



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.27479 OF 2004

T.P.T.1098 Kudisaikarai
Milk Producers Co-operative Society,
represented by its Special Officer,
Kudisaikarai Village,
Vinnamangalam Post,
Sevur, Tiruvannamalai District,
rep. by its Special Officer,
M.Thanikachalam

... Petitioner

.Vs.

1. P.Thangamani
2. The Labour Court,
Vellore.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records pertaining to the impugned order of the 2nd Respondent passed in I.D.No.38 of 2000, dated 09.03.2004, and quash the same.

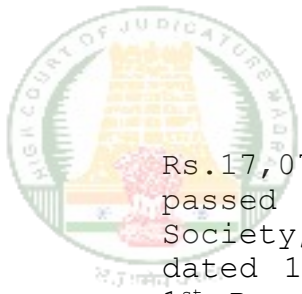
For Petitioner : Mr.S.Balakrishnan

For 1st Respondent : No appearance

O R D E R

Petitioner/Management has come up with this Writ Petition seeking to quash the order dated 09.03.2004 passed by the 2nd Respondent/Labour Court in I.D.No.38 of 2000.

2. According to the Petitioner/Management, the 1st Respondent/employee has misappropriated funds and caused loss to the Management to the tune of Rs.29,553.84 and after enquiry, it was found that, he was responsible for loss of a sum of



Rs.17,077/- and final orders of the surcharge proceedings were passed by the Deputy Registrar of Milk Producers Co-operative Society, Tiruvannamalai vide proceedings in Na.Ka.No.2326/97/B2, dated 13.03.2000. During the pendency of the proceedings, the 1st Respondent/employee, in order to escape from the liability, handed over his charge to one Sekar and thereafter, his whereabouts are not known.

3. The only contention of the Petitioner/Management is that, the 1st Respondent/employee had raised Industrial Dispute in I.D.No.38 of 2000, seeking reinstatement with backwages, after four years from the date of the alleged dismissal and the same ought to have been dismissed on the ground of laches. But, the Labour Court, by an Award dated 09.03.2004 in the said Industrial Dispute, had directed reinstatement of the 1st Respondent/employee with backwages.

4. A reading of the Award would make it clear that, the 1st Respondent/employee has not been issued a Charge Memo with regard to the departmental proceedings and no enquiry was conducted and final orders thereon have been passed. Merely because, there are surcharge proceedings, it does not mean that, the same has to be accepted as domestic enquiry proceedings. Surcharge proceedings may be the corroborative evidence in the domestic enquiry, in case, the Management issues a Charge Memo to the employee and the same can be marked as Exhibit. Dehors the surcharge proceedings, the employer is expected to establish the charges. In the case on hand, on both counts, the employer has not established the charges against the 1st Respondent/employee and relying upon the surcharge proceedings cannot be a ground to interfere with the Award.

5. Hence, this Court is of the view that, the Award of the Labour Court does not suffer from any perversity to be interfered with, so as to exercise extraordinary jurisdiction of this Court.

6. After dictating this order, learned counsel for the Petitioner sought permission of this Court to proceed with the 1st Respondent/employee departmentally. Firstly, the Award has become final. Secondly, even assuming that, this Court is going to grant such liberty, unless there is employer-employee relationship, no proceedings can be initiated against the employee. If the employee had attained the age of superannuation, no Disciplinary Proceedings can be initiated against him, in the absence of Rules. Admittedly, there is no provision to that effect. On these grounds, the request of the learned counsel for the Petitioner is rejected.



The Writ Petition is dismissed with the above observation.
No costs. Consequently, connected W.P.M.P.Nos.33411 and 40123 of
2004 are closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Labour Court,
Vellore.

W.P.NO.27479 OF 2004

SSI (CO)
PBS/18/08/2021