



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

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

**W.P. (MD)Nos.6145 of 2012 and 3532 of 2008**

**and**

**W.M.P. (MD)Nos.1 of 2008 and 1 of 2012**

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**W.P. (MD)No.6145 of 2012**

The Special Officer,  
Ambasamudram Agricultural Producers  
Co-operative Marketing Society,  
206, Puthugramam Street,  
Ambasamudram Road,  
Tirunelveli District.

... Petitioner

versus

1. V.Murugalvar

2. The Presiding Officer,  
Labour Court,  
Tirunelveli.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the 2<sup>nd</sup> respondent relating to the proceedings in IDOP No.74 of 1997 dated 30.12.2011 and quash the same.

For Petitioner : Mr.V.M.Balamohan Thampi

For R1 : No appearance

**W.P. (MD)No.3532 of 2008**

O.838, Ambasamudram Agricultural  
Producers Co-operative Marketing  
Society Ltd.,  
Through its Special Officer,  
No.64, New Village Street,  
Ambasamudram

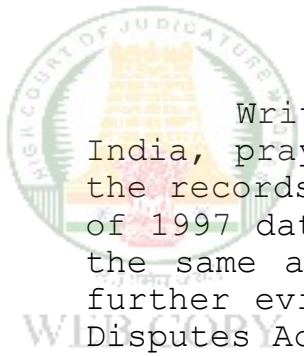
... Petitioner

versus

1. The Labour Court,  
Tirunelveli.

2. V.Murugalvar

... Respondents



Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records relating to the order in I.A.No.100 of 2006 in I.D.No.74 of 1997 dated 14.08.2007 on the file of the 1<sup>st</sup> respondent and quash the same and direct the 1<sup>st</sup> respondent to grant permission to lead further evidence as provided for under the provisions of Industrial Disputes Act 1947.

For Petitioner : Mr.M.P.Senthil

For R2 : No appearance

**COMMON ORDER**

W.P.(MD)No.6145 of 2012 has been filed seeking for the issuance of Writ of Certiorari, to call for the records of the 2<sup>nd</sup> respondent relating to the proceedings in IDOP No.74 of 1997 dated 30.12.2011 and quash the same.

2. W.P.(MD)No.3532 of 2008 has been filed seeking for the issuance of Writ of Certiorari, to call for the records relating to the order in I.A.No.100 of 2006 in I.D.No.74 of 1997 dated 14.08.2007 on the file of the 1<sup>st</sup> respondent and quash the same and consequently, direct the 1<sup>st</sup> respondent to grant permission to lead further evidence as provided for under the provisions of Industrial Disputes Act 1947.

3. Since the issues involved in both the writ petitions are one and the same, both the writ petitions are taken up together and disposed of by way of common order.

4. The first respondent/workman herein joined in the petitioner Cooperative Marketing Society as Peon and thereafter, he was promoted as Salesman on 01.07.1990 with salary of Rs.755/- p.m. The duty of the 1<sup>st</sup> respondent is to maintain all the records. While inspecting the shop, the Inspecting Officer found that there were irregularities in maintaining the stock and other documents and thereby, there was a loss to the extent of Rs.16,947.55p. Based on the report, the 1<sup>st</sup> respondent was placed under suspension. Challenging the suspension, he moved the Deputy Registrar, Cheranmahadevi and the same was dismissed. Thereafter, an Enquiry Officer was appointed and enquiry notice was issued to the first respondent herein, but, the first respondent refused to receive the same. Therefore, the petitioner Management made paper publication and, thereafter, conducted the enquiry. The first respondent attended the enquiry and submitted the explanation before the Enquiry Officer. However, the first respondent was dismissed from service on 30.10.1993. For the very same charge, a criminal case was also registered against the first respondent under the provisions of Essential Commodities Act before the Madurai District and Sessions Court, in STC.No.10 of 1996. After the trial, the first respondent was acquitted. The Madurai District and Sessions Judge, vide Judgment dated 22.01.2004, convicted and



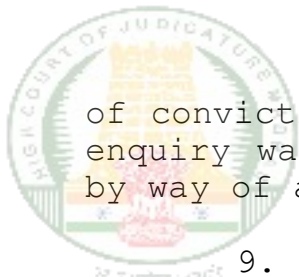
sentenced the first respondent to imprisonment for a period of three months along with fine of Rs.25,000/-. As against the conviction, the first respondent has not preferred any appeal, therefore, the order of conviction has become final. In the meanwhile, the first respondent raised an Industrial Dispute in I.D.No.74 of 1997, challenging the order of dismissal passed by the petitioner Management under Section 2A of the Industrial Disputes Act, wherein, the petitioner Management filed an interlocutory application in I.A.No.100 of 2006. However, the learned Judge dismissed the said application. Challenging the same, the petitioner management filed a writ petition in W.P.(MD)No.3532 of 2008. In the meanwhile, the industrial dispute raised by the workman was held in his favour by passing an award for reinstatement in service with back wages. Challenging the same, the writ petition in W.P.(MD)No.6145 of 2012 has been filed.

5. The learned counsel appearing for the petitioner Management submitted that before the Labour Court, the petitioner as well as the first respondent had not examined any witnesses, however, Exs.W1 to W11 were marked on the side of first respondent and Exs.M1 to M4 were marked on the side of the petitioner Management. Though the petitioner Management also marked the conviction order passed by the District and Sessions Court, Madurai, in STC.No.10 of 1996 as Ex.M4, the same was not discussed by the Labour Court and simply ordered for reinstatement on the ground that the enquiry was not properly conducted and the charges were not proved. Further, when the petitioner Management proved the case beyond reasonable doubt, the Labour Court, without considering the same, simply ordered for reinstatement with back wages, which is wholly unsustainable.

6. Though notice was ordered to the workman, however, no one appeared on behalf of the workman.

7. Heard the learned counsel for the petitioner Management and perused the materials available on records.

8. A perusal of the records reveals that as against the order of conviction, the first respondent has not preferred any appeal and, therefore, the order of conviction has become final, which shows that the first respondent/workman appears to have admitted the charges against him. Therefore, the charges framed against the workman should be deemed to be correct. Before the Labour Court, the stand taken by the first respondent/workman is that the petitioner Management has not conducted the enquiry properly. On the contrary, the petitioner Management has also filed an interlocutory application seeking to produce the records in order to prove the charges framed against the workman, but the same was dismissed by the Labour Court. Further, before the Labour Court, the petitioner Management marked the Judgment of conviction as Ex.M4. Before the Labour Court, without appreciating the Judgment



of conviction, simply ordered for reinstatement, on the ground that enquiry was not properly conducted and the charges were not proved by way of any oral and documentary evidence.

9. It is to be pointed out that the nature of proof required in a criminal trial is much more than the one required in the case of enquiry. In the case on hand, even in the trial, the workman was found guilty and he was convicted and sentenced against which no appeal has been preferred by the workman. Such being the case, the lacunae in the enquiry proceedings, which is clearly on the yardstick of preponderance of probabilities, cannot be a ground to hold that the workman should be reinstated in service. Further, it is to be pointed out that the Labour Court has not considered the judgment of conviction and sentence passed by the criminal court against the workman and there is no discussion of the same in the order passed by the Labour Court. The same clearly reveals total non-application of mind on the part of the Labour Court to the materials placed before it. Further, the Labour Court has also dismissed the application of the Management to table materials relating to the manner in which the enquiry was conducted. Once the Labour Court has precluded the Management from placing materials to prove that the enquiry was conducted properly, it does not lie in the mouth of the Labour Court to hold that the enquiry has not been conducted in a proper manner. The whole order of the Labour Court is *per se*, unsustainable and deserves to be set aside.

10. For the reasons aforesaid, both the writ petitions are allowed and the orders of the Labour Court are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To  
The Presiding Officer,  
Labour Court, Tirunelveli.

+1 CC to M/s.V.M.BALAMOHAN THAMBI, Advocate ( SR-14278[F] dated 30/03/2021 )

**W.P. (MD) Nos.6145 of 2012 and 3532 of 2008**  
**26.03.2021**

mj (CO)  
TR(23.06.2021) 4P 3C

<https://hcservices.ecourts.gov.in/hcservices/>