



WEB COPY

W.P.(MD)No.441 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.12.2021
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.441 of 2013

and

M.P. (MD)No.1 of 2013

The Management/Special Officer,
Thalakulam - Eraniel Farmers Service
Co-operative Society Ltd.,
Mondy Market, Neyyoor Post,
Kanyakumari District - 629 802.

... Petitioner

vs..

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. S. Jeyaseela.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned award dated 21.09.2012, passed by the first respondent in I.D.No.31 of 2010 and quash the same as illegal.

For Petitioner : Mr. Jerinmathew
For Mr.M.E.Ilango

For R-1 : Labour Court

For R-2 : Mr.L.Krishnmoorthy

O R D E R

This writ petition is filed challenging the impugned award passed in I.D.No.31 of 2010, dated 21.09.2012.

2. The Management has assailed the award on four grounds. The preliminary award granted by the Labour Court is held in favour of Management, wherein it has been recorded that natural justice has been granted to the second respondent. If natural justice has been granted which is the preliminary issue, then the only issue left over is whether the punishment is proportionate or not. But, again the Labour Court has analyzed whether an enquiry was conducted properly or not, which is illegal and therefore, the Labour Court has no jurisdiction to state so. Since this is a case of



misappropriation, the criminal proceedings were initiated and the second respondent was convicted in the trial Court. Separate Surcharge proceedings was initiated and the second respondent was directed to pay the misappropriated amount. The second respondent has not filed any counter affidavit, but relied on the petition filed before the Labour Court.

3. Heard Mr. Jerin Mathew, learned Counsel appearing for the petitioner and Mr.L.Krishnamoorthy, learned Counsel appearing for the second respondent.

4. The learned Counsel appearing for the petitioner has stated that the Labour Court has no jurisdiction. Since in the preliminary award it is held as the natural justice has been granted to the second respondent, the only question that is left out is to see the proportionate of punishment, for which, the petitioner relied on Supreme Court judgment in **Civil Appeal No.1841 of 2010** filed by **M.L.Singla vs Punjab National Bank**, wherein, it Hon'ble Supreme Court has held

"22. If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper. The next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court".

5. However, the learned Counsel appearing for the second respondent contended that the preliminary enquiry means that only the Labour Court would see whether proper opportunity was granted to the delinquent or not. The Labour Court need not see the other aspects while granting preliminary award. This Court is of the view, that this issue ought to be dealt with elaborately, since there are other points in this case, the issue is left open.

6. The Management submitted that since it is a case of misappropriation, the second respondent was convicted and the conviction order was placed as one of the documents during the final hearing. Under these circumstances granting of 50% of backwages, is illegal. The second respondent has submitted that against the criminal case, the second respondent has preferred a Criminal Appeal, which is pending before the Sessions Court, Nagercoil and since appeal is pending as on date, the 2nd respondent is entitled to the 50% backwages. The plea of the 2nd respondent would lead to absurdity, a convicted person getting backwages and this Court cannot entertain such a plea. Therefore, this Court is of the view that the second respondent is not entitled to 50% of backwages. This Writ Petition is allowed solely on that ground alone.



7. The respondent has submitted that since the criminal appeal is pending from 2005 onwards, a direction may be issued to the Sessions Court, Nagercoil to complete the appeal within a stipulated time. Therefore, this Court directs the Sessions Court, Nagercoil to complete the appeal within six months from the date of receipt of a copy of this order. If the criminal appeal ends up in acquittal of the second respondent, then liberty is granted to the second respondent to come before this Court and seek appropriate relief.

8. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

jbr

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

1.The Sessions Judge,
Nagercoil.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

Copy to:

The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-38004[F] dated 09/12/2021)

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MGJ(28.12.2021) 3P 6C