



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)Nos.1057 and 7416 of 2011

and

M.P(MD)No.1 of 2011

W.P(MD)No.1057 of 2011:

M/s.Kaleeswarar Mills "B" Unit,
(A Unit of M/s.National Textile Corporation),
Represented by its General Manager,
Kalayarkovil,
Sivagangai District.

... Petitioner

Vs.

1. N.Muthusamy

2.The Labour Court,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, to call for the records in connection with the impugned award passed by the Labour Court, Madurai in I.D.No.37 of 1995 dated 16.08.2010, quash the same.

For Petitioner	:	Mr.Niranjana S.Kumar for M/s.V.Balaji
For Respondent No.1	:	Mr.S.M.Mohan Gandhi
Respondent No.2	:	Labour Court

W.P(MD)No.7416 of 2011:

N.Muthusamy

... Petitioner

Vs.

1. M/s.Kaleeswarar Mills "B" Unit,
(A Unit of M/s.National Textile Corporation),
Represented by its General Manager,
Kalayarkovil,
Sivagangai District.



2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus, to call for the records relating to the award of the Labour Court, Madurai, in I.D.No.37 of 1995, dated 16.08.2010 and quash the same insofar as it relates to denial of reinstatement with continuity of service and backwages to the petitioner is concerned consequently directing the first respondent management to reinstate the petitioner in to service with continuity of service and backwages along with all other attendant benefits.

For Petitioner : Mr.S.M.Mohan Gandhi

For Respondent No.1 : Mr.Niranjan S.Kumar
for M/s.V.Balaji

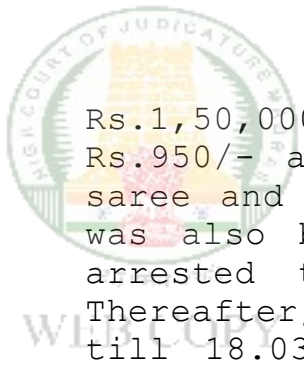
Respondent No.2 : Labour Court

COMMON ORDER

The petitioner in W.P(MD)No.1057 of 2011 is the Kaleeswarar Mills "B" Unit, (A unit of M/s.National Textile Corporation), hereinafter will be referred to as 'Employer' and the petitioner in W.P(MD)No.7461 of 2011 is the worker of the Mill, hereinafter will be referred to as 'Employee'.

2.Since both these writ petitions are interconnected and are arising out of the Industrial Dispute raised by the Employee in I.D.No.37 of 1995 before the Labour Court, Madurai, these writ petitions are heard together and disposed of by way of this common order.

3.The case of the Employer is that the Employer Mill is a Unit of National Textile Corporation, which is the Government of India undertaking. The Employee was employed as an office boy on 06.10.1993 in the Mill. While so, on 06.10.1993, the Employee had stolen a sum of Rs.1,50,000/-, which was drawn from the Bank and kept in the trunk-box for the disbursement of wages to the employees. Immediately, thereafter the cashier, Arumugam, who was examined as PW.1 in the domestic enquiry, made a complaint to the Law Enforcing Agency against six persons including the Employee. Thereafter the police came to the Mill premises and made enquiry with everyone. During the enquiry by the police on 09.10.2013, the Employee admitted his guilt that on 06.10.1993, he had stolen the cash by opening the cash box by using a duplicate key and brought the money back from the place where he kept the money. Out of



Rs.1,50,000/-, the money brought by the Employee was shortage of Rs.950/- and the said sum of Rs.950/- which was concealed in a saree and kept in a small wire basket belonging to the Employee was also brought by him. Immediately, the Law Enforcing Agency arrested the Employee and remanded him to judicial custody. Thereafter, the Employee let out on bail and went on medical leave till 18.03.1994. Therefore, the Employer initiated disciplinary action against the Employee under the provisions of Certified Standing Orders. For the charges imposed against the Employee, domestic enquiry was ordered and in the domestic enquiry, the Employee insisted the enquiry officer to supply the enquiry proceedings before the enquiry was completed. After verifying the Standing Orders, the enquiry officer refused to supply the enquiry proceedings, however, the Employee was permitted to go through the said proceedings. Even then, the Employee left the place of enquiry without participating the enquiry. Hence, the enquiry officer proceeded with the enquiry after setting the Employee as ex-parte on 23.04.1994 and finally, it was found the charges levelled against the Employee were proved. Subsequently, the Employee was issued with a second show cause notice, for which the Employee also submitted his explanation and as the explanation was not satisfactory, the same was rejected and it was concluded that the charges framed against the Employee were proved and based on the enquiry report, the Employee was dismissed from service on 01.07.1994.

4. As against the order of dismissal from service, the Employee raised an Industrial Dispute in I.D.No.37 of 1995 before the Labour Court, Madurai and the dispute was tried independently and after analysing all the evidences, the Labour Court held that the charges levelled against the Employee were not proved and therefore, the Labour Court passed an award to pay six (6) years salary from the date of dismissal to the Employee without ordering reinstatement of continuity of service and backwages.

5. As against the said order passed by the Labour Court, the Employer has filed the writ petition in W.P(MD)No.1057 of 2011 and as against the denial of reinstatement with continuity of service and backwages by the Labour Court, the Employee has filed the writ petition in W.P(MD)No.7416 of 2011.

6. The learned Counsel appearing for the Employee would contend that the Labour Court, after conducting a detailed enquiry and examining the oral and documentary evidence modified the punishment. The learned Counsel further submitted that the Employee rendered unblemished service for more than a decade and for flimsy reasons, he was implicated in the said offence which is unsustainable in law.



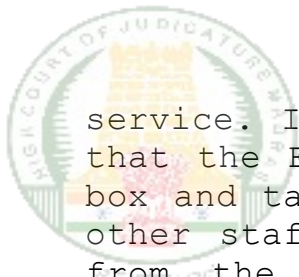
7. The learned Counsel appearing for the Employee further submitted that the Employee has not involved in any gainful employment in the interregnum period and the Employer did not establish that the Employee was gainfully employed and in the absence of any evidence to prove that Employee was gainfully employed, denying back wages and reinstatement with continuity of service to the Employee is not sustainable in the eye of law and therefore, the learned Counsel prayed for allowing the writ petition filed by the Employee and thereby ordering for reinstatement with continuity of service and backwages.

8. Per contra, the learned Counsel appearing for the Employer would submit that admittedly, the Employee had stolen the Management money to the tune of Rs.1,50,000/- for which the order of suspension was issued to him and hence, there is no procedural violation for conducting disciplinary proceedings as against the Employee and based on the proven charges, the Employee was dismissed from service and this was not considered by the Labour Court and therefore, the learned Counsel prayed for allowing the writ petition filed by the Employer.

9. Heard the learned Counsel on either side and carefully 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.

11. Admittedly, it is the allegation that the Employee had stolen a sum of Rs.1,50,000/- of the Management money, which was drawn for disbursement of wages to the employees of the Management. Immediately, PW.1- Arumugam lodged a complaint against six persons including the Employee before the Management as well as the Law Enforcing Agency and thereafter, the stolen amount was recovered from the Employee and subsequently, he was dismissed from



service. In this case, the said Arumugam-PW.1 has clearly deposed that the Employee utilized the duplicate key and opened the cash box and taken the amount and subsequently, in the presence of the other staffs, the Law Enforcing Agency recovered the said amount from the Employee. The crucial witness, Arumugam was cross-examined by the Employee and the same was also marked as Ex.M.17. On perusal of Ex.M17, a specific question pose by the Employee to Arumugam in which he clearly deposed that the recovery and confession was made in presence of him as well as MW.2.

12. In view of the above, the Employer clearly established the case before the enquiry officer, however, those documents were not properly considered by the Labour Court, which clearly establishes the perversity approach of the Labour Court. Further, the Labour Court arrived a conclusion based on the Appellate Court's verdict, however, merely the acquittal will not wipe up the offence committed by the Employee and proof required for the criminal case is beyond reasonable doubt, whereas in the Departmental Proceedings, the standard of proof is preponderance of probability.

13. In the light of the above discussion, the award of the Labour Court, Madurai, passed in I.D.No.37 of 1995, dated 16.08.2010 is hereby quashed. Therefore, the writ petition filed by the Employer in W.P.(MD).No.1057 of 2011 is allowed and the writ petition filed by the Employee in W.P.(MD).No.7416 of 2011 is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, the Employee Management is at liberty to withdraw the amount, already deposited, if any, in pursuance of the order of the Court.

Sd/-

Assistant Registrar(CS-III)

// 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 Labour Court,
Madurai.

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+1 CC to M/s.V.BALAJI, Advocate (SR-4689[F] dated 12/02/2021)

W.P. (MD)No.1057 and 7416 of 2011
11.02.2021

kvn (CO)
TR(04.03.2021) 6P 3C