

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.32378 of 2014
and
M.P.No.1 of 2014

The Management,
Salem District Consumer Co-operative
Wholesale Stores,
Rep., by its Managing Director,
P.B.No.910, Seetharaman Road,
Salem-636 009.

.. Petitioner

-vs-

1.The Presiding Officer,
Labour Court, Salem.

2.A.Mariappan

.. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records of the award passed in I.D.No.130 of 2008 dated
20.02.214 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.M.S.Palanisamy

For Respondents : R1 - Labour Court

: R2 - Mr.S.Umapathy

ORDER

The award dated 20.02.2014, in I.D.No.130 of 2008 passed by
the 1st respondent, Labour Court, Salem, is under challenge in
the present writ petition.

2.The writ petitioner is the Management of Salem District
Consumer Co-operative Wholesale Stores.

3.The learned counsel appearing on behalf of the writ
petitioner Management made a submission that the 2nd respondent
was employed as a salesman in the fair price shop at Uppumandi
Arisipalayam from 27.05.1999 to 31.07.2000. A squad inspected
the fair price shop on 03.07.2000 and found a deficit of 292 kg

of boiled rice and 3 kg of wheat. During another inspection conducted on 19.07.2000, there was a shortage in sugar and wheat, which all are controlled items. This apart, bogus entries were made on 07.06.2000, and 2000 kg of rice were sold on 10 bills and proceeds were misappropriated. The 2nd respondent cannot issue essential commodities more in quantity than the prescribed. Such distribution was detected by the flying squad on an inspection conducted on 19.07.2000. It was also found during inspection that the distribution register was not maintained properly from May, 2000. The 2nd respondent refused to handover charge and absconded from duty. The account of the fair price shop reveals that the 2nd respondent has not distributed the essential commodities to the card holders and has committed irregularities.

4.The learned counsel appearing on behalf of the writ petitioner Management further submitted that during the tenure of the 2nd respondent in the fair price shop, he has misappropriated a sum of Rs.30,058.65. Thus, a charge memo was issued in proceedings dated 04.02.2002. The 2nd respondent submitted his explanations on 05.04.2002, and a domestic enquiry was conducted and the Enquiry Officer submitted his report on 03.08.2002, holding that the charges levelled against the 2nd respondent employee are held proved. Based on the findings of the Enquiry Officer, an order of dismissal was issued by the Management on 20.03.2003.

5.The learned counsel for the writ petitioner further made a submission that challenging the order of dismissal from service dated 20.03.2003, the 2nd respondent filed a Statutory Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, which was rejected, by the statutory revisional authority, vide order dated 16.06.2008. By suppressing the fact regarding the rejection of the statutory revision petition, the 2nd respondent approached the Labour Court by raising an industrial dispute in I.D.No.130 of 2008. The Labour Court without considering the gravity of the proved misconducts and without considering the fact that the 2nd respondent approached the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act by filing a revision petition under Section 153 and after adjudication, the statutory revision was dismissed by the competent authority, committed an error in arriving a conclusion that the 2nd respondent is entitled for the relief of reinstatement with backwages. The Labour Court made a finding that the enquiry was conducted properly and the misconducts are also grave in nature and further, the employee/ 2nd respondent re-paid the misappropriated amount of Rs.30,058.65 to the Management. In spite of all these factual findings, the Labour Court finally arrived a conclusion that the 2nd respondent is entitled for the relief of reinstatement by erroneously drawing

a factual inference regarding the proved charges. The Labour Court has drawn a factual inference that if at all the 2nd respondent committed any such misconduct, he would have defended the same even before the domestic enquiry officer. In view of the fact that he had not defended his case before the domestic enquiry officer and admitted the guilty and re-paid the misappropriated amount, the Labour Court had come to the conclusion that the facts are contradictory and accordingly, drawn an inference and granted the relief. In respect of the admission of guilt by the delinquent employee, no factual inference can be drawn, unless such admission was made by way of coercion or undue influence. Even in such case, coercion or undue influence must be established before the competent court of law. In the absence of any such coercion or undue influence, the Court cannot draw a factual inference so as to grant the relief of reinstatement with backwages.

6. Perusal of the entire award reveals that the Labour Court appreciated the gravity of the proved misconducts as well as the conduct of the 2nd respondent. However, the relief was granted by invoking Section 11A of the Industrial Disputes Act, 1947.

7. Exercise of discretionary power is to be done cautiously. The power of discretion can be exercised only by recording reasons in writing. It is not sufficient if the power of discretion is exercised by merely recording the term that the punishment is proportionate or disproportionate. Mere recording of such words are insufficient and the reasons for arriving such a conclusion for modification or cancellation of punishment must be recorded in writing in clear terms to understand that the discretionary powers are exercised based on certain sound legal principles.

8. Regarding the exercise of discretionary powers, the Hon'ble Supreme Court in the case of LIC of India vs. R.Dhandapani reported in (2006) 13 SCC 613, made the following observations in paragraphs 7 and 8, which are as follows:-

"7. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11- A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words

'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. [1994 (1) SCALE 631]]."

9. Yet another ground is raised by the writ petitioner by stating that once the employees approached the competent authority/statutory authority under the Special Act, then they cannot approach the Labour Court under the Industrial Disputes Act, 1947. In this regard, a judgment of the Punjab and Haryana High Court in the case of Kapurthala Central Co-operative Bank Ltd. vs. State of Punjab and Others reported in (1990) 78 FJR 220 is referred to and the relevant paragraph is extracted hereunder:-

"5. Once the petitioner elected his remedy of filing appeal under the Act to challenge the order of termination of his service (relieving him from service), and having failed there, the matter could not be reopened by asking the Government to refer the matter to the Labour Court on the basis of the same demand notice, which was once rejected. The decision of the Registrar would bind the parties. The general principles of res judicata are based on the rule to give finality to decisions so that a party is not vexed twice over on the same matter. The petitioner having resorted to the remedy of appeal under the Act, the order passed on appeal would bind the parties until modified by some superior authority or Court. The workman could not ask the State Government to re open the matter. On

these peculiar facts of the case, we are of the view that the appellate order, Annexure P6 passed by the Registrar, Cooperative Societies disentitled the petitioner to again move the State Government to refer the matter to the Labour Court on the rule of res judicata and finality of decision."

10. Thus, this Court is of an opinion that the Labour Court is empowered to exercise the discretionary power under Section 11A of the Industrial Disputes Act, 1947 to modify or cancel the punishment. However, such an exercise is to be done judiciously and by recording reasons, which must be candid and convincing. Thus, mere usage of the words by the Labour Court "disproportionate" or "proportionate" are insufficient to arrive at a conclusion that the exercise of discretionary power is valid. In such an event, this Court has to set aside the award.

11. So far as the present writ petition is concerned, the 2nd respondent employee himself re-paid the misappropriated amount by admitting the financial loss. This apart, the enquiry was conducted in accordance with the procedures contemplated. The earlier adjudication of the very same dismissal order before the statutory revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act was not revealed, nor the Labour Court considered the same. These being the factum, this Court is of an opinion that the award of the Labour Court is perverse and not in consonance with the established legal principles.

12. Accordingly, the award dated 20.02.2014, passed in I.D.No.130 of 2008 is quashed and the writ petition stands allowed. It is made clear that if at all the 2nd respondent has chosen to pursue his remedy under the provisions of the Tamil Nadu Co-operative Societies Act, there is no impediment to do the same. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते Sd/-

Assistant Registrar (CJ Conf)

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Sub Assistant Registrar

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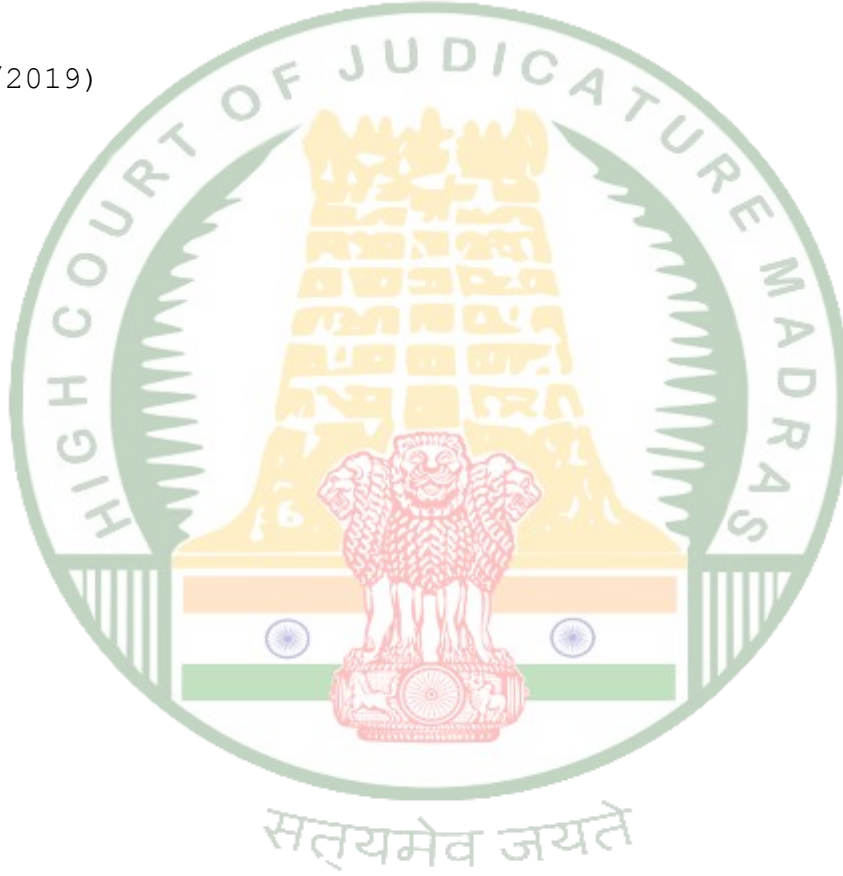
The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.S.Umapathy, Advocate, SR.No.95007.

+1cc to Mr.MS.Palanisamy, Advocate, SR.No.96428.

W.P.No.32378 of 2014

SR (CO)
CSR(17/12/2019)



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