



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.11552 of 2010
and
M.P. (MD)Nos.1 and 2 of 2010

The Management,
M.P.13, Uthamapalayam Taluk
Co-Operative Marketing Society Limited,
represented through its Special Officer,
Main Bazar, Uthamapalayam Post,
Theni District.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.P.Virumandi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the order passed by the first respondent made in I.D.No.278 of 1994, dated 15.10.2009 and quash the same.

For Petitioner :Mr.R.Saravanan

For R2 : Mr.T.Ravichandarn

O R D E R

This Writ Petition is filed by the Management as against the Award of Labour Court, Madurai, in I.D.No.278 of 1994, dated 15.10.2009.

2.The second respondent was engaged by the petitioner Society as a Clerk. Pursuant to an inspection and Audit report, several irregularities were found in the Society. Thereafter, surcharge proceedings were initiated against the second respondent and three other Salesmen. It is admitted that the surcharge proceedings were initiated against the second respondent holding him responsible for the deficiency in the stock. Thereafter, a charge memo was issued to the second respondent and the Management has dismissed the second respondent from service alleging that the second respondent has



misappropriated some amount. Hence, the second respondent raised an industrial dispute before the Labour Court, Madurai, in I.D.No.278 of 1994.

3.The contention of the second respondent that the domestic enquiry was not conducted properly, was accepted by the Labour Court. Based on records, the Labour Court came to the conclusion that the second respondent has not misappropriated any money and the charges against the second respondent is only for short fall in stock as per the audit report. The Labour Court further found that the surcharge proceedings initiated against the second respondent would indicate that there was no charge of misappropriation against the second respondent. Though the petitioner admitted that the second respondent was held responsible along with few others for the shortage in stock and other irregularities, no criminal prosecution is lodged as against the second respondent.

4.Insofar as the criminal charges against other employees are concerned, it is admitted that all other employees are exonerated, as they have made up the loss by paying the money equivalent to the value of the goods found to be in shortage. As for as the second respondent is concerned, the second respondent was held liable to pay a sum of Rs.1,59,333/- by way of surcharge proceedings. The Labour Court has found that the second respondent has not committed any misappropriation and that he is responsible along with other employees for the loss to the Society because of shortage. Regarding the loss, it is noted by the Labour Court that some amount had been deposited by the second respondent. The petitioner society has now been permitted to deduct the balance payable by the second respondent from the monthly salary. The Labour Court considering the documentary evidence came to the conclusion that the petitioner should reinstate the second respondent with continuity of service, but without back wages.

5.In such circumstances, this Court do not find any error or irregularity in the order of Labour Court directing reinstatement of second respondent. Having regard to the admitted facts, the charge of misappropriation is not proved. As admitted before the Labour Court, the allegation is only against a group of persons including the second respondent for the short fall in certain commodities meant for sale. The petitioner also admitted that the second respondent was employed only a Clerk and he did not handle money in business transaction nor he is responsible for selling commodities. It is stated that the second respondent retired from service. Since the second respondent is now retired, he is entitled to get monetary benefits in terms of the Labour Court award and the petitioner may also consider the disbursement of retirement benefits to the second respondent as early as possible.

6.Accordingly, the Writ Petition is dismissed and the Award of the Labour Court, Madurai, in I.D.No.278 of 1994, dated 15.10.2009, is affirmed.



is confirmed. No costs.
petitions are closed.

Consequently, connected miscellaneous

Sd/-

Assistant Registrar (Crl.Side)

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// True Copy //

Sub Assistant Registrar(CS)

cmr

To
The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-96929[F] dated 08/11/2019)

W.P.(MD)No.11552 of 2010
08.11.2019

JMN(03.12.2019) 3P : 3C