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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17586 of 2014

&

M.P.No.1 of 2014

The Management,
Kizhakavarapattu Primary Agricultural
Co-operative Credit Society Ltd.,
Rep by its President,
Panruti Taluk,
Cuddalore District.

...Petitioner

Vs..

1.K.Manavalan

2.The Presiding Officer,
Labour Court,
Cuddalore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records relating to the passing of the award in I.D.No.34/2012 dated 02.04.2014 on the file of the second respondent and quash the same.

For Petitioner : Mr.L.P.Shanmuga Sundaram

For RespondentR1 : No appearance for first respondent

R2 : Labour Court

ORDER

The award dated 02.04.2014 passed in I.D.No.34/2012 is under challenge in the present writ petition.

2.The writ petitioner is the The Management, Kizhakavarapattu Primary Agricultural Co-operative Credit Society Limited. The learned counsel appearing on behalf of the writ petitioner made a submission that the first respondent has joined as a Salesman in the writ



petitioner/Society on 07.02.1997. On 20.05.2008 a flying squad has inspected the premises and found that there was a stock deficit at the time of inspection. The first respondent/workman was placed under suspension on 12.06.2008 and on 20.04.2008, a charge memo was issued. The delinquent employee submitted his explanation on 12.08.2008. Thereafter, the domestic enquiry was ordered. The Domestic Enquiry Officer conducted an enquiry by affording an opportunity to the first respondent/workman and he participated in the domestic enquiry and admitted the guilt and availed the full opportunity.

3.The learned counsel appearing on behalf of the petitioner reiterated that the first respondent/workman admitted the guilt before the Enquiry Officer and repaid the loss occurred. The first respondent/workman paid a sum of Rs.33,839.72/- for the shortage of deficit stock on 11.08.2008. The statement was recorded and the Enquiry Officer submitted his report holding that the charges leveled against the first respondent are true. Thereafter, the first respondent was dismissed from service on 15.06.2009. The first respondent raised an industrial dispute in I.D.No.34/2012 and the said dispute was allowed by the Labour Court on 02.04.2014, against the said award, the present writ petition is filed.

4.The learned counsel appearing on behalf of the petitioner contended that the Labour Court has grossly failed to consider the charges framed against the first respondent and his clear admission of guilt before the Enquiry Officer. This apart, the first respondent/workman paid the financial loss caused to the society and more specifically a sum of Rs.33,839.72/- was paid for the shortage of the deficit stock on 11.08.2008. The fact findings recorded by Enquiry Officer in this regard was not considered by the Labour Court. Contrarily, the Labour Court passed an award setting aside the order of dismissal and granted full backwages with continuity of service, which is contrary to the judgment of the Hon'ble Supreme Court of India in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapalk Mahavidyalaya (D.Ed) and others reported in (2013) 10 SCC 324 and the relevant paragraph No.33 was extracted herein;

"33.The propositions which can be culled out from the aforementioned judgments are:

(i)In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii)The aforesaid rule is subject to the rider that while deciding the issue of backwages, the adjudicating authority or the Court may take into consideration the length of service of the



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employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting backwages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full backwages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

5. Perusal of the award also reveals that the writ petitioner/ management in their counter statement averred that the petitioner appeared before the Domestic Enquiry Officer and admitted his guilt and the Labour Court raised an issue in this regard. However, the Labour Court made a finding that the petitioner made some admissions and made good the loss. The petitioner appears to have stated that some foodstuffs have been damaged in rain and they were also included in the shortage account. Accordingly, the Labour Court came to a conclusion that the admission of guilt cannot be taken at all.

6. This Court is of the considered opinion that when the charge memorandum was issued regarding the deficit of stock and the financial loss caused to the Co-operative Society was repaid by the workman and the charges were also admitted by pleading guilt, the Labour Court committed an error in arriving at a conclusion that such admission cannot be taken at all. In this regard, the findings of the Labour Court is perverse and infirm. Perusal of the entire award reveals that the admission of guilt as well as the repayment of monetary loss caused to the writ petitioner/Society were not properly considered by the Labour Court and therefore this Court is not inclined to confirm the award passed by the Labour Court.



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7. Consequently, the award dated 02.04.2014 passed in I.D.No.34/2012 is quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrm

To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.L.P.Shanmuga sundaram, Advocate SR.100183

W.P.Nos.17586 of 2014

VBA (CO)
CB(07/01/2020)