

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.8539 of 2008

and

M.P.No.1 of 2008

The Management,
Park Town Co. Operative Wholesale Stores Ltd.,
represented by its Special Officer,
Davidson Street,
Chennai - 600 001.

Now at Chintamani Anna Nagar,
Chennai - 600 102.

... Petitioner

Vs.

1.Mr.R.Vasudevan

2.The Presiding Officer,
Labour Court,
Chennai - 600 104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the 2nd Respondent in I.D.No.73/95 dated 07.03.2006 and quash the same.

For Petitioner : Mr.D.Gopinathan for
Mr.M.Ravi Bharathi
For R1 : Mr.N.Jayabalan
For R2 : Court

ORDER

The present Writ Petition is filed for issuance of a writ of Certiorari to call for the records of the 2nd Respondent in I.D.No.73/95 dated 07.03.2006 and quash the same.

2.According to the petitioner, the first respondent was appointed as salesman and he was working in various fair price shops from the year 1990 to 1993. During that time, the first respondent was suspended from service on 08.10.1991 and charge

memo was issued on 18.08.1992 for his misconduct in two fair price shops. The explanation given by the first respondent was not satisfactory and domestic enquiry was conducted. The first respondent participated in the enquiry proceedings and sufficient copy of the documents were provided to him. The enquiry was conducted in fair and proper manner following the principles of natural justice. The Enquiry Officer held that the charges leveled against the first respondent were proved. Based on the report of the Enquiry Officer, two show cause notices were issued. The explanation submitted by the second respondent was considered and found that the same was not up to the satisfaction. Hence, the petitioner terminated the first respondent from his service by the order dated 30.06.1994. The first respondent challenging the order of termination raised Industrial Dispute in I.D.No.73 of 1995 on the file of the second respondent. The second respondent without assigning any reason, set aside the order of termination and ordered reinstatement with 50% backwages. Hence, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the second respondent has not properly appreciated the facts and circumstances of the case and the documents filed by the petitioner. The first respondent committed mal-practise while in service and disciplinary proceedings were initiated against him. The second respondent erred in holding that the first respondent was terminated due to shortage of essential commodities. The petitioner conducted domestic enquiry in a fair and proper manner and in the enquiry, the charges leveled against the first respondent were proved. The reason given by the second respondent is not sustainable and prayed for allowing the appeal.

4.Per contra, Mr.N.Jayabalan, learned counsel appearing for the first respondent contended that petitioner did not furnish the documents relied on by them. In the enquiry, no witness was examined and no document was marked. The Auditing Officer, who alleged to have deducted irregularities was not examined and no opportunity was given to the first respondent to cross examine them. The petitioner did not produce the distribution register or ration cards before the Enquiry Officer for comparison and the Enquiry Officer did not take any steps for production of the same. The second respondent considering the entire materials on record has rightly held that the enquiry was not conducted in a fair and proper manner and the finding of the Enquiry Officer is perverse and set aside the order of termination ordering reinstatement 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 first respondent and perused the entire materials on record.

6. From the materials available on record it is seen that the petitioner has leveled certain charges against the first respondent based on the audit report. According to the petitioner, the first respondent has committed irregularity in distributing essential commodities. In some cases, he has supplied goods more than the allowed limit. In certain cases, without supplying the goods made entries in the ration card as though the goods were supplied. Further he has supplied goods to the cancelled card holders also. The petitioner to prove the said charges, has not examined any witness and has not produced the relevant documents. From the report of the Enquiry Officer it is seen that the first respondent admitted the irregularities and paid the alleged defaulted amounts. The Enquiry Officer based on these materials, held that the charges leveled against the first respondent were proved. The Enquiry Officer has given the said finding without any witness being examined and any document being filed to prove the charges leveled against the first respondent. Before the second respondent, the petitioner has not examined the person, who gave the audit report. The second respondent considering all the materials on record has held that the petitioner has not proved the charges leveled against the first respondent and set aside the order of termination and ordered reinstatement with continuity of service and all other attendant benefits and 50% backwages. There is no perversity in the award of the second respondent and there is no error apparent on the findings of the record, warranting interference by this Court.

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

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

krk

To

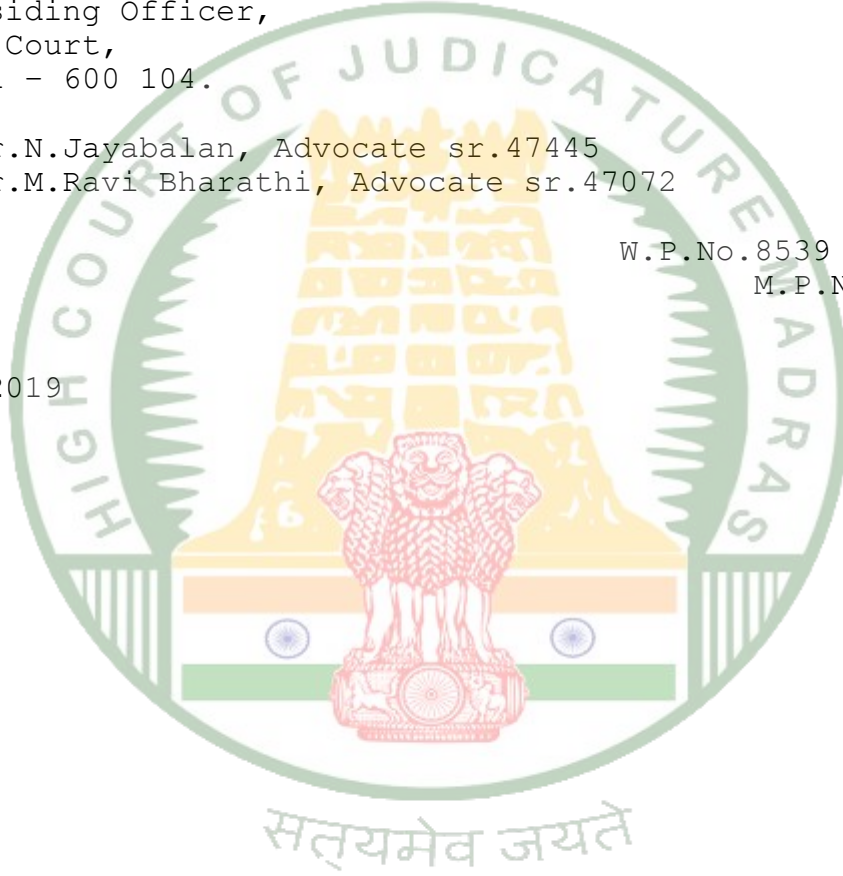
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+1cc to Mr.N.Jayabalan, Advocate sr.47445
+1cc to Mr.M.Ravi Bharathi, Advocate sr.47072

W.P.No.8539 of 2008 and
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gj (co)
nr 18/07/2019



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