



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM

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

W.P. (MD)No.9209 of 2011

and

M.P. (MD)No.1 of 2011

WEB COPY

The Special Officer,
Arumuganeri Kanthasamypuram
Lakshminagaram Co-Operative Stores Limited,
(No.1084), Arumuganeri, Tiruchendur Taluk,
Thoothukudi District- 628 202. ... Petitioner

vs.

1.The Presiding Officer,
The Labour Court, Tirunelveli District.

2.S.Somasekaran ... 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 relating to the proceedings of the order in C.P.No.107 of 2003, dated 01.07.2011 on the file of the first respondent and quash the same.

For Petitioner : Mr.I.Robert Chandrakumar
for G.Prabhu Rajadurai

For R2 : Mr.D.Srinivasaraghavan

O R D E R

This Writ Petition is filed to quash the order in C.P.No.107 of 2003, dated 01.07.2011 passed by the first respondent.

2.The petitioner in the writ petition is the Special Officer of Co-Operative Stores. The second respondent was appointed as Salesman in the Fair Price Shop run by the petitioner. Though the second respondent was appointed only on 01.01.1992, it is stated that there was an inspection on 22.01.1992 and the second respondent was found guilty of few charges. The allegation against the second respondent was that he had sold around 1151 kg., of rice in open market.

3.An Enquiry Officer was appointed and he submitted his report on 12.08.1992, holding that the charges against the second



respondent are proved. Thereafter, the petitioner has removed the second respondent from service on 24.08.1992. The second respondent, thereafter, filed I.D.No.07 of 1997 before the first respondent and an ex parte award was passed setting aside the order of termination and directing back wages. This Award of Labour Court in I.D.No.7 of 1997 has become final as on date. Though the petitioner has filed a petition to set aside the ex parte award, the delay condonation petition filed by the petitioner was also dismissed.

4. Thereafter, the second respondent filed a claim petition before the Labour Court claiming back wages for the period from 01.01.1992 to 31.07.2003. Though the claim for back wages is as per the Award passed in I.D.No.7 of 1997, the petitioner filed a counter and raised serious objection. Ultimately, the Labour Court allowed the Claim Petition and directed the petitioner to pay back wages on the ground that the order dismissing the second respondent from service, is set aside by the Labour Court later.

5. The learned Counsel for the petitioner raised several grounds in the writ petition challenging the order of the Labour Court and sustaining the order removing the second respondent from service. Though it is contended by the petitioner that there is no specific directions in the Award to pay back wages, it is admitted in the course of proceedings that there was a claim petition filed by the second respondent for back wages. However, the learned Counsel would contend that no issue was raised in this regard in the petition filed by the second respondent.

6. This Court is unable to see any merits in the writ petition. The contentions of the learned Counsel for the petitioner that there was no claim for back wages, is not true, as there is a specific prayer in the petition for back wages. Even assuming that there is no prayer for back wages, the Award of the Labour Court granting back wages is a matter of fact and it is the discretion of the Labour Court. Since the Award has become final and it is not challenged in the manner known law, it follows that the claim petition, which is in tune with the direction of the Labour Court in the earlier round of litigation, cannot be faulted.

7. The learned Counsel for the petitioner raised a ground that the Award itself is in-executable and unenforceable, as regards back wages, as the Labour Court has never recorded a finding regarding subjective satisfaction. The petitioner is aware of the nature of Award directing reinstatement and back wages. Having regard to the fact that the petitioner has allowed the Award of the Labour Court to become final, he cannot raise the same defence, which was available to the petitioner to challenge



the award of the Labour Court in the earlier proceedings, namely, I.D.No.07 of 1997.

8.The contentions raised by the petitioner before the Labour Court in the claim petition raising factual issues, which are deemed to have raised and decided earlier by the Labour Court, cannot be once again reiterated by the petitioner. In that view of the matter, this Court find no merits in the writ petition. Accordingly, the writ petition is dismissed and the order passed by the first respondent in C.P.No.107 of 2003, dated 01.07.2011 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
The Labour Court, Tirunelveli District.

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-88757[F] dated 24/09/2019)

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-88765[F] dated 24/09/2019)

W.P. (MD)No.9209 of 2011
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