

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.3927 of 2015

B.Azhagar

... Petitioner

..Vs..

1.The Presiding Officer,
Labour Court, Salem.

2.The Management,
Seshasayee Paper and Boards Limited,
Pallipalayam, Erode - 7,
Namakkal District. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to I.D.No.168 of 2009 on the file of 1st respondent and quash the award dated 08.09.2014 passed therein by the 1st respondent and further direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondents : R1- Labour Court
Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co., for R2

O R D E R

The award dated 08.09.2014, passed in I.D.No. 168 of 2009 is under challenge, in the present Writ Petition.

2. The Writ Petitioner joined the services of the 2nd Respondent on 01.05.1996 as Assistant (Clerical). The Petitioner was placed under suspension and a Charge Memo was issued on 09.04.2008. After conducting an Enquiry, the Petitioner was terminated from services with effect from 19.11.2008. The 2nd Respondent company has involved in the manufacture of paper and boards.

3. The Learned Counsel for the Writ Petitioner states that on behalf of the Writ Petitioner, he had examined himself before the Labour Court and Ex.M1 to M8 were marked. No oral evidence was taken and both sides documentary evidences were marked. The Learned Counsel for the Petitioner states that enquiry was not conducted in accordance with the procedures contemplated and based on the Labour Court Enquiry proceedings, the Petitioner

was terminated from services. It is contended that the Labour Court has not properly appreciated the findings of the Enquiry Officer and as well as the manner in which the enquiry was conducted by Respondent management. Thus, the Labour Court award is liable to be scrapped.

4. The Learned Counsel appearing on behalf of the Respondent states that the 2nd Respondent is having mill at Pallipalayam, where it manufacture pulp and paper. Coal is purchased by this Respondent for the purpose of re-producing steam in the boiler section. Normally Coal is supplied from Neyveli Lignite Corporation or imported from various Countries and cleared either in the Madras Port or Tuticorin Port. The supply of coal is effected by lorries. As the Coal is very commercially valuable commodity, there is always chance for pilferage either by the transporter or otherwise. In order to ensure strict control over the quantity and quality of coal that is being supplied, the lorries are normally sealed in the dispatch point and when the lorries reach the Mill they are weighed in the weigh bridge with the quantity of the Coal. Clerks in the Bulk Raw Material Department are deputed for the purpose of verifying the seals in the lorry and the lorry is weighed in the mill premises and the weighment is noted and compared with the waybill. Any discrepancy in the weight and the seals are also noted by the Clerks in the department and for that confirmation/acceptance would be obtained from the Lorry Drivers and then Lorries are sent for unloading.

5. During the year 2008, there were frequent complaints regarding the clearance of the Lorries which were unloading Coal. On enquiry, it was found that whenever the Petitioner and another employee by name Dinesh Singh were checking vehicles, there were delays. It came to the knowledge of this Respondent that the Petitioner and the other co-employee were in the habit of receiving bribes from the Lorry Drivers to ensure speedier clearance of the vehicle, gloss over the shortages and the tampering of the seals. Specific complaints were received from S. Paramthaman, the Proprietor of SVN Contracts, Neyveli and also from K.M.Ramdas a representative of SPDS Roadmovers and SVN Contracts. Accordingly, a charge sheet was issued to the Writ Petitioner on 07.05.2008, listing out the misconduct committed by the Writ Petitioner in respect of the clearance of the Lorries and the demand and acceptance of the bribe. On 12.05.2008, the Petitioner gave his explanation and as the same was not satisfactory, the domestic enquiry was ordered and an Enquiry Officer was appointed. The Petitioner also participated in the enquiry in which S. Paramthaman and K.N. Ramdas were examined. They were also Cross-Examined in detailed. The statements of the various drivers which were obtained were also marked in the enquiry. Thus, the enquiry was conducted by following the procedures contemplated and there was no infirmity

as such. The Writ Petitioner had an opportunity of cross-examining the said witnesses and he had availed and nothing worthwhile was elicited during cross-examination by the petitioner. The Enquiry Officer submitted his report holding that the charges against the Writ Petitioner were proved and based on the proved charges, he was terminated from service and thereafter the Writ Petitioner raised an industrial dispute in I.D.No. 168 of 2009.

6. The Learned Counsel appearing for the 2nd Respondent management reiterated that there is no perversity in respect of the findings of the Labour Court as the Labour Court categorically found that the domestic enquiry was conducted in a free and fair manner and there was no infirmity. This apart the Labour Court found that the allegations are in relation to the corrupt activities and the domestic enquiry was conducted in a free and fair manner wherein the findings of the Enquiry Officer states that the charges were proved.

7. Under these circumstances the Labour Court arrived at conclusion that the Writ Petitioner is not entitled for any relief as the allegations regarding the demand and acceptance of bribe was established and therefore, the punishment of dismissal from service cannot be construed as not in proportionate with the gravity of the proved charges.

8. This Court is of the considered opinion that the entire findings of the Labour Court is categorical and it states that the domestic enquiry was conducted in a free and fair manner. This apart, the allegations were established and the same were proved in the domestic enquiry and the findings of the Enquiry Officer was not disproved before the Labour Court by the Writ Petitioner.

9. This being the factum, this Court has no hesitation in coming to the conclusion that there is no perversity or infirmity in findings of the Labour Court and based on the proved charges of the demand and acceptance of the bribe by the Writ Petitioner, the punishment of dismissal from services was ordered which cannot be construed as disproportionate to the gravity of the proved charges. Consequently the award dated 08.09.2014, passed in I.D.NO.168 of 2009 is confirmed and the Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CJ conf)

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Sub Assistant Registrar

Pns

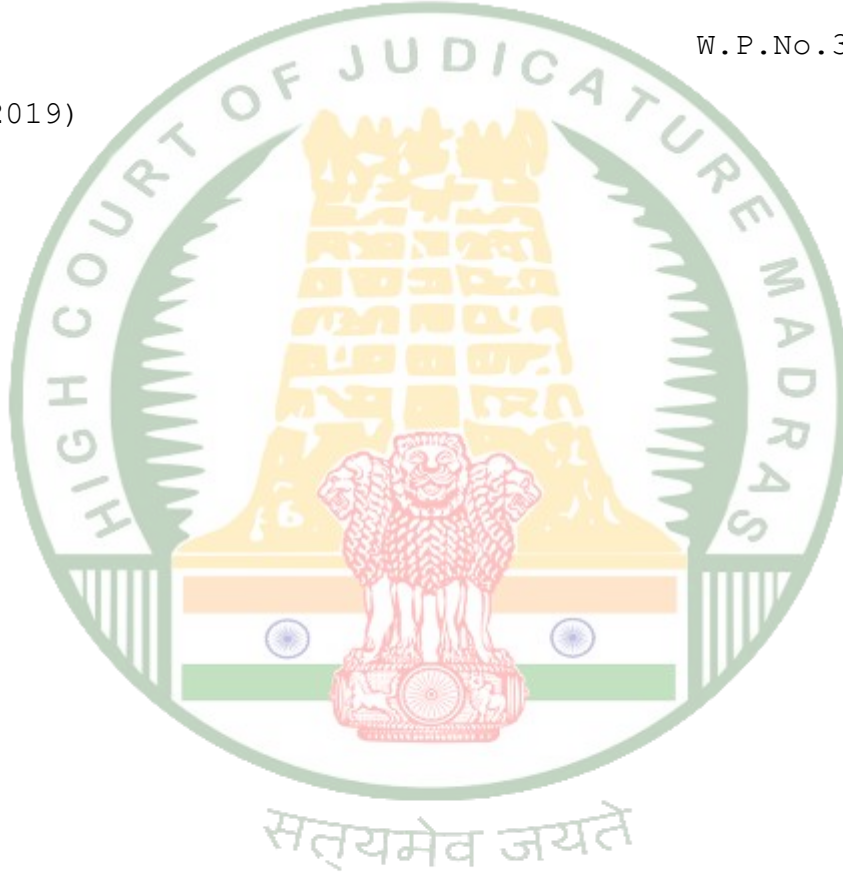
To

1.The Presiding Officer,
Labour Court, Salem.

+lcc to Mr.K.V.Shanmuganathan, Advocate, S.R.No. 80640
+lcc to Mr.T.S.Gopalan & Asso., Advocate, S.R.No.79607

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NMI (CO)
GN(18/10/2019)



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