



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12766 of 2005
and MP.No.13988 of 2005

The Management
Mettur Government
Servants Co-operative
Stores Limited
Mettur Dam - 1.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem
2. N.R.Karikrishnan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in C.P.No.70 of 2003 on the file of Labour Court, Salem, the 1st respondent herein and quash the order dated 20.07.2004 passed therein.

For Petitioner : Mr.M.R.Raghavan

For R2 : Mr.V.Elangovan

O R D E R

The Petitioner / Management has filed this Writ Petition, challenging the order of the Labour Court in C.P.No.70 of 2003 dated 20.07.2004 computing a sum of Rs.58,687/- together with interest at 6% p.a. apart from imposition of cost of Rs.250/-.

2. It is the case of the Workman that the employee has been divested of his duties without following any procedure and that the Authority under the Tamil Nadu Shops and Establishments Act, 1947 set aside the order of termination.

3. The Petitioner / Management contented that the order has been set aside, as the person employed has committed an act of misappropriation. It is further contended that as there is no order of reinstatement passed by the Authority under the Shops Act, no benefits would be extended.



4. It is seen that the employee approached the Labour Court for computation and the Labour Court computed the amount. This Court makes it very clear that once the order of termination or non employment is held to be bad by the Authority under Section 41 of the Shops Act, 1947 there is no need for reinstatement to be mentioned in the order, as once the order is set aside the termination order becomes non-est in the eye of law and it is deemed to be in service as if no order has been passed. The Hon'ble Division Bench of this Court in the case of The Tata Iron And Steel Co., Ltd. vs G. Ramakrishna Ayyar and another, reported in (1950) LLJ 1043 Mad had clearly held with regard to the circumstances for reinstatement of an employee as under:

"4.....Actually the legal position is this. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher authority. That authority reverses the decision of the employer and the result is that the order of the employer is set aside. It is no longer in existence. It follows that the effect of the original order of the employer also disappears and it is as if the order is non-est. Though, therefore, it may not be quite accurate to say that the employee will be entitled to reinstatement in service, yet the result of the order of the appellate authority is virtually the same. Probably, the result of the appellate order is even better than an order of reinstatement. It is as if the employee had never been properly dismissed from service."

5. Once an order of dismissal is set aside by the Appellate Authority, reinstatement is in-built in the said order. The labour Court has computed the amount based on the order of the authority under the Shops Act. The Management has produced the documents to show that the employee has committed misconduct and that surcharge proceedings under Section 81 has been initiated and order under Section 87 has been passed wherein it has been held that the employee has caused loss to the Society and that he has misappropriated the amount to the tune of Rs.87,654.80/-. It has been stated across the bar that in the criminal case in C.C.No.13 of 1997, learned Chief Judicial Magistrate, Mettur convicted the employee on 16.08.2005. Though the criminal court judgment has not been produced, as it has been stated that the order passed under Section 87 of the Cooperative Societies Act has become final, the employee has to return back the amount to the employer, even assuming that the order of the labour Court is correct.



6. Finding much force and substance in the contention of the Management, the writ petition is allowed as prayed for and the order dated 20.07.2004 in C.P.No.70 of 2003 passed by the Labour Court, Salem is set aside. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq
To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.S.Doraisamy, Advocate Sr.30352
+1cc to Mr.M.R.Raghavan, Advocate Sr.30079

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pch[col]
srg 11/08/2021