



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17201 of 2018

and

WMP.No.20466 of 2018

The Management,
Sathiyamangalam Sarvodiya Sangam,
9/467 Main Road, Sathiyamangalam,
Erode- 638 401.

... Petitioner

-vs-

1. The Presiding Officer,
Labour Court, Salem.

2. R.Murugan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records in I.D.No.221 of 2010 on the file of Labour Court, Salem, the first respondent herein and quash the impugned award dated 08.02.2018 (published on 07.05.2018) read with preliminary award dated 27.02.2014.

For Petitioner : Mr.M.R.Raghavan

For Respondents : Mr.K.V.Shanmuganathan (R2)

O R D E R

The Petitioner / Management has come forward with this Writ Petition, challenging the Award in I.D.No.221 of 2010 on the file of Labour Court, Salem, the first respondent herein and quash the impugned award dated 08.02.2018 (published on 07.05.2018) read with preliminary order dated 27.02.2014.

2.The facts in nutshell as stated by the Management are as follows:

(i) The Workman / 2nd respondent herein joined the services of the Management as Assistant on 01.04.1985. During the course of employment with the Management, the Workman



indulged in a serious misconduct of misappropriation, which had resulted in issuance of a Charge Memo dated 05.08.2002 and not satisfied with the explanation submitted by the 2nd respondent, an enquiry was ordered to probe into the charges levelled against the 2nd respondent. The Enquiry Officer submitted a report stating that the charges levelled against the second respondent were proved. Therefore, the 2nd respondent issued a show cause notice to him, along with the report of the Enquiry Officer and despite receipt of the show cause notice, he had not chosen to give any reply and thereafter, the Workman was dismissed from service on 11.10.2006.

(ii) Aggrieved by the same, the second respondent filed a writ petition before this Court in W.P.No.45107 of 2002 and the same was disposed of by this Court on 10.02.2010, giving liberty to the second respondent to raise an industrial dispute which was taken on file of the first respondent in I.D.No.221 of 2010. The first respondent/Labour Court after receiving the materials filed by the parties passed a preliminary order holding that the domestic enquiry was not in accordance with principles of Natural Justice. Since, the Management sought permission to lead evidence, the Labour Court permitted the Management to adduce evidence.

(iii) The Labour Court, after considering the oral and documentary evidence, passed a final award on 08.02.2018, and granted the relief of reinstatement to the second respondent/workman. Challenging the same, the present Writ petition has been filed.

2. Learned counsel for the Workman contended that the dismissal order passed by the Management is illegal, as the Workman was not allowed to defend his case effectively and there was a violation of principles of natural justice. He further contended that the Workman was victimized for the illegal act committed by one Sennanjappa, Branch In-charge and it was the Workman, who had brought out the act of misappropriation by other staff members and in order to take vengeance upon him, he was dismissed from service without conducting a fair enquiry.

3. Heard both sides. Perused the records.

4. The Labour Court in the preliminary order held that domestic enquiry was not fair and proper. The Management was prevented from using the very same exhibits that form part of the charges. Once the domestic enquiry has been held to be not fair and proper, it is open to the Employer to adduce fresh



evidence in the light of the judgment of the Apex Court in the case of Workmen of Fire Stone Tyre Rubber Company v. Management, reported in 1973 (1) LLJ 78, provided there is a plea taken by the Management in the counter affidavit that they must be given an opportunity to let in evidence as per the decision of the Hon'ble Apex Court in the case of Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd., and others, reported in (1979) 3 SCC 371. Once the domestic enquiry is set aside, the finding of the Enquiry Officer can be marked as Exhibit, as it would form part of the material on record. But, however, it can be looked into only for the purpose of contradiction and it cannot be construed as a gospel truth. Though the Management is entitled to lead evidence afresh and establish the charges, based on the documentary and verbal evidence, the same has not been accepted by the Labour Court as found in Paragraph 8 of the Award.

5. Hence, this Court, while interfering with the award as perverse, remands the matter to the Labour Court to decide the case afresh, after providing an opportunity to the Management to lead fresh/additional evidence, mark Exhibits that has been rejected in Paragraph 8 of the award, which is subject matter of the Writ Petition and decide the issue, uninfluenced by the earlier award of the Labour Court which is subject matter of the Writ Petition. The Labour Court is directed to decide the matter, within a period of six months from the date of receipt of a copy of this order, without adjourning this matter beyond seven working days at any point of time.

6. This Writ Petition is disposed of with the aforesaid directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

arr

To:

The Presiding Officer,
Labour Court,
Salem.



Copy to:

The Section Officer,
E.R.Section,
High Court,
Madras - 104.

(Registry is directed to return the original
records, if the records are received)

+1cc to Mr.M.R.Raghavan, Advocate, S.R.No.33352

W.P.No.17201 of 2018

SSV(CO)
SU(22/11/2021)