



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.3767 of 2010
and M.P.(MD).No.1 of 2010

The Management,
SP.Spl.99, Kosugundu Primary
Agricultural Co-operative Bank,
Kosugundu, Sattur Taluk,
Virudhunagar District.

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.P.Seeni

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records in relating to the award dated 23.12.2009 made in I.D.No.4 of 1998 on the file of the 1st respondent, Labour Court, Madurai and quash the same.

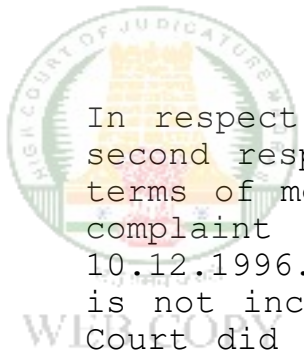
For Petitioner : Mr.J.Parekhkumar

For Respondents: R1 - Court
Mr.S.Mohandass for R2

ORDER

This writ petition has been filed challenging the award of Labour Court setting aside the punishment and directing the reinstatement of the second respondent without back wages.

2.The petitioner is the Management of Primary Agricultural Co-operative Bank. The petitioner is running a fair price shop. The second respondent was appointed as Sales Man in the above shop. A charge memo was issued to the second respondent on 24.12.1996. The charges are relating to shortage of stock, selling of commodities with forged bills and failing to adhere to the circulars and instructions given by the Society. Totally there are four charges. In respect of fourth charge, the Enquiry Officer found that the charge is not proved as no one was examined to prove the charge.



In respect of the third charge is concerned, it is found that the second respondent used to sell commodities with lesser quantity in terms of measurement and weight. This charge is only based on the complaint stated to have been received from the public on 10.12.1996. Since no independent witness was examined, this Court is not inclined to consider the same as proved. Even, the Labour Court did not consider the charges as serious. Since the charges were rebutted by the second respondent, an Enquiry Officer was appointed and the Enquiry Officer filed his report holding that three charges were proved. After issuing second show cause notice and receipt of explanation, the second respondent was removed from service by order, dated 23.06.1997. This was challenged by the second respondent by raising industrial dispute in I.D.No.4/1998 before the Labour Court, Madurai and the Labour Court set aside the order of removal and directed the reinstatement without back wages. Aggrieved by the award of Labour Court, the Management has filed the above writ petition.

3.Going by the Enquiry report, it is seen that the second respondent was found guilty of charge of selling commodities with low weight. The charge is only based on the complaint alleged to have been received from the public. Except the complaint, the Enquiry report does not refer to any other document or evidence. Hence, there is no proof for the third charge. As regards the fourth charge is concerned, the Enquiry Officer himself found that the charge is not proved by examining any one. It is in the background, the first two charges alone are relevant for consideration in this writ petition. From the charge memo, the first charge is that on Inspection by Revenue Department on the fair price shop on 18.12.1995, there was a shortage of stock and that the petitioner had sold the commodities with forged bills. It is further stated that loss has been caused to the society on account of such delinquency. The second charge is that the second respondent had failed to adhere to the circulars and instructions issued by the Management. The allegation against the second respondent with regard to the second charge is that he never kept the shop open from 09.00 a.m. to 01.00 p.m. and 03.00 p.m. to 07.00 p.m. as required. It is alleged that the second respondent allowed strangers inside the fair price shop. The commodities are not sold with proper measurements and sold for prices more than fixed. Though the charges were rebutted by the second respondent, the Enquiry officer did not consider any of the explanation offered by the second respondent.

4.The Enquiry Report clearly shows that the findings are based on presumption that the second respondent had admitted the charge by paying the value of goods which are either found to be sold by fake bills or found to be in shortage. The Enquiry officer has not considered the explanation in the light of materials produced before the Enquiry Officer. Regarding second charge, it is



when the second respondent was found not adhering to the instructions given to him by the Management. Except referring to the complaint received from the public and the statement of petitioner, no other material was available before the Enquiry officer. The president of the Co-operative Bank was stated to have found that the second respondent was not keeping the shop open during office hours. The allegation is not supported by any material that proved by examining the President himself. In such circumstances, the finding of the Labour Court that the charges have not been proved beyond doubt cannot be interfered with. Considering the entire facts and circumstances, the Labour Court has allowed the petition partly by directing reinstatement without back wages. This Court find no reason to interfere with the award of Labour Court as no perversity or irregularity is found in the award of Labour Court.

5. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (w)

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Sub Assistant Registrar(CS)

+1 CC to M/s.J.PAREKHKUMAR, Advocate (SR-90010[F] dated 27/09/2019)

+1 CC to M/s.MOHANDOSS, Advocate (SR-90361[F] dated 30/09/2019)

TM

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27.09.2019

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