Road,
Sastri Bhavan,
Chennai - 600 006.

+1cc to Mr.S.Ravi , Advocate SR.No. 41904

+1cc to Mr.K.V.Subramanian Associates , Advocate SR.No.
42144 (19/08/2019)

W.P.No.13461 of 2004 and
W.P.M.P.No.37684 of 2004 &
W.V.M.P.No.1210 of 2004

A.SK(27/06/2019)

A.SK(10/07/2019)