



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.04.2022

DELIVERED ON: 14.06.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

REV.APLW(MD).No.40 of 2013

in

W.P. (MD).No.13749 of 2009

D.Kaliraj

...Applicant/Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Madurai District Court Campus,
Madurai - 625 020.

2.The Management,
Q-1066 Rajapalayam Consumers
Co-operative Wholesale Stores Limited,
P.S.K. Nagar, Chatrapatti Road,
Rajapalayam - 626 117,
Virudhunagar District.

3.V.O.S.Kalaiselvam,
Advocate / Domestic Enquiry Officer,
No.22, Mahal 5th Street,
Madurai - 625 001.

4.N.S.Solomon,
Secretary,
Regd.No.3, A.I.T.U.C
Madurai Motor Transport
and General Workers Union,
Gopala Kothan Street,
Central Cinema (Opp.Lane),
Madurai - 625 001.

... Respondents/Respondents

Prayer : Review Application filed under Order 47 Rule 1 and 2, read with Section 114 CPC, to review the order made in W.P.(MD).No.13749 of 2009 by hon'ble Judge of this Court dated 27.08.2010.

Prayer in WP(MD). 13749/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIIFIED MANDAMUS, calling for the records relating to the Award of the 1st Respondent / Presiding Officer, Principal Labour



Court, Madurai Dated 25-07-2006 made in I.D.No.279/1996 and to quash the same and consequently direct the 2nd Respondent / Management Q 1066, Rajapalayam District to reinstate the petitioner workman with original seniority including back wages, continuity in service, other monetary benefits and other attendant benefits.

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For Petitioner : Mr.V.J.Kumaravel
For R-1 : Labour Court
For R-2 : Mr.R.Saravanan
For R-4 : M/s.AL.Ganthimathi

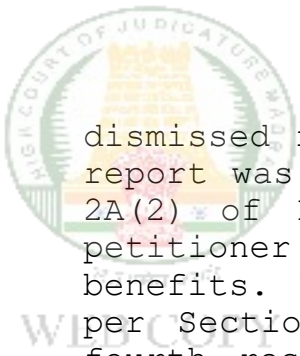
ORDER

This Review Application is filed for reviewing the order passed in W.P. (MD).No.13749 of 2009 dated 27.08.2010.

2. The Writ Petition in W.P.(MD).No.13749 of 2009 is filed for a Writ of Certiorarified Mandamus to quash the order dated 25.07.2006 passed in I.D.No.279/1996 and consequently to direct the second respondent to reinstate the petitioner workman with original seniority including back wages, continuity in service, other monetary and attendant benefits. This Writ Petition was dismissed vide order dated 27.08.2010. Aggrieved over the same, a Writ Appeal in W.A.(MD).No.898 of 2011 was preferred and the Division Bench vide order dated 30.11.2012 dismissed the Writ Appeal as withdrawn with a liberty to file Review Application in view of the submissions made by the learned counsel for the petitioner that the third respondent had played fraud on the Court. Hence, the present Review Application is filed.

3. The brief facts of the case are that the petitioner joined the second respondent Wholesale Stores as Packer in the year 1985 through employment exchange and was lastly working as Packer cum Salesman at Public Distribution System Branch No.67, Meenatchipuram Fair Price shop. The petitioner was removed from service by order dated 28.02.1995. Aggrieved over the same, the petitioner filed a petition before the Conciliation Officer, Virudhunagar District on 17.10.1995. Simultaneously, an appeal dated 24.03.1995 was preferred and the same was pending before the Deputy Registrar / Special Officer.

4. The contention of the petitioner is that in the appeal, the petitioner has clearly stated that even during the time of illness, the petitioner tried to disburse the sale amount to the management through the former Salesman, namely, K. Mariappan on 05.08.1994 along with the leave letter and the said leave letter was rejected mercilessly by the Deputy Registrar/Special Officer of the said store. Thereafter, the petitioner was kept under suspension from 16.08.1994 for the alleged willful absence for the period starting from 08.08.1994 to 13.08.1994. Thereafter, the petitioner was

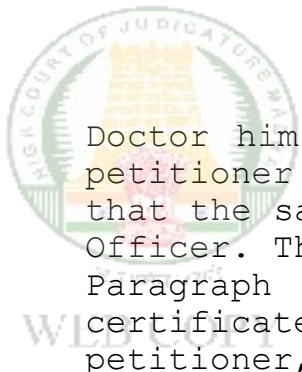


dismissed from service by order dated 28.02.1995. Since the failure report was filed, the petitioner preferred a petition under Section 2A(2) of Industrial Disputes Act, 1947 praying to reinstate the petitioner with back wages, continuity of service and other benefits. The petitioner nominated an authorized representative as per Section 36(1)(c) for conducting the case on his behalf. The fourth respondent herein, namely, Mr.N.S.Solomon was appearing on behalf of the petitioner till the disposal of the matter before the Labour Court, Madurai in I.D.No.279/1996 and I.D. was dismissed by an order dated 25.07.2006.

5. The contention of the petitioner is that the petitioner was unable to find out any misdeeds of the respondents 3 and 4 until the date of receipt of certified copies of certain documents in the said case on 08.09.2008. The third respondent, namely, Mr.V.O.S.Kalaiselvam, Advocate/Domestic Enquiry Officer, who is also the active practitioner in Madurai Bench of Madras High Court had suppressed the fact that he was functioning as Domestic Enquiry Officer during the domestic enquiry held on 17.12.1994 and also appeared for the second respondent/Management in all the proceedings before the first respondent/Labour Court without any valid Vakalat Nama but with the connivance of the fourth respondent, namely, Mr.N.S.Solomon.

6. The petitioner also contended that he gave a detailed affidavit along with rejoinder petition at the earliest occasion in the year 1997 itself for conducting the case in an expeditious manner with the relevant papers including the medical certificate dated 07.08.1994 for a period of 25 days starting from 07.08.1994 to 31.08.1994. This fact was jointly suppressed by the respondents 3 and 4. Because of this, the petitioner could not give oral evidence before the first respondent/the Presiding Officer. The Exhibit No.M25 containing the findings of the Domestic Enquiry Officer are baseless in nature. The petitioner was severely pressurized by the second respondent/Management and the Domestic Enquiry Officer to sign the papers which were already prepared for the alleged misconduct. The role of the third respondent during the domestic enquiry proceedings and also before the Labour Court are nothing but professional misconduct.

7. The petitioner submits that he never had an opportunity to submit any oral evidence before the Court during the enquiry of I.D.No.279/1996 and the same was attributable on the respondents 3 and 4. There is no acquiescence on the part of the petitioner in approaching this Court under Article 226 of the Constitution, since the award was passed on 25.07.2006. The indispensable and necessary document of medical certificate was in the custody of the fourth respondent along with the other material papers. The fourth respondent returned the bundle after a long time. The genuineness of the original medical certificate has been authenticated by the



Doctor himself on 10.12.2009. Since it was the last hope for the petitioner to prove his case, the petitioner was shocked to note that the said medical certificate was not produced before the Labour Officer. The first respondent/Labour Court has rendered a finding in Paragraph No.13 affirming the non-production of the medical certificate during the time of enquiry on the side of the petitioner, which has become fatal to the petitioner.

8. According to the petitioner, the findings of the Domestic Enquiry Officer are without any legal evidence and the award of the Labour Court lacks the same. The petitioner was not in drunkard mode during the period of duty. All the allegations are concocted stories of the management and the Domestic Enquiry Officer. The authorized representative has not made out a strong defence in the pleadings submitted on behalf of the petitioner. The fourth respondent has unnecessarily portrayed the petitioner as a drunkard in his pleadings. All these mis-happenings came to the knowledge of the petitioner only on 08.09.2008, that too, after having obtained the certified copies from the Principal Labour Court, Madurai. The petitioner was able to get back the bundle from the third respondent herein along with the original medical certificate dated 07.08.1994. Subsequently, the petitioner was able to get the certificate of genuineness from the medical officer concerned only on 10.12.2009. Hence, the Writ Petition was filed with delay.

9. The respondents relied on the counter filed before the Labour Court and relied on the documents filed before the Labour Court.

10. Heard Mr.V.J.Kumaravel, the learned Counsel for the petitioner, Mr.R.Saravanan, the learned Counsel for the 2nd respondent, M/s.AL.Ganthimathi, the learned Counsel for the 4th respondent and perused the records.

11. The allegations against the petitioner are that he was drunkard on that particular day and he has misappropriated the funds by issuing wrong bills and he has unauthorizedly absented himself for six days.

12. As far as the allegation of drunkard is concerned, the respondents have not obtained any medical certificate to that effect. The petitioner was not subjected for any breath analysis or blood test in order to prove that the petitioner was in drunkard mode. This Court in several cases has held that mere allegation of drunkard is not sufficient and the same should be substantiated by medical certificate either by subjecting the delinquent for breath analysis test or by blood test. Since, in the present case, the respondents have not carried out any such tests, the allegation of drunkard cannot be accepted. Therefore, this Court is of the considered opinion that the charge of drunkard is not proved and the



charge of drunkard is liable to be set aside.

13. The next allegation against the petitioner is that the petitioner absented himself for six days under medical leave without any medical certificate. The contention of the petitioner is that the petitioner was absent from 08.08.1994 to 13.08.1994, since the petitioner was ill and he was taking treatment and he was not able to immediately inform the authorities, but subsequently, the petitioner has produced the medical certificate issued by the competent Doctor. The Labour Court has simply rejected the claim of the petitioner by stating that the petitioner has not produced the medical certificate before the disciplinary proceedings.

14. The learned counsel for the petitioner submitted the original medical certificate before this Court. Since the genuinity of the medical certificate was questioned in the Labour Court, the learned counsel for the petitioner also submitted a certificate of genuineness issued by the same medical officer. However, the respondents declined to accept the medical certificate establishing the genuineness issued by the medical officer by stating that the medical certificate was issued in the year 1994 and the genuineness certificate is issued in the year 2009 and therefore, the same cannot be considered. The illness which is on record in the year 1994 cannot be confirmed by issuing genuineness certificate in the year 2009. Therefore, this Court is of the considered opinion that the claim of the respondents is absolutely correct. The medical certificate issued in the year 1994 cannot be confirmed by any genuineness certificate, that too, which is issued in the year 2009. However, the period of absence is only six days. If the six days absence is taken into account, the punishment of dismissal is absolutely disproportionate. Therefore, on this angle, the punishment of dismissal ought to be interfered.

15. The third charge against the petitioner is that the petitioner has misappropriated the sale by issuing wrong bills in Meenatchipuram Fair Price Shop. While the petitioner was serving in the said shop, on 04.08.1994, the petitioner was unwell. However, the petitioner has attended duty in spite of his illness and has looked after the sale in the said shop. However, the sale proceeds were not accounted in the register because of his illness. The contention of the petitioner is that just because it is not registered in the register, the same shall not be considered as misappropriation. After the medical leave, the sale proceeds to the tune of Rs.3693.10/- was deposited on 17.08.1994 in Receipt No.18707. It is seen from the facts that the petitioner was unwell on 04.08.1994. Subsequently, he was on medical leave from 08.08.1994 to 13.08.1994 and the sale proceeds were deposited on 17.08.1994. At the most, it can be considered as negligence of duty, since the petitioner has already paid the sale proceeds to the tune of Rs.3693.10/-, moreover, which is coupled with the fact that the



petitioner was unwell. Considering this fact also, the punishment of dismissal from service is not proportionate.

16. The next allegation against the petitioner is that while accounting for the amount of Rs.1364.40/-, the petitioner has accounted Rs.1350.00/-. The petitioner has left out Rs.14.40/- alone and the same was accounted vide Receipt No.25196 on 28.10.1994. This is only a calculation error and the same has been rectified on 28.10.1994. Considering this fact also, this Court is of the considered opinion that the punishment of dismissal from service is absolutely disproportionate.

17. On perusal of records, it is seen that this Review Application is filed in the year 2013. As on date, the petitioner is 61 years old and has attained superannuation. In view of the above, this Court is inclined to modify the punishment alone and the petitioner cannot be reinstated because he has attained superannuation. Therefore, the punishment of dismissal from service is modified as stoppage of increment for one year without cumulative effect. The petitioner was working in a non-pensionable job and therefore, the petitioner is not entitled to any pension. However, the petitioner is entitled to continuity of service, gratuity, provident fund and other monetary benefits, but the petitioner is entitled to 50% of backwages. Therefore, the respondents are directed to implement this modified punishment order and disburse other benefits, as stated supra, within a period of eight (8) weeks from the date of receipt of a copy of this order.

18. With the above direction, this Review Application is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Principal Labour Court,
Madurai District Court Campus,
Madurai - 625 020.

+1 CC to M/s.R. SARAIVANAN, Advocate (SR-25525[F] dated 14/06/2022)



+1 CC to M/s.V.J. KUMARAVEL, Advocate (SR-25661[F] dated 14/06/2022

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