



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.12846 of 2010

WEB COPY

I.Gangadharan

... Petitioner

Vs.

1.The Management,
O.1919 Tenkasi Senkottai Taluk,
Co-op Society Ltd.,
Amman Sannathi,
Tenkasi.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the Preliminary Award in I.D.No.22 of 1999, dated 17.07.2009 and the Final Award in I.D.No.22 of 1999 dated 22.02.2010 passed by the second respondent and quash the same and consequently direct the first respondent to pay the backwages from the date of dismissal to the date of retirement with all terminal benefits to the petitioner.

For Petitioner : Ms.D.Geetha

For Respondent No.1 : Mr.M.Muthugeethaiyan
Special Government Pleader

Respondent No.2 : Labour Court

O R D E R

This writ petition has been filed challenging the preliminary award passed by the Labour Court in I.D.No.22 of 1999, dated 17.07.2009 and the final award in I.D.No.22 of 1999 dated 22.02.2010 and consequently direct the first respondent to pay the backwages from the date of dismissal to the date of retirement with all terminal benefits to the petitioner.

2. The case of the petitioner is that the petitioner joined in service of the first respondent in the year 1972 as basic servant. Subsequently, he was promoted as Cashier by the first respondent after recognising his unblemished service for a period of more than 28 years. While so, a charge memo was issued on 03.02.1998 alleging



that he had absented from work from 17.01.1998 and he did not handover the Cashier responsibilities to one Rajamanicka Somasundaram as per the order of the first respondent dated 20.01.1998. The second charge is misappropriation of money to the tune of Rs.2,90,000/-, Rs.9,654/- and Rs.14,381.10/- respectively. The petitioner gave a reply to the said charges vide his letter dated 07.02.1998 denying the charges levelled against him. Based on the above said charges, Departmental Enquiry was conducted and the Enquiry Officer fixed the hearing date on 08.07.1998 and further the Enquiry Officer held all the charges were proved against the petitioner and the petitioner was dismissed from service vide order dated 23.09.1998. Aggrieved by the order of dismissal, the petitioner raised industrial dispute before the second respondent in I.D.No.22 of 1999. The second respondent passed a preliminary award dated 17.07.1999 holding that the enquiry proceedings were conducted after following the procedure and the principles of natural justice and final award was also passed on 22.02.2010. Aggrieved on the same, the present writ petition has been filed by the petitioner.

3. Ms.Geetha, learned counsel appearing for the petitioner would submit that though the preliminary award was held against the petitioner and the final award also passed against the petitioner, wherein rejecting the petitioner's request for reinstatement with backwages. However, the crucial issue which was raised before the Labour Court was not considered. In the present case, the Disciplinary Authority examined himself as a management witness before the Enquiry Officer and thereafter, the Disciplinary Authority received the enquiry report and based on the enquiry report, the petitioner was dismissed from service which was not sustainable in law, however, the said issue was not answered and mechanically the Labour Court has rejected the claim of the petitioner and accordingly, the learned counsel prays for allowing this writ petition.

4. Per contra, the learned Special Government Pleader appearing for the first respondent would submit that the petitioner did not raise any ground with regard to the violation of natural justice and the petitioner was permitted to peruse all the documents and thereafter the petitioner submitted a detailed explanation. Hence, the petitioner has effectively participated in the proceedings and the reasons were recorded by the Labour Court and ultimately, the Labour Court arrived a conclusion that there was double entry of the amount received by the petitioner from the wine shop and the duty of the petitioner as a Cashier is whatever the amount collected has to be entered in the cash book. In the present case, the petitioner made double entry to the same amount in the cash book and based on the management witness and documents, the Labour Court passed the award against which the petitioner claimed re-instatement with backwages is not correct by invoking Article 226 of the Constitution of India. Hence, he prays for dismissal of this writ petition.



5. Heard the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the first respondent and perused the materials available on record.

6. 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. Hence, this Court is not inclined to grant the relief sought for by the petitioner.

7. Considering the facts and circumstances of the case, though the petitioner raised a claim that the Disciplinary Authority himself examined as a witness before the Enquiry Officer and he received the enquiry report and after receiving the enquiry report, the Disciplinary Authority passed the final order of dismissal, which is not sustainable one. On perusal of the records, the proper opportunity was given to the petitioner before the Enquiry Officer. After perusing the entire records available before him, the Enquiry Officer drawn the proven minutes and the same was submitted to the Disciplinary Authority and thereafter, the Disciplinary Authority passed the order of removing the petitioner from service. Though such issue was raised before the Labour Court, the Labour Court has not discussed the said issue and further, on merits, the charge against the petitioner in misappropriating the society money was elaborately discussed before the Labour Court in paragraph.10, wherein the Labour Court appreciated the evidence of M.W.1 before the domestic enquiry officer that the petitioner received Rs.5514/- from Tenkasi Wine Shop and recorded the same in the cash Chitta on 10.01.1998 and the petitioner had twice made entries of the receipt of the single amount of Rs.5514/- in the cash Chitta so as to make it appear that the total cash appears to be Rs.5514/- plus Rs.5514/- and in finalising the closing balance amount on 13.01.1998, the petitioner ought to have deducted the double entry made by him in the cash chitta. Further, the Labour Court also held that the petitioner ought to have written the cash chitta that opening balance amount is Rs.72,070.10/- however the closing balance as on 13.01.1998 to be Rs.8,867.10/- and the petitioner had not handed over the balance amount of Rs.9654/- to Cashier-in-charge, one, Rajamanicka Somasundaram and the total of misappropriation committed by the petitioner was Rs.18,521.10/- and various malpractices done by the petitioner was ultimately discussed in the award. Hence, on



merits, the petitioner had no proper explanation either before the Labour Court or before this Court by way of placing necessary documents.

8. Accordingly, this Writ Petition stands dismissed and the Preliminary Award passed by the second respondent in I.D.No.22 of 1999, dated 17.07.2009 and the Final Award in I.D.No.22 of 1999 dated 22.02.2010 are confirmed. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to SGP (SR-2375[F] dated 29/01/2021)

W.P. (MD) No.12846 of 2010

27.01.2021

KG (CO)

NR (09/02/2021) 4P : 3C