



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.08.2020
DELIVERED ON : 04.09.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.4580 of 2014 and
M.P(MD).No. 1 of 2014 and W.MP(MD).No.3370 of 2020

R-1569, Pettaivaithalai Primary Agricultural
Co-opertative Bank Limited,
rep. by its President,
Trichy District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Trichy.

2.R. Sivakami

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent pertaining to its order passed in I.D.No.129 of 2004, dated 18.12.2012 and quash the same.

For petitioner : Mr. M. Sridharan
For 2nd respondent : Mr. S.K. Mani

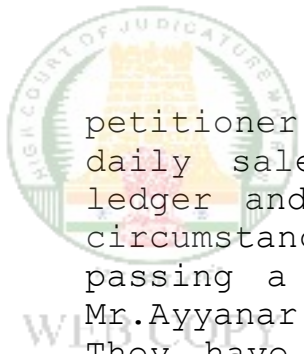
ORDER

This Writ Petition has been filed to call for the records on the file of the first respondent pertaining to its order passed in I.D.No.129 of 2004, dated 18.12.2012 and quash the same.

2. Challenging the Award passed by the first respondent / Presiding Officer, Labour Court, Trichy, in I.D.No.129 of 004, dated 18.12.2012, wherein reinstatement of the second respondent along with back wages were allowed, the petitioner / Co-operative Bank has filed this Writ Petition.

3. The factual matrix of the case are as under:

(i) While the second respondent was working as a salesman in Devastharam Village fair price shop under the control of



petitioner / Cooperative Bank, she was directed to maintain the daily sales Chitta, liability register, stock register and B ledger and she has also maintained the same regularly. In such circumstances, the then Special Officer made an arrangement for passing a resolution and thereby, powers of the then Secretary Mr. Ayyanar was taken away and it was handed over to Anbalagan. They have used to do several misconducts and misappropriation. Hence, the second respondent has made a written complaint to the inspection officer about the same. On the next day, the then Secretaries came and coerced the second respondent and obtained a letter as if she was responsible for all misdeeds and for failure to deposit the sale profits of Rs.40,970.05/- and then, next day, it was complained by the second respondent to inspection officer. But, she was placed under suspension with effect from 05.09.2003 and a charge memo was issued on 23.06.2003 and seven charges were framed as against the second respondent and she had also submitted her explanation. Not satisfied with that, the Domestic enquiry was conducted and thereafter, the second show cause notice was issued and after considering the same, the second respondent was dismissed from service. Hence, this Writ Petition.

(ii) It is seen from the records that the domestic enquiry was conducted 06.12.2003. In the domestic enquiry as many as seven charges are framed. The second respondent had also participated and management witnesses were examined in her presence and she has cross examined the management witnesses. After completing the enquiry, the Enquiry Officer came to the conclusion on 07.12.2003, the charges 1,2,3,5 and 6 are proved and the charges 4 and 7 were not proved. Based on that, the petitioner has given a second show cause notice and after receiving the explanation for the same, she was dismissed from service on 03.03.2004.

4. Heard both side and perused the records.

5. The sum and substances of finding of Labour Court on all the charges are hereunder:

1) (a) The second respondent is alleged to have committed stock deficit and thereby, she had made the Bank to suffer a loss. Further, she had committed a deficit in the non control commodities and thereby, made the bank to suffer another loss. Even though she had received the articles of commodities to stock deficit was made and thereby, bank was made to suffer a loss. There was a discrepancy in the stock detailed Chitta and liability register and thereby shortage of fund. She alleged to have created bogus bill and 3 litres of Kerosene was sold. A sum of rs.47,590/- was not paid to the Bank and thereby, she had

misappropriated.



(b) The case of the Department as spoken to by MW.1 : MW1 - Mr. Ayyanar did not produce any documentary evidence. He has further deposed before the enquiry officer that management need not prove that the petitioner was authorised to sell the essential commodities. He had further deposed that the deficit articles found in the deficit register was not given to him. But, on perusal of the record, a sum of Rs.500/- was found which was not entered in the above said register. The discrepancy between liability register and another register, she was made responsible. He had further deposed that on the direction of the Special Officer, the records were handed over to the management witness by the second respondent.

(c) The case of defence as projected by the delinquent staff : through her defence witness :

(i) The Witness Sirumbayee had deposed that Ayyanar used to come to the Angadi and used to collect the sale proceeds. Another witnesses Padma also deposed that as Secretary was used to come with Anbalagan and collected the money and remitted into Bank. Another witness Chandran had deposed that the witness Anbalagan collected the money from the second respondent for remitting the same to the Bank. On behalf of the authorities, a petition was submitted before the Enquiry Officer contending that around 3.30 pm on 04.09.2003, the sales man was threatened by Anbalagan and made to sign in the paper.

(ii) In short, as per Department, on inspection day, there was deficit in stock and delinquent is responsible for the loss made to the Bank;

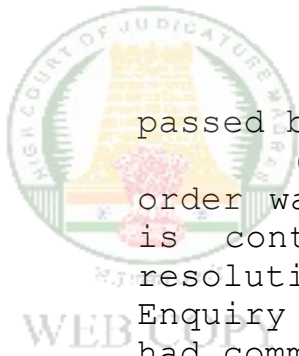
(iii) Per contra, it is specific defence of the delinquent that as per relevant circular she was not given responsibility. Some other persons were made responsible for stock and now for the deficit she was made an escape go out and she was also threatened and made to sign some papers.

2. Based upon the oral and documentary evidence adduced in the Department enquiry, the Labour Court has rendered as categorical finding that:

(a) The fact of resolution dated 12.05.2003 empowering Anbalagan to receive the sale proceeds from the salesman of fair price shop was not disputed by the management, but it is admitted.

(b) M.W.1, the then Secretary Ayyanar did not state the fact of resolution.

(c) The fact of collection of sale proceeds from salesman / Sivagami by Anbalagan was witnessed by Co-worker of the fair price shop and so it was proved that Anbalagan used to collect sale proceeds from fair price shop with an intention to remit into bank on the basis of resolution



passed by the society.

(d) In spite of this fact, the finding that no written order was passed on oral was passed to collect sale proceeds is contrary to available evidence and contrary to the resolution passed by the society. So, the finding of the Enquiry Officer relating to the charges is leading that she had committed misappropriation, is contrary to the evidences.

3. Next finding of the Labour Court is that:

(a) The narration of this fact as deposed by the witness, revealed that the then Secretary had taken the charge without verification of the stocks and so, the petitioner was not responsible for any alleged deficit.

(b) Without producing the relevant registers stock registers daily chitta and liability register and without proving the deficit, she cannot be made responsible for the alleged imaginary loss.

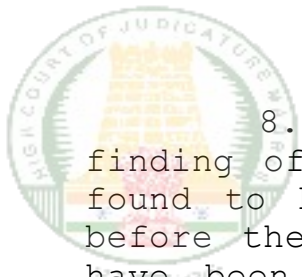
(c) When a specific charge was framed that kerosene was sold by creating bogus bill. But, bill was not produced before the Enquiry Officer. So, charges levelled against the second respondent were not proved.

4. On the part of the sixth charge is also contrary to the evidence before the enquiry officer and so, it is liable to be set aside. Even after seeing the records and stock from the second respondent, a charge that she had not handed over stock to the staff of the the Secretary is contrary to the records.

5. It is also held by the Labour Court that the enquiry report is also revealed that no documents were marked in the presence of the second respondent in the enquiry and copies of such documents were not furnished to her.

6. Based upon the above finding, the Labour Court has rightly held that the domestic enquiry is vitiated and the Enquiry Officer has not properly perused the documents and evidence let in and consequently, held that without referring a particular date, quantum of loss, the second respondent herein was alleged to have made the bank to suffer a loss. The relevant documents were not marked in the presence of the second respondent. The Enquiry Officer had failed to consider the resolution passed by the Society.

7. It appears that the Enquiry Officer has proceeded to decide in favour of the bank without considering the materials in a proper perspective and without an intention to find whether the materials produced are relevant to charges framed and supports the charge so framed against the second respondent herein.



8. So this Court after analyzing the evidence adduced and finding of the Enquiry Officer, relating to all the charges are found to be improper. On consideration of the evidence adduced before the Enquiry Officer, the Enquiry Officer has appears to have been not conducted the enquiry in the proper perspective manner as stated by the Labour Court as extracted Supra. So, the order of dismissal passed by the petitioner herein is unsustainable in law and hence, the order is liable to be set aside.

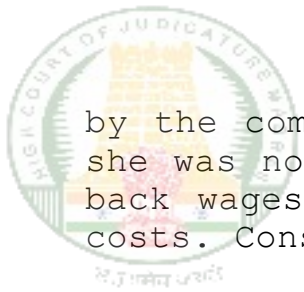
9. It is to be stated that in view of the specific evidence of the witnesses Sirumbayee, Padma and Chandran and also taking note of the circular to the effect that 0.05% was permissible in case of deficiency and that taking into consideration of the ledger, the order passed by the Labour Court and the finding rendered by the Labour Court for the Enquiry proceeding are appears to be just and proper. On the proper appreciation of the oral evidence that was adduced before the Enquiry Officer, the award passed by the Labour Court does not suffer from any irregularity or illegality warranting interference by this Court in exercise of power under Article 226 of the Constitution of India.

10. On the point of quantum of award, the second respondent is out of employment from 05.09.2013. The award of Labour Court is on 18.12.2012. During the relevant point of time, the second respondent is not gainfully employed and the charges framed are held to be not proved in the manner known to law and hence the Labour Court ought to have granted a percentage of back wages. In the decision reported in **2019 (1) JCR (SC) 163**, the Hon'ble Apex Court has observed that in appropriate cases, the question of award of back wages to be taken and 25% of back wages could meet the ends of justice.

11. The learned counsel for the second respondent delinquent produced the penury certificate from Tahsildar, competent Revenue authority stating that the second respondent delinquent has no means to maintain herself and find difficult for her daily livelihood and hence I am inclined to grant 25% back wages and accordingly, the order of award passed by the Labour Court is modified to the extent that the second respondent is entitled for reinstatement with continuity of service with back wages to the tune of 25% only.

12. In fine,

(i) The award passed by the Labour Court that setting aside the order of dismissal and order of reinstatement of second respondent is confirmed. In view of the penury certificate issued



by the competent Tahsildar and also taking note of the fact that she was not gainfully employed, I am inclined to grant 25% of the back wages and this Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii) In view of the long pendency of Execution Proceeding in E.P.No.6 of 2013, the first respondent is directed to dispose of the same as early as possible, in any event, not later than, eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court, Trichy.

+1 CC to M/s.S.K. MANI, Advocate (SR-16163[F] dated 07/09/2020)

ORDER MADE IN
WP(MD).No.4580 of 2014
04.09.2020

TR(10.09.2020) 6P 3C