IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.Nos.1469 and 1500 of 2013
and
M.P.No.1 of 2013

Management of
the Chemplast Sanmar Ltd.,
Kadampuliyur, Panruti TK
Villupuram District. ...Appellant in W.A.No.1469 of 2013

A.K.Chandrasekaran ...Appellant in W.A.No.1500 of 2013

-vs-

1.The Presiding Officer,
Labour Court, Cuddalore.

2.AK.Chandrasekaran ...Respondents in W.A.No.1469 of 2013

1.The Presiding Officer,
Labour Court, Cuddalore.

2.The Management of
Chemplast Sanmar Ltd.,
Kadampuliyur, Panruti TK
Villupuram District. ...Respondents in W.A.No.1500 of 2013

Prayer in W.A.No.1469 of 2013: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 15.02.2013 made in W.P.No.24374 of 2002.

Prayer in W.P.No.24374 of 2002: Writ Petition filed under Article of 226 of the Constitution of India praying for the assuance of certiorarified mandamus calling for the records relating to the Award of the first respondent Labour court cuddalore dated 18.03.2002 in I.D.No.84 of 2000 filed and marked holding the petitioner's discharge is justigied and quash the same and consquently direct the second respondent management to reinstate the petitioner in service with backwages continuity of service and all other consquential benefits.

Prayer in W.A.No.1500 of 2013: Writ Appeal filed under Clause 15 of Letters Patent Act as against the order dated 15.02.2013 made in W.P.No.24374 of 2002 and pray that the same may be set aside insofar as the learned Judge denied 50% of backwages.

In W.A.No.1469 of 2013:-

For Appellant	:	Mr.Sai Prasad for M/s Sai Raaj Associates
For R1	:	Labour Court
For R2	:	Mr.N.G.R.Prasad for M/s Row & Reddy

In W.A.No.1500 of 2013:-

For Appellant	:	Mr.N.G.R.Prasad for M/s Row & Reddy
For R1	:	Labour Court
For R2	:	Mr.Sai Prasad for M/s Sai Raaj Associates

COMMON JUDGMENT

(Order of the Court was made by V.SIVAGNANAM, J.,)

The Writ Appeals have been filed,

(i) to set aside the order dated 15.02.2013 made in W.P.No.24374 of 2002.

(ii) as against the order dated 15.02.2013 made in W.P.No.24374 of 2002 and pray that the same may be set aside insofar as the learned Judge denied 50% of backwages.

2.The learned counsel for the appellant in W.A.No.1469 of 2013 would submit that the 2nd respondent-Mr.A.K.Chandrasekaran/workman joined the appellant/Management as Accounts Assistant on 16.07.1976 and was working continuously. The last drawn wages of the 2nd respondent was Rs.8480/-.

3.In the year 1998, it came to the notice of the Management that there were irregularities and malpractices indulged in by the officers and staff in the matter of handling of cash. Mr.S.Sankaran, Executive Vice President (Finance) directed Mr.Gopal Mahadevan, Assistant General Manager (Accounts) to investigate into the irregularities/malpractices. In the course of investigation, he found that during the financial year 1997-1998, 85 cheques had been issued to a contractor by name A.Pushparaj amounting to Rs.24.66 Lakhs and of these cheques, on a random basis, 9 cheques were selected for verification. A verification was done in the bank to see whether the cheques were encashed by the respective payees. It was found that in respect of two cheques, though the counterfoils showed that the cheques were issued to A.Pushparaj, they were really issued in favour of the 2nd respondent and the cheques were encashed by him. On a further scrutiny, it was found that the vouchers in support of the two cheques were prepared in favour of A.Pushparaj. Out of these two cheques, one cheque was signed by S.Sankaran. Whenever S.Sankaran signs the cheque, he also used to sign or initial the cheque payment voucher. The voucher supporting one of the above cheque encashed by the 2nd respondent did not contain the initial of S.Sankaran. Then it was decided to make a further investigation into the payments made to A.Pushparaj and it was found that two more cheques had been encashed by the 2nd respondent and they had been accounted as payments made to A.Pushparaj. Out of these two further cheques, one of them had been signed by S.Sankaran and the supporting voucher which was prepared in favour of A.Pushparaj did not contain the initial of S.Sankaran. In respect of the remaining two cheques, in the counterfoil, the name of the payee written as "self" was scored out and written as "AP" meaning A.Pushparaj. Thus it became evident that the cash drawn by the 2nd respondent by encashing the four cheques issued in his favour, were accounted as if they were payments payments made to A.Pushparaj and the cash was used for some other purpose.

4.On 23.12.1998 a charge sheet was issued to the 2nd respondent pointing out the above irregularities, charging him with the misconduct under para 14(c) and (k) of the Certified Standing Orders and calling upon him, to show cause, why disciplinary action shall not be taken against him. The 2nd respondent gave a reply dated 26.12.1998, denying the charges. His case was that whatever he did was on the instructions of his superiors Arun Kumar, Senior Manager and R.Seshadri, Executive Manager (Accounts). He also stated that he used to encash the cheque and hand over the cash to A.Pushparaj. The 2nd respondent was asked to appear for an enquiry to be held by a retired District Judge.

5.On 25.08.1999 the Enquiry Officer gave his report holding that the four disputed cheques were M11, M7, M6 and M12 and the corresponding cheque payment vouchers were M20, M21, M22, M24 that the 2nd respondent had admittedly prepared the vouchers M20, M21 and M24 and that in voucher M22, while the name of A.Pushparaj, and the amount in figures and letters were written by R.Seshadri, the 2nd respondent filled up the other details, that the preparation of the vouchers should precede the preparation of cheque and that both of them should be in the same name, that the 4 cheques and the related four cheques did not satisfy the said requirement and that therefore there was deflection in those four transactions from the usual procedure followed, that when the 2nd respondent was asked to expalin the strange feature, he would say that he did it on the instructions of Arunkumar and R.Seshadri, that when there was a set procedure in the preparation of cheque payment vouchers and cheques, and when the 2nd respondent was doing the functions of a cashier he was bound to follow the set procedure and he cannot make any departure from the normal procedures, that even if his superiors had asked him to deviate from the set procedure, such a deviation was wrongful or atleast he should have insisted upon a direction in writing from his superiors and that when that was not done, the 2nd respondent cannot take shelter under the so called direction from his superiors and seek to justify his action.

6.The Enquiry Officer has further held that when there was a conscious departure from the set procedure in respect of 4 transactions resorted to by the 2nd respondent coupled with his failure to make credit entries in the cash account in respect of the amounts encashed by him, it will certainly amount to gross negligence in carrying out his duties. The Enquiry Officer has further held that the deflection from the set procedure was deliberate because the manipulation/falsification of records relating to accounting had been done in respect of four transactions, that the 2nd respondent's claim that the payments on four occasions were made to A.Pushparaj only in cash out of the amounts drawn by him from the bank under the four cheques, but the related vouchers were not cash payment vouchers and were only cheque payment vouchers, that even though the four cheques were drawn in the name of the 2nd respondent and were encashed by him, in the relevant cheque payment voucher, as against the column cheque No., the particulars of the cheques drawn in the name of the 2nd respondent were mentioned as if the cheques were issued in favour of A.Pushparaj, that in respect of the two vouchers supporting the two cheques which were signed by S.Sankaran, the vouchers should have been manipulated/fabricated later, that the two vouchers had also been prepared mentioning incorrect details as if they were cheque payments and the relevant cheques were drawn in the name of A.Pushparaj, that since the 2nd respondent was functioning as a cashier, he had also made his contribution in the preparation of these false documents and as such he was answerable to the manipulation/alteration of the documents and he cannot be heard to say that he did everything at the behest of his superior and that he was not at fault, and even though the four cheques were admittedly prepared in the name of the 2nd respondent, in two of the counterfoils of the cheque leaves, as against the column "in favour of" it is mentioned as AP signifying the name as A.Pushparaj after scoring out "self", that the 2nd respondent had admitted that he had made those writings and that therefore there was manipulation/falsification of records relating to accounting in respect of the four transactions covered by the charges and the 2nd respondent was a party to it.

7.Though the Enquiry Officer exonerated the 2nd respondent of the charge of forgery and misappropriation, the Enquiry Officer has held that there has been gross negligence, on his part, in the performance of his duties, by not following the set procedure in the discharge of his functions as a cashier and that apart he had been a party to the manipulation/falsification of the 4 vouchers, forgetting his obligation to the Company to be honest in his dealings. In the result, the Enquiry Officer found the 2nd respondent guilty of the misconduct of dishonesty in connection with the business of the company and gross negligence in the performance of his duties.

8.On 15.09.1999, a copy of the report of the Enquiry Officer was furnished to the 2nd respondent and he was also informed that it was provisionally decided to award him the punishment of discharge from service. He was asked to show cause in writing why the said punishment shall not be inflicted. The 2nd respondent gave a reply dated 15.11.1999.

9.After considering his representation, orders were passed on 07.12.1999 confirming the punishment of discharge from service. It is submitted that the punishment of discharge from service awarded to the petitioner, is perfectly valid and justified and it should not be interfered with. Further, the Labour Court by its order dated 18.03.2002 in I.D.No.84 of 2000 upheld the punishment given by the Management.

10.Aggrieved with this order the 2nd respondent filed a Writ Petition in W.P.No.24374 of 2002.

11.The learned Single Judge failed to consider the negligence on the part of the 2nd respondent as recorded by the Enquiry Officer as well as the Labour Court. The learned Single Judge without considering the fact, set aside the impugned award dated 18.03.2002 and ordered for reinstatement of service along with 50% of backwages and reiterated other grounds raised in the grounds of Writ Appeal and thus pleaded to allow the Writ Appeal.

12.The learned counsel for the 2nd respondent in W.A.No.1469 of 2013 would submit that the order of the learned Single Judge for 50 % of backwages is contrary to law. The learned Single Judge failed to appreciate that when the charges as such has not been proved he ought to have ordered full backwages to the 2nd respondent and thus pleaded to dismiss the Writ Appeal in W.A.No.1469 of 2013. The 2nd respondent/workman filed the Writ Appeal in W.A.No.1500 of 2013 to grant full backwages.

13.Heard the learned counsel appearing on either side and perused the materials available on record.

14.The admitted fact of the case is that the 2nd respondent in W.A.No.1469 of 2013 and the appellant in W.A.No.1500 of 2013 employed as an Accounts Assistant in the Appellant Management from 1976 to 1998. For the financial year 1997-1998, there was a dispute with regard to four cheques and in that dispute a charge memo was issued on 23.12.1998, asking for an explanation by the 2nd respondent. He submitted his explanation on 26.12.1998. An enquiry was conducted and the Enquiry Officer gave the report on 25.08.1999. In that report, finally it has been held that the 2nd respondent was not found guilty of misconduct of dishonesty, misconduct of forgery and misappropriation. Findings of the Enquiry Officer runs as follows:-

> "19.In the result, I find the chargesheeted employee guilty of the misconducts of dishonesty in connection with the business of the company and gross negligence in the performance of his duties and not guilty of the misconducts of forgery and misappropriation."

15.The learned Single Judge considering the fact that the workman was not guilty for misconduct of dishonesty, misconduct of forgery and misappropriation. For some negligence workman need not be removed from service. As per the Enquiry Officer's report, the 2nd respondent had been exonerated from the charges. However, the appellant/Management passed the order of removal from service on the observation made by the Enquiry Officer with regard to gross negligence. Therefore, the learned Single Judge rightly set aside the impugned award passed by the Labour Court in I.D.No.84 of 2000 dated 18.03.2002 and further ordered for reinstatement of service along with 50% of backwages.

16.We find no merit in the Writ Appeal and hence we confirm the order of the learned Single Judge in W.P.No.24374 of 2002 dated 15.02.2013. Accordingly, the Writ Appeal in W.A.No.1469 of 2013 is hereby dismissed. No costs. Consequently connected miscellaneous petition is closed.

17.Now, during the course of argument it is represented that the 2nd respondent/workman has already attained the age of superannuation in the year 2006. We have considered the arguments of the learned counsel for the appellant in W.A.No.1500 of 2013 for full backwages.

18.The learned counsel for the appellant filed an affidavit dated 07.07.2021, and stated that this Court, while admitting the above Writ Appeal, vide order dated 16.07.2013 in M.P.No.1 of 2013, directed the appellant to deposit a sum of Rs.4,50,000/- in fixed deposit with the Indian Bank, High Court Branch, jointly in the name of the appellant viz., Chemplast Sanmar Limited as well as the 2nd respondent viz., AK Chandrasekaran. Further directed the 2nd respondent workman to withdraw the accrued interest once in three months. Pursuant to the said order passed by this Court, the appellant herein has deposited the sum of Rs.4,50,000/-, jointly in the name of the appellant as well as the 2nd respondent viz., Chemplast Sanmar Limited and AK Chandrasekaran vide letter dated 26.07.2013. Pursuant to the same, Bank had also issued a fixed deposit receipt in A/c.6149935654 and the original FD receipt is held by the appellant.

19.Along with the affidavit, the learned counsel for the appellant filed the photocopies of the below mentioned documents:-

"a)Copy of Cheque No.588550 of the appellant for Rs.4,50,000/- in favour of Indian Bank, High Court Branch, FD Account.

b)Copy of the letter of the appellant dated 26.07.2013 to the Branch Manager, Indian Bank, High Court Branch, duly acknowledging the receipt of the Cheque for Rs.4,50,000/-.

c)Copy of the Fixed Deposit Receipt for Rs.4,50,000/-.

20.Admittedly, the workman's last drawn wages was Rs.8480/-. If that amount was taken for consideration his yearly income will be Rs.1,01,760/-. He was terminated from service on 07.12.1999. His superannuation falls in the year 2006. Therefore, his remaining service is nearly 6 years.

21.Therefore, the loss of full wages will go to Rs.6,10,560/- (Rupees Six Lakhs Ten Thousand Five Hundred and Sixty Only) (approx). Accepting the arguments advanced by the learned counsel for the appellant in W.A.No.1500 of 2013, we are inclined to grant full wages to him since the workman was not found guilty of misconduct, forgery and misappropriation by the Enquiry Officer.

22.Hence, the appellant in W.A.No.1469 of 2013 is directed to hand over the Demand Draft for the remaining back wages of

Rs.1,60,560/- (Rupees One Lakh Sixty Thousand Five Hundred and Sixty Only) to the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order. In the meanwhile, the 2nd respondent is permitted to withdraw the Fixed Deposit amount accrued in the account No.6149935654 forthwith.

23.In the result, the Writ Appeal in W.A.No.1469 of 2013 stands dismissed and the W.A.No.1500 of 2013 stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to M/s.Row & Reddy, Advocate, S.R.No.31784

W.A.Nos.1469 and 1500 of 2013
and M.P.No.1 of 2013

VSN-II[co]
NSK 14/09/2021