IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.30216 of 2016

R.Kumar ... Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore - 641 018.

2. The Management of the Nilgris District,
Co-operative Milk Producers' Union,
Coonoor Road, Udhagamandalam,
The Nilgris - 643 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus, calling for the entire records relating to the Award dated 21.06.2011 passed in I.D.No.342 of 2003 on the file of the Labour Court, Coimbatore and quash the same, and consequently direct the 2nd Respondent to reinstate the Petitioner with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.S.Elambharathi
For Respondents : Mr.G.Muniratnam for R2
R1- Court

O R D E R

Aggrieved by the Award dated 21.06.2011 passed by the 1st Respondent/Labour Court, Coimbatore in I.D.No.342 of 2003, the Petitioner has come up with the present Writ Petition, seeking to quash the same and for a consequential direction to the 2nd Respondent to reinstate him with continuity of service, back wages and all other attendant benefits.

2. According to the Petitioner, he joined the service of the 2nd Respondent/Management as Mazdoor, in the year 1997 and his service as Mazdoor, was regularized by the 2nd Respondent on 10.12.1987. He was promoted to the cadre of Junior Assistant on 23.06.1995. During the year 2002, while the Petitioner was working as Junior Assistant in the Marketing Section at the Head Quarters of the 2nd Respondent/Management, he exposed the financial irregularities of the then Managing Director of the 2nd

Respondent/Management, to the District Collector, and hence, he was placed under suspension, on 15.03.2002.

3. Pursuant to the order of suspension, the Petitioner was furnished with a Charge Memo dated 22.04.2002, containing eight charges, alleging that, he had committed misappropriation of Rs.37,025.82, under different heads, and he failed to report for duty at the transferred place and misbehaved with the then Managing Director of the 2nd Respondent/Management. Denying the charges, the Petitioner submitted a detailed explanation dated 24.04.2002 to the 2nd Respondent/Management. However, without considering the explanation submitted by the Petitioner, a domestic enquiry was conducted, and the Enquiry Officer submitted his Report dated 03.06.2002, by holding that all the charges against the Petitioner were proved. The Petitioner's explanation dated 28.06.2002 to the second Show Cause Notice dated 10.06.2002, was also summarily rejected by the then Managing Director, and by an order dated 18.09.2002, the Petitioner was terminated from service.

4. Aggrieved by the order of dismissal, the Petitioner raised an Industrial Dispute in I.D.No.342 of 2003, and also challenged the domestic enquiry proceedings on the ground that, it was not conducted in accordance with the principles of natural justice. The Labour Court interfered with the Domestic Enquiry, and the Management was given an opportunity to establish the charges, which they did and, thereafter, an Award was passed by the Labour Court on 21.06.2011, dismissing the Industrial Dispute.

5. Pending disposal of the said Industrial Dispute, the 2nd Respondent/Management called upon the Petitioner to make a representation seeking re-consideration of his dismissal order. Accordingly, the Petitioner made a representation dated 09.09.2011 to the 2nd Respondent/Management, succumbing to their demand that he shall not claim any backwages, if he is reinstated into service. However, after two years, the 2nd Respondent, by a letter dated 25.09.2013, declined to reinstate the Petitioner into service, on the pretext that the Award of the Labour Court remained unassailed. Hence, the Petitioner is before this Court.

6. Learned counsel for the Petitioner contended that the Labour Court miserably failed to appreciate the evidence of the Petitioner in a healthy perspective, and swayed by the uncorroborated evidence of M.W.1, has held that, the Petitioner has indulged in misappropriation.

7. In reply, learned counsel appearing for the 2nd Respondent/Management, submitted that, all the eight charges

framed against the Petitioner, were held to be proved by the Enquiry Officer, and hence, the Management proceeded to terminate the services of the Petitioner, and that the finding of fact rendered by the Labour Court, requires no interference.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Admittedly, the Petitioner was employed as a Junior Assistant with effect from 23.06.1995 in the 2nd Respondent/Management. It is seen that eight charges were framed against the Petitioner on the ground that he committed irregularities. For better appreciation, charges framed against the Petitioner, are reiterated below:

> (i) He prepared false debit bills and temporarily misappropriated a sum of Rs.14,107,86
>
> (ii) He failed to report for duty at the transferred place
>
> (iii) He prepared debit bills and false gate pass in the name of the agent, Tmt.Pushpavathi and thereby, misappropriated a sum of Rs.1,621.55
>
> (iv) He misappropriated a sum of Rs.4,000/- paid by Sri Kuppusamy Chettiar Dairy.
>
> (v) He prepared a debit false bill in the name of Divine Island and misappropriated a sum of Rs.2,496.45
>
> (vi) He misappropriated a sum of Rs.13,446.20 by creating false documents, as if he sold some goods to the agents.
>
> (vii) He prepared false bills in the name of agents, but sold goods to third parties and received a sum of Rs.1,353.71 as commission amounts and misappropriated the said sum.
>
> (viii) He misbehaved in a disrespectful manner towards the Managing Director, while he was discharging his duties.

10. Before the Labour Court, the Petitioner examined himself as W.W.1, and has not marked any document. On behalf of the 2nd Respondent/Management, one K.Balasubramanian was examined as M.W.1 and 46 documents were marked. The Labour Court concluded that the Petitioner has committed misconducts of dishonesty and misappropriation, and accordingly, held that, the punishment of dismissal imposed on the Petitioner, is a

justifiable one. For better appreciation, relevant portion of the Award is extracted hereunder:

> "31. ... Here, it has been concluded that by preparing the bogus bills, the Petitioner over a period of time, sold the goods to the third parties in the name of commission agents and thereby misappropriated the amounts mentioned in those bogus bills. Even though the petitioner repaid the amounts mentioned in some of the bogus bills, the same cannot be taken as a lenient circumstance to avoid the punishment of dismissal. In the second show cause notice, the Management has mentioned the two previous misconducts committed by the Petitioner and punishment imposed on him for those proved prior misconducts. The Petitioner has not denied the above past punishments. He has submitted that for setting aside those punishments, he applied to the Management. To prove the above contention, the Petitioner has not placed any material evidence. Hence, it can be taken that as stated in the second show cause notice, the Petitioner's past record is also not satisfactory. In any event, in the case of proved misconduct of dishonesty and misappropriation, the only justifiable punishment is dismissal from service. Therefore, this Court is of the view that there is no need to set aside the punishment of dismissal imposed on the Petitioner. For all the reasons stated hereinbefore, it is concluded that the Respondent has proved the charges 1 to 7 levelled as against the Petitioner in Ex.M3-Charge Memo dated 22.04.2002. Further, it is concluded that the Petitioner has committed misconducts of dishonesty and misappropriation and therefore, the punishment of dismissal imposed on the Petitioner is not liable to be set aside. The punishment of dismissal imposed on the Petitioner is a justifiable punishment. The Petitioner is not entitled to any relief in this case. This Industrial Dispute is liable to be dismissed. ..."

11. On a perusal of the Award, it is seen that charges 1 to 7 levelled in Ex.M3 - Charge Memo, dated 22.04.2002, are grave in nature and they have been clearly established and

proved as against the Petitioner.

12. As regards the first charge that, the Petitioner prepared false debit bills and temporarily misappropriated a sum of Rs.14,107.86, it is seen that the Petitioner himself has admitted in Ex.M7-Reply dated 30.07.2001 to Ex.M6-Show Cause Notice, dated 26.07.2001, as regards preparation of Debit Bills marked as Exs.M33 to M38, and that, he had sold milk products to other persons by preparing bogus Debit Bills in the names of Commission Agents. According to the Petitioner, in view of the target fixed for sales, he sold goods to the third parties, by preparing bills in the name of Commission Agents, but those third parties failed to remit the amounts mentioned in those debit bills. Even in the cross-examination, the Petitioner has admitted preparation of debit bills under Ex.M33 to Ex.M38 in the name of Commission Agents. Hence, the first charge against the Petitioner stood proved.

13. As regards the second charge that the Petitioner failed to report for duty at the transferred place, it is seen that the Petitioner, in his explanation under Ex.M4, has not stated that he reported for duty in the cattle feed section. Even in his proof affidavit, he has not submitted that after receiving the transfer order and relieving order, he went to the cattle feed section for attending duty. It is clear that there is no evidence that the Petitioner attempted to report for duty in the cattle feed section, immediately after getting relieved from the Marketing Section. As he deliberately failed to report for duty in the cattle feed section and disobeyed the order of the 2nd Respondent/Management, he was placed under suspension. Thus, the second charge against the Petitioner was also proved.

14. As to the third charge against the Petitioner that, he prepared debit bills and false gate pass in the name of the agent, viz. Pushpavathi and thereby, misappropriated a sum of Rs.1,621.55, it is seen that the Petitioner, in his explanation under Ex.M4, has clearly admitted that it is he, who prepared the debit bill for Rs.1,621.55 and the gate pass on 01.07.2001, in the name of the Commission Agent, Pushapavathi. However, he has denied the responsibility of non-collection of the amount mentioned in the said debit bill. It is further seen that, as the amount due under the debit bill was not collected by the Petitioner, the Management enquired the said Pushpavathi, and on 14.02.2002, she submitted a letter under Ex.M12 to the Management, stating that she had not purchased milk by-products on 01.07.2001 from the 2nd Respondent/Management. Further, the Petitioner has not produced any evidence to prove that Ex.M10 - Debit Bill and Ex.M11 - Gate Pass, are true and correct documents, prepared by him. In view of the above, the Labour Court came to the conclusion that the Petitioner, after preparing the bogus debit Bill under Ex.M10 in the name of the

Commission Agent, Pushpavathi, sold the goods mentioned in the said bill to the third parties and thereby, misappropriated the amount mentioned in the said Debit Bill. Thus, the third charge against the Petitioner was proved.

15. The fourth charge against the Petitioner is that he misappropriated a sum of Rs.4,000/- paid by Sri Kuppusamy Chettiar Dairy. It is seen that Ex.M15 is the copy of the Debit Bill prepared in the name of D.Prabhu, who is the owner of "Sri Kuppusamy Chettiar Dairy", on 13.12.1999 for a sum of Rs.4,632.65. It is the contention of the 2nd Respondent/Management that though the said debit bill was prepared by the Manager, the Petitioner alone supplied goods mentioned in the debit bill to D.Prabhu, and he alone is responsible for collection of the said amount. Ex.M16 is the copy of the cheque dated 17.06.2000 issued by D.Prabhu for Rs.4,000/- in the name of the Petitioner herein. Ex.M17 is the letter given by D.Prabhu, on 23.02.2002 to the Managing Director of the 2nd Respondent/Management, wherein, he has stated that it is the Petitioner, who approached him to issue a cheque in his name (D.Prabhu), to enable the Petitioner encash the cheque and remit the amount immediately and that only at his insistence, he issued the said cheque, and that the amount is yet to be remitted to his account.

16. In his explanation to the fourth charge, the petitioner has specifically stated that he did not receive any cheque in his name. However, the Petitioner, in his proof affidavit, at page number 3 of his deposition, has stated that the said D.Prabhu was his friend and that, he gave a cheque for Rs.4,000/- in his name, with a view to discharge the debt due to him. However, to prove the same, the Petitioner did not summon and examine the said Prabhu as a witness. Hence, the Labour Court came to a conclusion that the fourth charge levelled against the Petitioner is also a proved one.

17. Coming to the fifth charge that the Petitioner prepared a debit false bill in the name of Divine Island and misappropriated a sum of Rs.2,496.45, it is seen that the Petitioner prepared a Debit Bill in the name of 'Divine Island', which is marked as Ex.M18 and sold the goods mentioned therein, and thereby misappropriated a sum of Rs.2,496.95. Based on the said bogus Debit Bill, the 2nd Respondent/Management issued Ex.M19 - letter to Divine Island, demanding payment of the amount mentioned in the said Bill. In the reply given by the Manager of Divine Island, which is marked as Ex.M20, it is stated that they have not purchased any milk products on debit. In view of the same, the Labour Court held the fifth charge against the Petitioner, as proved.

18. As regards the sixth charge that, the Petitioner misappropriated a sum of Rs.13,446.20 by creating false documents, as if he had sold some goods to the agents, it is seen that the Petitioner has clearly admitted that he prepared Debit Bills vide Ex.M40 to Ex.M45, and sold the goods to third parties, by preparing those Debit Bills in the names of Commission Agents. In Ex.M46, the Petitioner has specifically admitted that with a view to increase the sales, he sold the goods to third parties, by preparing debit bills in the name of Commission Agents and since those individuals failed to repay the amount, the Petitioner repaid the same on administrative reasons. In view of the same, the Labour Court held that the sixth charge against the Petitioner is proved.

19. Even the seventh charge against the Petitioner that he prepared false bills in the name of agents, but sold goods to third parties and received a sum of Rs.1,353.71 as commission, and misappropriated the said sum, was held to be proved, as those Debit Bills were found to be bogus ones.

20. As regards the eighth charge that the Petitioner misbehaved in a disrespectful manner towards the then Managing Director of the 2nd Respondent/Management, it is seen that the 2nd Respondent/Management has not produced any evidence and examined any official, to subsantiate their allegation. Hence, the Labour Court concluded that the 2nd Respondent/Management failed to prove the said charge by placing sustainable evidence.

21. The primary contention of the Petitioner is that the Commission Agents have not been examined and that being a Trade Union Leader, he has been victimized, and that, he was not given an opportunity in the domestic enquiry or before the Labour Court.

22. It is not mandatory that Commission Agents have to be examined in an enquiry. It is suffice to establish charges through documentary evidence. In this regard, it is worth referring to a decision of the Apex Court in the case of J.D. Jain vs. The Management of State Bank of India, reported in 1982 1 SCC 143, wherein, it has been held that hearsay evidence is admissible. Relevant portion of the said decision is extracted below:

> "9. ... The learned Tribunal has committed another error in holding that the finding of the domestic enquiry was based on "hearsay" evidence. The law is well-settled that the strict rules of evidence are not applicable in a domestic enquiry.

This Court in the case of State of Haryana & Anr. v. Rattan Singh held:

> "It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

10. The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal ?

The word 'hearsay' is used in various senses. Some times it means whatever a person is heard to say; some times it means whatever a person declares on information given by someone else. (See Stephen on Law of Evidence).

The Privy Council it the case of Subramaniam v/s. Public Prosecutor, observed: "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of that is contained in the statement. lt is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

23. In the case on hand, there is a categorical admission by the Petitioner that, he prepared bogus Debit Bills in the names of Commission Agents, and that, on many occasions, signatures of Commission Agents were not found. Furthermore, it is incorrect on the part of the Petitioner to contend that he was not given any opportunity in the domestic enquiry or before the Labour Court, to cross-examine the Management Witness.

24. Since the domestic enquiry was set aside, it does not mean that the documents placed before the Enquiry Officer, cannot be relied upon. If such contention is accepted, then the entire documents including the Charge Memo will not be available for scrutiny before the Labour Court, to proceed with the matter. Yet, this Court is unable to accept the contention of the Petitioner that, he was not given an opportunity to put forth his defence. Being a Trade Union Leader, the Petitioner should have been a model to other workmen. Of course, in this case, he proved to be a role model, as to how a Labour leader should not be.

25. Though the Petitioner has incessantly pleaded that he was victimized for being a Trade Union Leader, with the issuance of the said Charge Memo, alleging misappropriation of money, this Court, on a careful perusal of the evidence and the explanation given by the Petitioner to the charges levelled against him, is of the view that the charges of misappropriation of money, were duly established by the 2nd Respondent/Management by way of oral and sufficient documentary evidence, and there is no perversity in the Award dated 21.06.2011 passed by the Labour Court in I.D.No.342 of 2003. Accordingly, the same is confirmed.

In fine, the Writ Petition fails and stands dismissed. No costs.

Sd/-
Asst.Registrar (CJ conf)

/true copy/

Sub Asst. Registrar

(aeb)
To:
1. The Presiding Officer,
Labour Court,
Coimbatore - 641 018.

2. The Management of the Nilgris District,
Co-operative Milk Producers' Union,
Coonoor Road,
Udhagamandalam,
The Nilgris - 643 001.

+1 cc to Mr.G.Muniratnam Advocate sr74347
+1 cc to Mr.K.J.Rabello Advocate sr74292

W.P.No.30216 of 2013

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