



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.10106 of 2011

and

M.P (MD)No.1 of 2011

WEB COPY

Management,
M/s.Southern Petrochemical Industries
Corporation Limited, Tuticorin,
Tuticorin District,
Through its Vice President (FB). ... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Tirunelveli,
Tirunelveli District.

2. A.Ramalingam ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records in relating to the award passed by the first respondent in I.D.No.123 of 1997 dated 30.09.2009 received on 27.05.2011 and to quash the same.

For Petitioner : Mr.P.Chandrabose

For Respondent : Mrs.Chamundi Bose
for R.2

* * * * *

ORDER

This Writ Petition is filed seeking for issuance of a writ of Certiorari, to call for the records in relating to the award passed by the first respondent in I.D.No.123 of 1997 dated 30.09.2009 received on 27.05.2011 and to quash the same.

2. The case of the petitioner is that the petitioner is a Limited Company incorporated under the provisions of the Companies Act 1 of 1956 and carrying on various business inclusive of manufacture and distribution of fertilizers. The petitioner concern is having certified Standing Orders in relating to the service conditions of its employees. The second respondent viz., A.Ramalingam joined as Assistant Store Keeper in the year 1973 and



conformed on 07.11.1973. At the time of dismissal order, the second respondent had worked as a Senior Assistant in Product Handling and Distribution Department looking after Logistic jobs.

3. The petitioner concern is having three warehouses in Tuticorin at Meelavittan, Port Area and TNWC warehouse. At the time of the incident, the second respondent was supervising the wagon loading operations in the Meelavittan warehouse which is near to Railway Wagon Shed. The loading activities were carried out in three shifts in the warehouse. Two security guards were working each in day shift and night shift. Three more security guards were deployed at the time of carrying out the loading activities. While railway wagon loading is carried out, urea bags will be dispatched through shunting trucks and for that the duty Logistic Assistant, who is supervising the wagon loading operation duty, will give necessary orders to the security guards and instruct the guard on duty to load urea lorries and prepare the truck loading list accordingly.

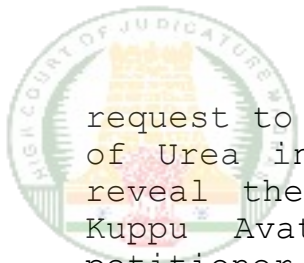
4. While so, on 26.01.1996, the second respondent attended duty in the second shift as the Logistic Assistant and by oral understanding, he exchanged his duty and attended the second shift instead of first shift duty and supervised the wagon loading operations at Meelavittan. On the second shift of the said date, the opening stock of Urea was 420.80 M.T., and during the second shift, 16 lorries of Urea were loaded at good shed with 10 M.T., of Urea in each truck. The second respondent had instructed the guard on duty at the good shed at Meelavittan to load 10 M.T., of Urea in each lorry and prepared truck loading check list only for 15 lorries and made entries in the good shed stock register also for the 15 lorries and further instructed not to account for the balance one lorry either in the check list or in the stock register. He instructed the guard, without any instructions from the higher officials, to load the 10 M.T., Urea in the outstation vehicle bearing Registration No.TN 04A-4006 to the value of Rs.33,000/- and sent out. He informed the guard that he will adjust the said load as it is meant for outstation delivery and he would make necessary adjustment later. However, in this connection no information was given by the company authorities to him to send any material for outstation delivery from the said good shed instead of railway wagon. The second respondent has also not informed to the subsequent shift Logic Assistant about the dispatch of one lorry load of 10 M.T., urea to outstation. The actual stock available was only 260.80 M.T., against the stock as per records was 270.80 M.T. This discrepancy arose only due to 10 M.T., of Urea sent out by him fraudulently. The second respondent has fraudulently sent out 10 M.T., of Urea without the knowledge of the higher officials through the said lorry. Further, the second respondent also prepared Form XX fraudulently and he also forged the signature of the Senior Manager and handed over the same to the lorry driver.



5. The next day on 27.01.1996, he called the security guards who were on duty from 07.00 p.m., on 26.01.1996 to 07.00 a.m. on 27.01.1996 and requested them to hide the facts of sending 10 M.T., Urea by the said lorry. However, the security personnel refused to oblige. Thereafter, the said illegal act of the second respondent was reported to the higher officials and the management reported the fact to the Law Enforcing Agency and on that basis, FIR was registered against the second respondent as well as the lorry driver including the dealer of the Karaikudi. Thereafter, the second respondent on 29.01.1996 informed orally for one day casual leave through a staff category employee who was not on duty. Thereafter, the second respondent sent a telegram to the Senior Manager stating that he was feeling unwell and praying leave for 15 days and subsequently, he did not turn to duty. Thereby the Senior Manager sent a detailed telegram to the second respondent for his unauthorised absence. Thereafter the second respondent submitted his explanation on 30.04.1996 with a Tuticorin Doctor medical certificate, dated 28.04.1996 recommending medical leave from 29.01.1996 to 28.04.1996. Since his explanation was not satisfactory, the management decided to conduct a domestic enquiry against the charges levelled against him.

6. Prior to his unauthorized absence from duty, regarding the fraudulent theft of 10 M.T., Urea through the outstation lorry, a detailed charge memo dated 30.04.1996 was issued to him and after receipt of the same, the second respondent submitted his explanation on 06.05.1996. Since his explanation was not found satisfactory, the petitioner decided to conduct a domestic enquiry. After conducting enquiry, the Enquiry Officer has drawn a proven minute against the second respondent. Thereafter he was dismissed from service on 14.12.1996. As against the order of dismissal, the second respondent preferred an appeal to the Vice President of the petitioner concern and it was also dismissed on 16.01.1997. Thereafter, the second respondent raised an industrial dispute before the Labour Court in I.D.No.123 of 1997. The Labour Court, through its preliminary award dated 16.05.2008, upheld that the domestic enquiry was conducted according to the natural justice and fairness. In final order dated 30.09.2009, the Labour Court came to the conclusion that the findings of the Enquiry Officer are perverse and not sustained under the law and accordingly, passed the award by directing the petitioner concern to reinstate the second respondent into service with all back wages. Challenging the same, the present writ petition is filed.

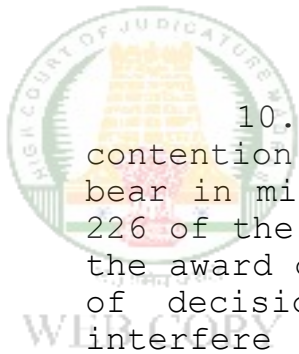
7. Learned Counsel appearing for the petitioner concern would submit that the guilt against the second respondent was clearly established before the Enquiry Officer. The petitioner concern examined as many as witnesses particularly from the position of Senior Manager up to the level of Security Guard - Kuppu Avathani and they categorically deposed about the guilt committed by the second respondent. However, the second respondent made a specific



request to Security Guard - Kuppu Avathani not reveal the said load of Urea in the outstation lorry. However, initially he did not reveal the lorry number and subsequently, the Security Guard - Kuppu Avathani revealed the lorry number and thereafter the petitioner concern made a complaint before the Law Enforcing Agency. Thereafter, a criminal case was registered against the second respondent as well as a lorry driver including the dealer. Though the criminal case was ended in acquittal, however in the departmental proceedings, the said Security Guard - Kuppu Avathani and other staffs, who were accommodated with the second respondent at the relevant point of time, were examined and they categorically deposed about the guilt committed by the second respondent and for the proven minute, the dismissal order was passed against the second respondent. Without appreciating all the facts, the Labour Court arrived at conclusion as if the second respondent has not committed the guilt, which is perverse and the same is liable to be interfered with and hence, the learned Counsel would pray for appropriate orders.

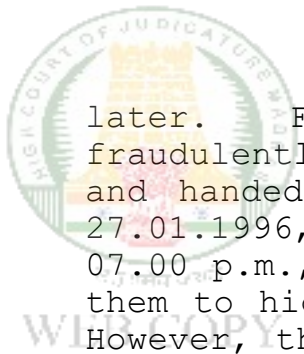
8. Per contra, learned Counsel appearing for the second respondent would submit that though the petitioner concern claimed that it examined all the staffs who were accommodated with the second respondent before the Enquiry Officer and the entire proceedings were marked as Exs.M.6 and M.7, however the statements of the witnesses were not marked along Exs.M.6 and M.7. In the absence of any statement, merely marking of enquiry proceedings is insufficient to establish the guilt against the second respondent. Further, the documents, which were marked before the Enquiry Officer, were not marked before the Labour Court. Even on a perusal of log sheet, there is no discrepancy in the in the three shifts and the said document and other material evidences were not marked before the Labour Court to prove the guilt against the second respondent. Further, it is stated by the petitioner concern that the second respondent in collusion with Karaikudi dealer, misappropriated 10 M.T., Urea, however, the said Karaikudi dealer was not examined before the Enquiry Officer, though he was arrayed as an accused in the criminal proceedings. Further, the cancellation of dealership with the said dealer by the petitioner concern was also not marked and with regard to the collusion in between the second respondent and the said dealer, no proof was marked before the Labour Court. Therefore, after thorough consideration of the entire facts only, the Labour has passed the award of reinstatement of the second respondent into service with back wages, which does not warrant any interference by this Court and hence, the learned Counsel for the second respondent would pray for dismissal of the writ petition.

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



10. 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. First, it has to be seen, whether the Employer Management was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is solely responsible for the guilt and the same is affected the reputation of the Employer Management.

11. The facts in the present case are not in dispute. the petitioner is a Limited Company incorporated under the provisions of the Companies Act 1 of 1956 and carrying on various business inclusive of manufacture and distribution of fertilizers. The second respondent viz., A.Ramalingam joined as Assistant Store Keeper in the year 1973 and conformed on 07.11.1973. At the time of dismissal order, the second respondent had worked as a Senior Assistant in Product Handling and Distribution Department looking after Logistic jobs. At the time of the incident, the second respondent was supervising the wagon loading operations in the Meelavittan warehouse which is near to Railway Wagon Shed. The loading activities were carried out in three shifts in the warehouse. On 26.01.1996, the second respondent attended duty in the second shift as the Logistic Assistant and by oral understanding, he exchanged his duty and attended the second shift instead of first shift duty and supervised the wagon loading operations at Meelavittan. On the second shift of the said date, the opening stock of Urea was 420.80 M.T., and during the second shift, 16 lorries of Urea were loaded at good shed with 10 M.T., of Urea in each truck. The second respondent had instructed the guard on duty at the good shed at Meelavittan to load 10 M.T., of Urea in each lorry and prepared truck loading check list only for 15 lorries and made entries in the good shed stock register also for the 15 lorries and further instructed not to account for the balance one lorry either in the check list or in the stock register. He instructed the guard, without any instructions from the higher officials, to load the 10 M.T., Urea in the outstation vehicle bearing Registration No.TN 04A-4006 to the value of Rs.33,000/- and sent out. He informed the guard that he will adjust the said load as it is meant for delivery and he would make necessary adjustment



later. Further, the second respondent also prepared Form XX fraudulently and he also forged the signature of the Senior Manager and handed over the same to the lorry driver. The next day on 27.01.1996, he called the security guards who were on duty from 07.00 p.m., on 26.01.1996 to 07.00 a.m. on 27.01.1996 and requested them to hide the facts of sending 10 M.T., Urea by the said lorry. However, the security personnel refused to oblige. Thereafter, the said illegal act of the second respondent was reported to the higher officials and the management reported the fact to the Law Enforcing Agency and on that basis, FIR was registered against the second respondent as well as the lorry driver including the dealer of the Karaikudi.

12. Regarding the fraudulent theft of 10 M.T., Urea through the outstation lorry, a detailed charge memo dated 30.04.1996 was issued to him and after receipt of the same, the second respondent submitted his explanation on 06.05.1996. Since his explanation was not found satisfactory, the petitioner decided to conduct a domestic enquiry. After conducting enquiry, the Enquiry Officer has drawn a proven minute against the second respondent. Thereafter he was dismissed from service on 14.12.1996. As against the order of dismissal, the second respondent preferred an appeal to the Vice President of the petitioner concern and it was also dismissed on 16.01.1997. Thereafter, the second respondent raised an industrial dispute before the Labour Court in I.D.No.123 of 1997. The Labour Court, through its preliminary award dated 16.05.2008, upheld that the domestic enquiry was conducted according to the natural justice and fairness. In final order dated 30.09.2009, the Labour Court came to the conclusion that the findings of the Enquiry Officer are perverse and not sustained under the law and accordingly, passed the award by directing the petitioner concern to reinstate the second respondent into service with all back wages.

13. On a perusal of the award of the Labour Court, it would reveal that the statements obtained from the petitioner management staffs before the Enquiry Officer, were not marked before the Labour Court and they were also not examined. The documents which were produced before this Court to substantiate the allegation against the second respondent, were not marked before the Labour Court. Merely oral evidences who were examined before the Enquiry Officer were not sufficient to prove the guilt against the second respondent before the Labour Court. Unless the petitioner concern independently examined any witness before the Labour Court and prove the said guilt by way of marking documents, the same cannot be accepted. Mere marking of enquiry proceedings is not enough to establish the case against the second respondent. Though the dealer was arrayed as accused No.2 in the criminal proceedings, he was not examined before the Enquiry Officer.

14. However, with regard to the findings of the Labour Court <https://hcservices.wcdonline.hcservicesk> wages to the second respondent is concerned, the



second respondent did not prove that during the period of dismissal, he was not gainful employee in anywhere and in the absence of any document to prove that he was not gainful employee during the period of unemployment, the back wages awarded by the Labour Court is unsustainable one. Therefore, the order of the Labour Court in awarding back wages in favour of the second respondent is set aside. However, this Court is not inclined to interfere with the order of the Labour Court in reinstatement of the second respondent into service. It makes it clear that without back wages, the second respondent is entitled to the benefits as well as the continuity of service. Accordingly, the petitioner concern is directed to calculate the entire benefits in favour of the second respondent and settle the same to the second respondent within a period of twelve weeks from the date of receipt of a copy of this order.

15. In view of the above, the Writ Petition is partly allowed with the above terms. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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,
Tirunelveli District.

W.P (MD)No.10106 of 2011

17.03.2021

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