



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.4535 of 2011

and

M.P. (MD) No. 1 of 2011

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The Management,
Co-optex Sales Emporium,
Tiruchirappalli - 1.
Rep. by its Senior Regional Manager,
Thanjavur.

... Petitioner

- VS -

1. M.Shamsudeen
2. The Labour Court,
Trichy.
3. The Tamil Nadu Handloom Weavers
Co-operative Society Limited,
Apex Society), 350, Pantheon Road,
Chennai - 18.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records, pertaining to the impugned Award dated 04.08.2010 in I.D.No.35 of 2003 on the file of the second respondent herein and quash the same.

For Petitioner	: Mr.R.Vijayakumar
For Respondent 1	: Mr.S.Muthukrishnan
For Respondent 3	: Mr.D.Muruganathan
	Standing Counsel

ORDER

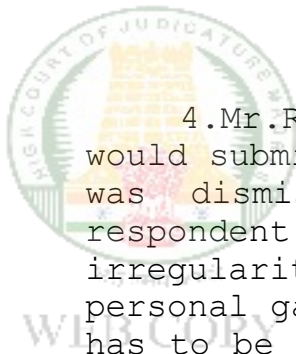
The case of the petitioner is that the petitioner society is duly registered under the Co-operative Societies Act. The first respondent was appointed as Salesman in the society in the year 1982. While he was in service, he was suspended on 30.12.1996 when he was working as Salesman at Trichy Cooptex Sales Showroom as he has committed serious irregularities including misusing old bill books for illegal monetary personal gains to the tune of Rs.7,13,335/-. The said amount was not credited in the Cooptex account. Further, the first respondent workman has also not properly issued the clothing



and has misappropriated the amount and spoiled the reputation of the Cooptex Management and cheated the Management. Hence, he was issued with a charge memo on 05.06.1997. Thereafter, a second charge memo was issued on 10.07.1998 to the first respondent workman on the ground that there was a stock deficit to the tune of Rs.7,346/-. For both the charge-memo the first respondent submitted his explanation on 26.06.1997 and 25.07.1998.

2. Being not satisfied with the explanation offered by the first respondent, the petitioner decided to conduct a domestic enquiry and appointed one Mr. Durairaj, a retired Joint Registrar of Cooperative Societies, as Enquiry Officer. The enquiry was held on various dates, after due intimation to the first respondent and after participation and full-fledged enquiry, the Enquiry Officer drawn a proven minute on 14.05.1999 and the said Enquiry Report was furnished to the first respondent on 05.06.1999 and his explanation was called for. However, the first respondent failed to offer his explanation. Hence, the petitioner Management independently analysed the enquiry findings and came to the conclusion that the charges which are serious and grave in nature are proved. For proven charges, the petitioner Management issued a second show cause notice on 24.04.2002 to the first respondent and the first respondent submitted his explanation on 14.05.2002. After considering his explanation, the petitioner management passed an order of dismissal against the first respondent on 05.08.2002. Simultaneously, a criminal case was also lodged against the first respondent and after the investigation, the criminal case was taken on file as C.C.No.588 of 1997 on the file of the Judicial Magistrate II. However, the said criminal case has ended in acquittal.

3. As against the order of dismissal, the first respondent raised an Industrial Dispute in I.D.No.35 of 2003 on the file of the Labour Court, Trichy under Section 11A of the Industrial Disputes Act with a prayer to reinstate the first respondent with all service and monetary benefits. The Labour Court in the ID proceedings, raised a preliminary issue as to whether the domestic enquiry conducted was in free and fair manner. The Labour Court held that the domestic enquiry conducted free and free manner and following the principles of natural justice. The Labour Court passed award on 04.08.2010 wherein it is held that the charge of misappropriation has not been proved, however, the charge of tampering and misusing old bill books for illegal monetary personal gain has been proved. However, the Labour Court proceeded to interfere with the quantum of punishment awarded to the first respondent by the petitioner management on the ground that the family members of the first respondent died in TSUNAMI. Accordingly, the Labour Court set aside the order of dismissal passed by the petitioner Management and has granted continuity of service for the purpose of calculation of terminal benefits and has turned down the reinstatement and back-wages as the first respondent has already attained the age of superannuation. Against which the present Writ Petition is filed.



4.Mr.R.Vijayakumar, learned Counsel appearing for the petitioner would submit that based on the two charge memos, the first respondent was dismissed from service and the charge against the first respondent is grievous one and the first respondent committed serious irregularities by misusing the old bill books for illegal monetary personal gains and gained Rs.7,13,335/- illegally and the said amount has to be credited in favour of the Co-optex Department and the said amount is utilised on his own personal and the said amount was not credited in the account of Cooptex. Further, the first respondent has not properly issued the clothing destined to the last grade servants of the Tiruchirappalli Corporation and thereby he spoiled the reputation of Cooptex. All those issues were established before the Labour Court and the Labour Court arrived a categorical conclusion that the old bill books were misused by the first respondent, however, the illegally gain was not established. Further, the learned Counsel appearing for the petitioner Management would submit that the purpose of tampering bill books and using the old bill books are for monetary gain and without monetary gain, there was no tampering of the bill books and utilising the old bill book is arisen. Hence, for proven charges, that too, for corruption charges, the Labour Court has no power to modify the punishment. Since the first respondent has committed the serious corruption and misappropriation which cannot be modified by this Court.

5.Mr.S.Muthukrishnan, learned Counsel appearing for the first respondent would submit that the trial Court is well within the power under Section 11A of the Industrial Disputes Act and the Labour Court as it thinks fit or to give other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. In the present case, the tampering of old bill books was established, however, the alleged illegal monetary gain accrued by the first respondent was not established before the Labour Court. On considering the gravity of the offence, a lesser punishment was awarded which cannot be interfered with.

6.This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

7.Considering the facts and circumstances of the case, before the trial Court, the following issues were framed:

- (i) Whether the punishment imposed by the Management is shocking to the conscience or disproportionate?
- (ii) Whether the first respondent is entitled for reinstatement by setting aside the order of dismissal and what relief?



8. In order to establish the case of the petitioner management 15 documents were marked and on behalf of the first respondent, only one document was marked and no witness was examined on either side.

9. Insofar as the punishment awarded to the first respondent is concerned for the delinquency, it has been the consistent view of the Courts that, it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In **Prem Nath Bali - Vs - High Court of Delhi** reported in (2015 (16) SCC 415), the Hon'ble Supreme Court has held as under :

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

10. In the case on hand, the Labour Court arrived at a categorical conclusion that though the charge of tampering of the old bill book against the first respondent was only established, the misappropriation of funds was not established. Therefore, the Labour



Court modified the punishment on humanitarian grounds by considering the fact that first respondent was involved in such act for the first time and has reached the age of superannuation. However, in the opinion of this Court, the first respondent was involved in the misappropriation by corrupt motive for illegal monetary and personal gains by tampering and utilising the old bill books. When the tampering of old bill books was established, this Court is unable to understand as to how the Labour Court has come to the conclusion that the monetary loss was not established. For disproving the case of the petitioner management, the first respondent marked only acquittal order of the criminal case and in catena of decisions, the Hon'ble Supreme Court held that mere acquittal will not expunge the irregularities committed in the employment. Therefore, the award of the trial Court is perverse and liable to be interfered with. Accordingly, this Writ Petition is allowed and the award passed by second respondent in I.D.No.35 of 2003, dated 04.08.2010 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Labour Court,
Trichy.
2. The Tamil Nadu Handloom Weavers
Co-operative Society Limited,
(Apex Society), 350, Pantheon Road,
Chennai - 18.

+cc to M/s.R.Vijayakumar SR.615
+cc to M/s.Spl.Govt.pleader SR.815

W.P (MD) No.4535 of 2011
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JA(04.05.2021) 5P- 5C