



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
23.03.2021	29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) Nos.10523 of 2007 and 3798 of 2012
and
M.P. (MD)No.1 of 2007

W.P. (MD)No.10523 of 2007:

The Management,
0522, Kovilpatti Agricultural Producers
Co-operative Marketing Society Ltd.,
Sattur road, Kovilpatti,
Tuticorin District.

... Petitioner

Vs.

1.The Deputy Commissioner of Labour,
Palayamkottai Road, Tirunelveli.

2.R.Thiruppathy

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records on the file of the respondents relating to the order passed by the first respondent in TNSE No.1 of 2006 dated 23.10.2007 and quash the same.

W.P. (MD)No.3798 of 2012:

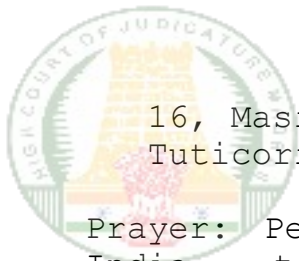
The Management,
0522, Kovilpatti Agricultural Producers
Co-operative Marketing Society Ltd.,
962,Sattur road, Kovilpatti,
Tuticorin District.

... Petitioner

Vs.

1.The Labour Court,
Tirunelveli.

2.The District Vice President,
District Co-operative Employees Union (C.I.T.U),



16, Masilamanipuram 3rd street,
Tuticorin District-628 008.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records relating to the order passed by the first respondent in I.D.No.76 of 2006, dated 31.05.2011 and quash the same.

For Petitioner
in both petitions : Mr.V.O.S.Kalaiselvam

For Respondents
in both petitions : Mr.A.Thirumurthy
for R.2

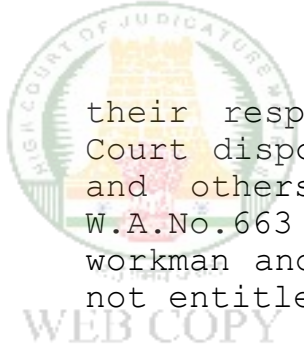
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COMMON ORDER

Since the issue involved in both the writ petitions are being interconnected, both the writ petitions are disposed of by this common order.

2. The case of the petitioner Society is that the petitioner Society is a co-operative Society and the main object of the Society is to procure agricultural products from farmers and auction them for better price to the farmers in order to avoid middlemen. Apart from the above function, they are also purchasing cotton from agriculturists and gin the cotton and sell the cotton through auction for better price to the agriculturists. Apart from this , they are also distributing essential commodities to the fair price shops situated within its territorial jurisdiction. The petitioner Society would further aver that due to continuous drought in the State for a period of four years between 2001 to 2004, the agriculturists could not cultivate and consequently, the business of the petitioner Society was reduced to a great extent. There are 41 employees working in the petitioner's Society. On the above said situation, it has become necessary to reduce surplus employees and in order to reduce establishment and contingency expenses being incurred by the petitioner Society, 6 of the employees were retrenched from their services. Due to excess establishment and contingency expenses, loss was increased year by year.

3. The second respondent workman and 5 others were junior most and they were covered under retrenchment by the order dated 21.01.2002. They were retrenched from their services and the requisite procedure as required under Section 25F of the Industrial Disputes Act was followed. However, aggrieved over the same, the second respondent workman and others filed a writ petition before this Court and the same was stayed by this Court and in view of the same, the second respondent workman and others continued to work in



their respective capacity. However, the Principle Seat of this Court disposed of the batch of writ petitions in the case of Justin and others, more specifically dismissed the writ petition in W.A.No.663 of 2002, dated 19.03.2008, filed by the second respondent workman and in view of the said fact, the petitioner and others are not entitled to continue into their services.

4. In the meanwhile, the State Government has allotted a wine shop to the petitioner Society. Instead of retrenchment, the second respondent workman was transferred to the wine shop. However, the status and sale of pay remains unaffected to the second respondent workman. The second respondent workman, instead of reporting to the transferred place, he went on leave and sent a leave letter for a period of 3 days from 31.02.2003. However, the petitioner Society refused to grant leave and the same was intimated through the telegram dated 31.02.2003 by directing the second respondent workman to report to duty. Despite a specific direction, the second respondent workman reported to work only on 06.12.2003. Further, he refused to report to work at the transferred place and hence, through a specific memo dated 17.12.2003, he was directed to report at the transferred place. Instead of doing so, the second respondent workman, through his letter dated 26.12.2003, applied for 6 days leave and that was also rejected by the petitioner Society on 01.01.2004 and he was directed to report for work in the transferred place. Thereafter, the second respondent workman neither reported for work nor sent communication to the petitioner Society. Thereafter, through another letter dated 20.01.2004, the second respondent workman sought for 20 days leave from 01.01.2004 to 20.01.2004 and thereafter, through the letter dated 20.01.2004, he extended his leave for further period of 31 days with effect from 21.01.2004 and the said request made by the second respondent workman was rejected by the petitioner Society. Further the telegram issued by the petitioner Society was also returned as unserved. For the above disobedience and insubordination of the lawful order of the petitioner Society, instead of submitting explanation, through another letter dated 20.02.2004, the second respondent workman sought leave for 30 days and the said letter was with medical certificate for the illness of the second respondent and considering his medical request, the second respondent workman was referred to medical board vide letter dated 21.02.2004 and the second respondent workman appeared before the medical board to find out the veracity of the certificate.

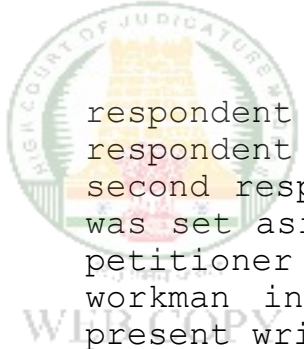
5. In the meanwhile, the second respondent workman submitted several leave letters dated 20.01.2004, 29.01.2004 and 20.02.2004. The medical board, for which the second respondent workman was referred to issue a fitness certificate, after thorough examination on 17.03.2004, has specified that the second respondent workman was fit to work. Further, the medical board also certified that the second respondent workman cannot be recommended for his leave and



board's opinion, the petitioner Society directed the second respondent workman to report duty on 18.03.2004. Instead of reporting to work, the second respondent workman tendered his resignation dated 18.03.2004, however the said resignation was rejected by the petitioner Society on 20.03.2004 and the same was communicated to the second respondent workman. However, the second respondent workman has not reported to work. Thereafter, notice under Section 9A of the Industrial Disputes Act was issued to the second respondent workman for the change in conditions of service for his transfer to the fair price shop and he was directed to report to work at the fair price shop immediately. The second respondent workman through his reply, has stated that he has already raised Industrial Dispute before the Labour Officer, Tuticorin under Section 2K of the Industrial Disputes Act. Thereafter, the Government of Tamil Nadu through its G.O.(D)No.395, Labour and Employment (B1), Department, dated 11.05.2006 has referred an industrial dispute before the Labour Court, Tirunelveli to decide the validity of the said transfer by way of demotion order issued to the second respondent workman is proper and legal. Based on the above said Government Order, the Labour Court registered the case.

6. For the above said disobedience and insubordination, the second respondent workman was issued with a charge memo on 15.10.2004. The first charge is that the second respondent workman did not obey the superiors and the second charge is that the second respondent workman was running an independent business in the name of Thirupathy traders by selling sanitary and hardware materials and for running a business in his name, it is a clear violation of 11(3) of the Special By-laws of Society and the other charges are for continuous non-maintenance of proper records. Immediately thereafter, the second respondent workman sent a letter dated 29.10.2004 stating that he wanted 15 days time to submit his explanation. Thereafter, the petitioner Society sent a remainder letter dated 05.01.2005 seeking for his explanation. Even thereafter, the second respondent workman has not sent any explanation. Thereafter, the second respondent workman was requested to appear before the Enquiry Officer and thereafter, the Enquiry Officer conducted enquiry and repeatedly sent letters to the second respondent workman to attend the enquiry. However, the second respondent workman did not participate in all the proceedings, having received the entire notices. Thereafter, the Enquiry Officer has drawn a proven minute against the second respondent workman. Based on the proven minute, the charges against the second respondent were proved. After receipt of the Enquiry Officer's report, the petitioner Society sent a second show cause notice by enclosing enquiry report dated 21.10.2005. Even thereafter, the second respondent workman has not submitted any explanation and subsequently, the second respondent workman removed from service on 21.10.2005.

<https://hcservices.ecourts.gov.in/services> by the said order of dismissal, the second

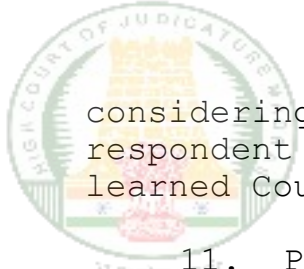


respondent workman filed TNSE No.1 of 2006 before the first respondent and the first respondent passed an award in favour of the second respondent workman and thereby the earlier order of transfer was set aside and the order of dismissal was also set aside and the petitioner Society was directed to reinstate the second respondent workman into service with back wages. Challenging the same the present writ petitions have been filed.

8. Learned Counsel appearing for the petitioner Society would submit that admittedly the second respondent workman was retrenched by the petitioner Society and the order of retrenchment was challenged before this Court and initially, this Court granted an interim order and subsequently, the interim order was vacated and his claim was rejected. Thereafter, the second respondent was directed to work in the wine shop, however, the second respondent workman did not join duty as per the superior's direction and he went on leave. Though the petitioner's Society repeatedly made a request to the second respondent workman to join duty, he went on leave. Further the production of medical certificate was clearly established before the Medical Board that it was false one and further, the second respondent workman was running a firm in his own name under the style of "Thirupathi Traders" by selling sanitary and hardware materials. Though the said allegation was made in the charge memo, the second respondent workman did not deny the same by submitting his explanation. Instead of submitting his explanation, he sent a reply seeking time to submit his explanation. Though repeatedly the time was granted to the second respondent workman, he did not submit his explanation and also not participated in the enquiry proceedings.

9. Learned Counsel appearing for the petitioner Society would further submit that the second respondent was well aware about the enquiry proceedings as well as the demotion. Further, the transfer order as well as the termination order were challenged before the first respondent and the first respondent, erroneously held that there is a procedure violation in conducting domestic enquiry. Further, since the second respondent workman did not deny the second allegation in respect of running of independent business in his name, which is contrary to the Special Bye-law of the Society, the said charge is clearly established. However, the first respondent failed to consider the same and passed the award in favour of the second respondent workman, which is *non-est* in law.

10. Learned Counsel for the petitioner Society would further submit that admittedly the petitioner employed as Junior Assistant and after retrenchment, he was directed to join as salesman in a wine shop allotted to the petitioner Society, however, the second respondent workman did not join the duty and even though, without considering the fact that there is no pay different, the non-joining of duty to the transferred place by the second respondent workman is



considering all these facts, passed an award in favour of the second respondent workman, which is unsustainable and accordingly, the learned Counsel would pray for appropriate orders.

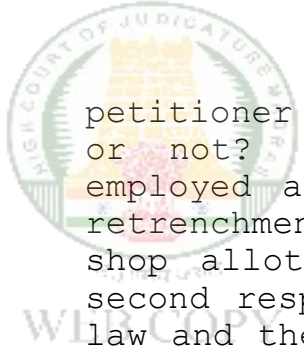
11. Per contra, learned Counsel appearing for the second respondent workman would submit that though the second respondent workman was retrenched, thereafter, he was given employment by the petitioner Society and subsequently transferred to the wine shop, allotted to the petitioner Society and the second respondent workman was transferred by way of demotion, which is non-est in law. The salary of the second respondent workman's to the original post and for the transferred post is completely different and after elaborate discussion, the first respondent arrived at a conclusion that there was a pay different and the transfer order is contrary to Section 9A of the Industrial Disputes Act and accordingly, the Labour Court held that the transfer order is *non-est* in law.

12. Learned Counsel appearing for the second respondent workman would submit that the procedure contemplated before terminating the service of the second respondent workman is not in accordance with law and no opportunity was given to the second respondent workman before passing termination order and behind the second respondent workman's back, all the proceedings were conducted, which is clearly in violation of natural justice. Hence, the learned Counsel would pray for dismissal of the writ petitions.

13. Heard the learned Counsel appearing for the petitioner Society and the learned Counsel appearing for the second respondent workman and perused the materials placed on record.

14. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

15. The facts in the present case are not in dispute. The only issue arises for consideration in these writ petitions is as to whether the writ petition for dismissal order dated 21.10.2005 passed by the



petitioner Society against the second respondent workman is correct or not? Admittedly, the second respondent workman initially employed as Junior Assistant in the petitioner Society and after retrenchment, the second respondent workman was transferred to wine shop allotted by the Government to the petitioner Society. The second respondent workman claimed that the transfer was *non-est* in law and there are junior persons available and without transferring them, transferring the second respondent workman to the lower category is bad in law and ultimately, the first respondent arrived at conclusion that the transfer order is *non-est* in law and also held that the second respondent workman is entitled to the post of Junior Assistant.

16. As per the decision of the Division Bench of this Court in ***L. Justine and another Vs. the Registrar of Co-operative Societies and Others*** reported in **2002(4) CTC, 385**, if the persons who were appointed otherwise than through employment exchange and if the appointments exceed either the cadre strength or the candidates not possessing the educational and other qualifications and if there is violation of other conditions envisaged in Rule 149 of the Tamil Nadu Co-operative Society Ruls, their services shall be terminated forthwith. Admittedly the second respondent workman was retrenched by the petitioner Society and the order of retrenchment was challenged before this Court and initially, this Court granted an interim order and subsequently, the interim order was vacated and his claim was rejected. Thereafter, the second respondent was directed to work in the wine shop, however, the second respondent workman did not join duty as per the superior's direction and he went on leave. Though the petitioner's Society repeatedly made a request to the second respondent workman to join duty, he went on leave.

17. For non-joining of the transferred post and for other allegations, the second respondent workman was issued with a charge memo dated 15.10.2004. For better appreciation, the charges are as follows:

" (i) the second respondent workman did not obey the order of the Special Officer and ignored the administration of the petitioner Society;

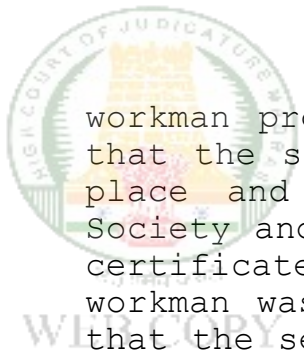
(ii) the second respondent workman was doing private business in violation of special bye-law of the petitioner Society;

(iii) the second respondent workman absented from duty without permission or reason;

(iv) the second respondent workman derelict his duties and responsibilities; and

(v) the second respondent workman has the habit of cheating the administration of the petitioner Society."

18. Except the charges 1 and 2, the other charges are not in serious nature. In respect of charge No.1, the second respondent



workman produced the medical certificate. It is an admitted case that the second respondent workman did not join in the transferred place and repeatedly, he sent leave letters to the petitioner Society and thereafter, he sent leave letter along with the medical certificate. It is also not in dispute that the second respondent workman was referred to Medical Board and the Medical Board opined that the second respondent workman could not be recommended for his leave and also directed that his leave may be treated as other leave. The second respondent workman marked his medical certificate as Ex.A.19. However, the illness of the second respondent workman was also disproved by the petitioner Society by marking Ex.M.7 - the fitness certificate which was given by the Medical Board.

19. Further, though the second respondent workman claimed that there was a clear violation in principles of natural justice, even on a perusal of the award passed by the first respondent, it is clear that all the documents relating to the enquiry proceedings were marked by the petitioner Society. Though the second respondent workman had a knowledge about the enquiry proceedings against him, instead of participating the enquiry, he repeatedly sent leave letters with medical certificate. However the Medical Board certified that the second respondent workman was fit for work and thereafter also, he did not return to join duty. It is clearly established about his disobedience.

20. In respect of the second charge, the second respondent workman is having his own business by selling sanitary and hardware material at door No.1D-3 in Kovilpatti - Pasuvanthinai road, the second respondent workman did not deny the same before the first respondent. However, the first respondent did not consider the same and there was no discussion to that effect. Further, the second respondent not even denied the said charge, when the same was adjudicated before the first respondent. However, the first respondent arrived at conclusion that there was a violation of principles of natural justice and set aside the dismissal order, which is in perverse and the same is *non-est* in law.

21. In view of the above discussions, the award passed by the first respondent is perverse and irrational and accordingly, the same is liable to be set aside and hence, the same is set aside. Therefore, both the Writ Petitions are allowed. There shall be no order as to costs Consequently, the connected Miscellaneous Petition is closed.

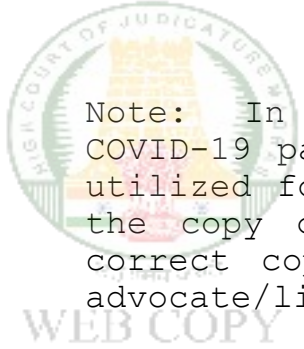
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Assistant Registrar (RTI ACT)

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Sub Assistant Registrar(CS)



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.

SSL

To

1.The JUDGE,
Labour Court,
Tirunelveli.

2.The Deputy Commissioner of Labour,
Palayamkottai Road, Tirunelveli.

+2 CC to M/s.A.THIRUMURTHY, Advocate (SR-14356[F] dated
30/03/2021)

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-14511[F] dated
30/03/2021)

PRE-DELIVERY ORDER IN

W.P. (MD)Nos.10523 of 2007 and 3798 of 2012

29.03.2021

GS (18.05.2021) 9P 6C