



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.20804 of 2013

and

M.P. (MD) .Nos.1 of 2013 and 1 of 2015

WEB COPY

The Management,
Sp.Spl.24, Kanjampatti Primary
Co-operative Bank Ltd.,
(Now-Sp.Spl.24, Kanjampatti Primary
Co-operative Credit Society Ltd.),
At Pulvayapatti, Sathur Division,
Viruidhuangar District,
Through its Secretary

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Building,
Melur Road,
Madurai-625 020.

2.T.Veeravel

...Respondents

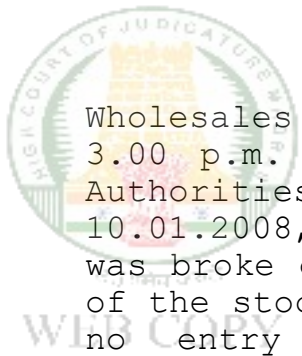
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the first respondent in I.D.No.112 of 2010 and quash the award dated 16.07.2013 passed therein.

For Petitioner : Mr.T.Ravichandran
For R2 : No Appearance

O R D E R

This writ petition has been filed challenging the award passed by the Labour Court in I.D.No.112 of 2010, dated 16.07.2013 and to quash the same.

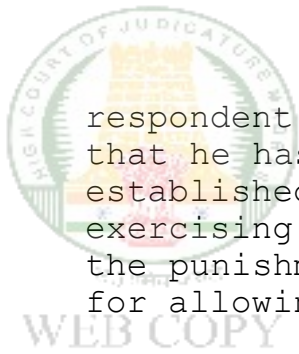
2. The case of the petitioner is that the petitioner is a Co-operative Institution registered under the Tamil Nadu Co-operative Societies Act and the Rules made thereunder. The second respondent was employed as Salesman in Kanjapatti Fair Price Shop and he was responsible for the stock, supply, sales, remittance of sales proceeds, preparing sales bill and entry in family cards and other registers, as per the civil supply procedures. While so, on 09.01.2008, public distribution system rice was sent to Kanjampatti Fair Price Shop from Sathur goodown of Virudhunagar Co-operative



Wholesales Stores and the rice was lifted from that goodown at about 3.00 p.m. However, when the Revenue Authorities and Co-operative Authorities inspected the Shop on the morning of next day ie., on 10.01.2008, the said Fair Price Shop was found closed. So, the shop was broke open in front of the responsible persons. On verification of the stock register and other registers, they found that there was no entry for receiving rice on 09.01.2008. The inspecting authorities made a report to the higher authorities. Hence, the second respondent was placed under suspension, on 10.01.2008. Thereafter, a charge memo was issued against the second respondent on 12.04.2008 and he has submitted his explanation on 02.07.2008. Not being satisfied with the above said explanation, an enquiry was fixed on 07.06.2008. Thereafter, the enquiry officer has conducted an enquiry and drawn a proven minute against the second respondent and submitted a report on 14.07.2008. Based on the enquiry report, a show cause notice was issued on 17.07.2008. Thereafter, the second respondent has submitted his explanation on 21.07.2008. However, the second respondent was dismissed from service on 28.07.2008.

3. Aggrieved by the order of dismissal, the second respondent has filed a revision under Section 153 of the Tamil Nadu Co-operative Societies Act, before the Joint Registrar of Co-operative Societies, Virudhunagar. The petitioner Management has filed their counter statement. Thereafter, the second respondent withdrew his revision petition and raised an industrial dispute. However, the Conciliation Officer has filed a failure report. Thereafter, the second respondent has raised an industrial dispute before the Labour Court under Section 2 A (2) of the Industrial Disputes Act, challenging the order of dismissal. The Labour Court, after contest, passed an award in favour of the second respondent, directing the petitioner Management to reinstate the second respondent into service with continuity of service within three months from the date of receipt of the order, but without back wages and other benefits. Challenging the same, the present writ petition has been filed by the petitioner Management.

4. The learned counsel appearing for the petitioner Management would submit that though the petitioner Management issued a charge memo containing two charges viz., the second respondent unauthorisedly absent from duty on 10.01.2008, without any prior permission and further, the second respondent not maintained the records properly and there was a deficiency of PDS rice to the tune of 4464 Kgs., the deficiency was clearly established before the Labour Court. However, the Labour Court arrived at a conclusion that the cardholders were not examined and on the sole ground, the Labour Court interfered with the order of the petitioner Management. Further, the conduct of the second respondent in not entering the receipt and supply of rice cannot be appreciated and accepted and the Labour Court has arrived at a conclusion that mere payment of the amount for deficit rice will not prove the misconduct of the second respondent, which is not sustainable. Once the second

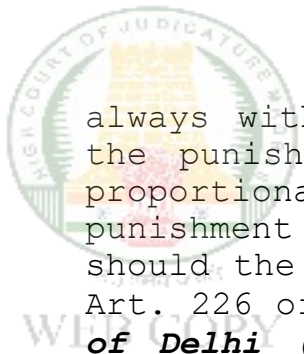


respondent paid the deficit amount of PDS rice, that itself shows that he has admitted the guilt. Hence, the proven misconduct clearly established before the Labour Court. Such being the case, by exercising the jurisdictionary power, the Labour Court has modified the punishment, which is not sustainable one. Accordingly, he prayed for allowing of this writ petition.

5. Though the name of the second respondent was printed in the cause list, no one appeared on behalf of the second respondent. However, considering the pendency of the case, this Court is inclined to decide the issue, based on the materials available on record.

6. The facts in the present case are not in dispute. Admittedly, the second respondent was appointed as Assistant in the petitioner Bank on 05.10.1996 and he was posted as Salesman on 01.04.2007 and his service was regularised in the year 2007 itself. For the above said alleged misconduct, the second respondent was placed under suspension from 10.01.2008 onwards and the enquiry notice was served to the second respondent on 22.02.2008, under Section 81 of the Co-operative Societies Act, 1983. The second respondent has submitted his explanation. Thereafter, after 81 Enquiry, the petitioner Management has issued a charge memo on 12.04.2008. After receipt of the charge memo, the second respondent has submitted his explanation. In the audit report, it was found that there was a deficit of 5590 Kgs. of rice and the second respondent was directed to pay a sum of Rs.68,918/- at the rate of Rs.12.50 per kg. However, contrary to the audit report, in the Joint Registrar's Letter, dated 11.03.2008, it was found that there was a deficit of 4464 Kgs. of rice and directed the second respondent to pay a sum of Rs.54,469.80/-. On compulsion, the second respondent has remitted the said amount. The Labour Court arrived at a conclusion that the enquiry officer has conducted the enquiry in a proper manner and there is no violation of principles of natural justice and also arrived at a conclusion that there was an unauthorised absent from duty on a particular day without prior permission from the higher officials. The Labour Court, after accepting the enquiry report with regard to the misconduct of the second respondent, arrived at a conclusion that the cardholders were not examined to prove the deficit PDS rice in the fair price shop. However, the fact remains that the deficiency was well established before the enquiry officer as well as before the Labour Court and mere non-examination of the cardholders will not vitiate the entire proceedings. Once the deficiency of PDS rice is proved, automatically, the misconduct of the second respondent is also established. Such being the position, interfering with the order of the petitioner Management is not sustainable one. Hence, this Court has no hesitation to arrive at a conclusion that the order of the Labour Court is perverse and the same is liable to be set aside.

<https://hcservices.ecourts.gov.in/hcservices/> been the consistent view of the Courts that it is



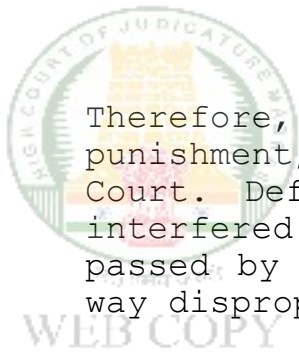
always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court 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)

8. As already held above, once the charge made against the workman stood established, it is within the domain of the disciplinary authority to impose the punishment and so long as the punishment is not disproportionate and shocking the conscience of the Court, the courts shall not interfere with the said punishment. The gravity of the offence committed by the petitioner is of such a nature, in that he has misused the PDS rice that are to be distributed among the general public, mostly the poor and the needy, showing any leniency towards such individuals will result in causing great harm to persons, who are in dire need of the commodities given



Therefore, the disciplinary authority has rightly imposed the punishment, which has been wrongly interfered with by the Labour Court. Definitely the order of the Labour Court deserves to be interfered with, thereby, restoring the punishment of dismissal passed by the disciplinary authority as the said punishment is no way disproportionate nor shocking the conscience of this Court.

9. In the light of the above, this Writ Petition is allowed and the order of the Labour Court in I.D.No.112 of 2010, dated 16.07.2013 is set aside. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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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,
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Madurai-625 020.

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AS (07.07.2021) 5P 2C