



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2021

CORAM:

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

W.P.(MD)Nos.2969 and 4180 of 2012

and

M.P(MD).No.1 of 2012

W.P(MD)No.2969 of 2012

M.Lakshmanan

... Petitioner

Vs.

1.The Management
Tirunelveli Sarvodaya Sangam
56, South Car Street,
Tirunelveli-627 006

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, to call for records in I.D.O.P.No.92 of 2006 from the 2nd respondent dated 10.11.2011, quash the same as far as non granting back wages alone further directing the 1st respondent to pay the back wages to the petitioner from the date of termination to date of award.

W.P(MD)No.4180 of 2012

The Management
Tirunelveli Sarvodaya Sangam
56, South Car Street,
Tirunelveli-627 006

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.M.Lakshmanan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.92 of 2006 and quash the award dated 10.11.2011 passed therein.



For petitioner
in WP(MD).No. 2969/12 &
R2 in WP(MD).No 4182/12

:Mr.S.Kumar for
M/s.K.Sudalaimuthu (in both W.Ps)

For R1
in WP(MD).No.2969/12 &
petitioner in WP(MD).No.4180
R2 in WP(MD).No.2969/12 &
R1 in WP(MD).No.4180/12

:Mr.Ravichandran (in both W.Ps)
:Court

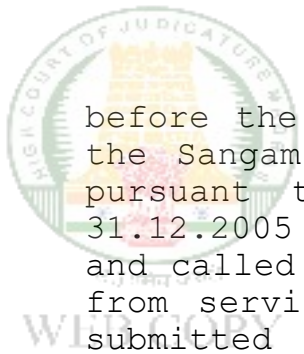
COMMON ORDER

Since the issue involved in both the Writ Petitions are one and the same, they are taken up together for hearing and being decided by this common order.

2.The petitioner in W.P(MD)No.4180 of 2012 is referred to as the Management. The petitioner in W.P(MD)No.2969 of 2012 is referred to as the workman.

3.The case of the petitioner is that the petitioner is a Sarvodya Sangam functioning under the Khadi and Village Industries Commission and there is no employer and employee relationship in this Sangam. The workman was serving in the petitioner Sangam. When the workman was working as Manager of Melapalayam Branch of the Petitioner Sangam, he made credit sales at his own risk and he was in total charge of that branch. On 11.08.2003, the General Body meeting of the Sangam was held to verify the out standing in the credit sales made by the workman. The workman attended the said meeting and gave a letter, dated 17.02.2004 that he will recover the Khadi dues and also assured to pay the balance if any, on or before 31.03.2004. Since the workman has not paid the dues as assured by him, an order was issued on 01.04.2004 informing that his service will be treated as leave on loss of pay. The workman was absent from 01.04.2004 without any prior permission for leave. Since the dues were not paid and the workman was also absent without any prior permission, a memo was issued on 24.02.200 directing him to join duty within 48 hours and settle the dues.

4.Further, the petitioner has averred that when the workman was working as Manager of Melapalayam Branch, he has made many credit sales without recording the address of the concerned customer and getting their signature. As such, the workman has misused his power and sanctioned credit sales. Thus, the workman has not made actual credit sales and misappropriated the goods and thereby misappropriated the sale proceeds. Therefore, a detailed charge memo was issued on 09.04.2005. The workman has also submitted his explanation on 14.04.2005 and thereafter, an enquiry was conducted, wherein, the workman did not appear and therefore, one opportunity was given to him to peruse the documents. The petitioner appeared



before the enquiry on 04.06.2005 and cross examined the witness of the Sangam and thereafter, the Enquiry Officer gave his findings, pursuant to which, a second show cause notice was issued on 31.12.2005 along with a copy of the findings of the Enquiry Officer and called for his explanation as to why he should not be dismissed from service for the charges proved against him. The workman has submitted his explanation, on 09.01.2006. Since the said explanation was not satisfactory, the workman was dismissed from service on 20.01.2006. Aggrieved over the same, the workman had raised an industrial dispute in I.D.No.92 of 2006 before the first respondent.

5.On the side of the workman, no witness was examined and no document was marked and on the side of the petitioner Sangam, no witness was examined and documents Exs.R.1 to 44 were marked.

6.After analysing the entire oral and documentary evidence, the labour Court directed the petitioner Sangam to reinstate the workman with continuity of service and dismissed the industrial dispute with respect to other prayer. Challenging the same, the petitioner Sangam has filed the Writ Petition in W.P(MD)No.4180 of 2012.

7.The learned counsel appearing for the petitioner submitted that the Enquiry Officer drawn a proven minute, based on the available materials and after following the due process of law and affording an opportunity to the workman, the petitioner Sangam dismissed the workman from service. However, the workman has not paid the misappropriated amount to the tune of Rs.49,110.05/- in Khadi sales and Rs.13,200/- in steel sales. Further, the learned counsel for the petitioner submitted that there is no proper explanation for the absence of the workman from 01.04.2004. Without considering the same, the Labour Court set aside the impugned order, which is arbitrary one. Hence, he prays for allowing the Writ Petition.

8.Per contra, the learned counsel appearing for the workman submitted that the order of reinstatement was passed only on the ground that the order of dismissal was not approved by the Executive Committee. Hence, the order of the Labour Court cannot be interfered with and prays for dismissal of the writ petition.

9.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available 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 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.The facts in the present case are not in dispute. Admittedly, when the workman was working as Manager of Melapalayam Branch, he has made many credit sales without recording the address of the concerned customer and getting their signature and as such, the workman has misused his power and misappropriated the sale proceeds. Therefore, a detailed charge memo was issued on 09.04.2005 and after conducting enquiry as the charges were proved against the workman, the petitioner Sangam dismissed the workman from service and hence, the workman raised an industrial dispute before the Labour Court. A perusal of the order of the Labour Court reveals that the Labour Court has taken into consideration all the materials placed before it and has come to the conclusion that the charges against the workman have not been properly proved. Therefore, the Labour Court, in exercise of its power, directed reinstatement of the workman, however, without ordering any of the attendant benefits, on the simple reason that the workman has not proved that he was not gainfully employed during the interregnum period. The said finding recorded by the Labour Court, in the considered opinion of this Court, is just and reasonable and there is no material whatsoever to contradict from the said view taken by the Labour Court. In such view of the matter, this Court is of the considered view that the order passed by the Labour Court deserves to be sustained.

12. For the reasons aforesaid, both the writ petitions are dismissed. It appears that the workman has passed away in the year 2014 itself and the legal heirs of the workman are impleaded. Hence, the petitioner Management is directed to settle all the monetary benefits due and payable to the deceased employee's legal heirs, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To
The Presiding Officer,
Labour Court,
Tirunelveli.

WEB COPY

+1CC to Mr.S.Kumar, Advocate, SR.No.5811 dated 18.02.2021

W.P. (MD)Nos.2969 and 4180 of 2012
and
M.P (MD) .No.1 of 2012
17.02.2021

KM(CO)
KB(16.07.2021) 5P 3C