

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.17372 of 2010

and

M.P.No.2 of 2011

The Management,
Salem District Consumer
Co-operative Wholesale stores,
Represented by its Joint Registrar/Special Officer,
Seetharaman Road, Salem. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.G.Ramamoorthy ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the award passed in I.D.No.249 of 2005 dated 24.09.2009 on the file of the 1st respondent, quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For R2 : Mr.R.Md. Nasrullah
for Mr.K.V.Shanmuganathan

O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the first respondent dated 24.09.2009 made in I.D.No.249 of 2005.

2.The petitioner issued charge memo to the second respondent who was working as Salesman in the petitioner Consumer Co-operative whole sale stores alleging that there was stock deficit to the tune of Rs.31,144.09 and the second

respondent absented himself without prior permission of the petitioner. The petitioner conducted domestic enquiry and based on the enquiry report, by the order dated 20.04.1991 the second respondent was dismissed from service. The second respondent raised Industrial Dispute before the first respondent in I.D.No.249 of 2005. The first respondent passed the preliminary award holding that domestic enquiry conducted by the petitioner is fair and proper. The first respondent exercising its discretion under Section 11-A of the Industrial Disputes Act, 1947, set aside the order of dismissal and directed the petitioner to reinstate the second respondent without back wages and continuity of service. Against the said award, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the first respondent erred in holding that there is no misappropriation after a lapse of 14 years. The first respondent having held that enquiry is fair and proper and the charges are proved, erred in ordering reinstatement. The first respondent failed to see that the second respondent has raised the Industrial Dispute after 14 years and the second respondent cannot be reinstated in service. The second respondent has not explained the delay of 14 years in approaching the first respondent.

4.Per contra, the learned counsel appearing for the second respondent contended that the order of dismissal for stock deficit and for taking leave without prior permission, the punishment of dismissal is disproportionate to the said charges. The first respondent has considered the materials on record and passed the award of reinstating the second respondent which is valid and prayed for dismissal of the Writ Petition.

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

6.From the materials on record, it is seen that the second respondent was working as Salesman in the petitioner Consumer Co-operative whole sale stores. The petitioner issued charge memo to the second respondent consisting of two charges i.e., stock deficit to the tune of Rs.31,144.09 and taking leave without application for leave. In the domestic enquiry, the petitioner proved the said charges and dismissed the second respondent from service. The second respondent raised Industrial Dispute before the first respondent. The first respondent

appreciating the pleadings, oral and documentary evidence held that charges leveled against the second respondent were proved. Considering the nature of charges, i.e., stock deficit to the tune of Rs.31,144.09 and taking leave without leave application, the first respondent held that order of dismissal for such proven charges is disproportionate and set aside the said order. The first respondent by the impugned award ordered reinstatement without back wages and continuity of service. The charge leveled against the second respondent is deficit of stock to the tune of Rs.31,144.09 and no charge is leveled against the second respondent that he sold the stock to the third parties and misappropriated the funds. The first respondent considering the above facts that there is no charge of misappropriation, exercised its discretionary power under Section 11-A of the Industrial Disputes Act, 1947 and set aside the order of termination and ordered reinstatement but did not award back wages and continuity of service. There is no error in the award passed by the first respondent warranting interference by this Court.

7. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Presiding Officer,
Labour Court,
Salem.

+1 cc to Mr.K.V.Shanmuganathan Advocate sr73921

+1 cc to Mr.M.S.Palanisamy Advocate sr73890

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