



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.4471 of 2013

WEB COPY

A.Chandrasekaran

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli, Tirunelveli District.

2.The Management,
TN.SPL:146, Poothalapuram Primary
Agricultural Co-operative Bank,
Poothalapuram Post,
Vilathikulam Taluk,
Thoothukudi District.

3.The Enquiry Officer,
Office of the TN.SPL:146, Poothalapuram
Primary Agricultural Co-operative Bank,
Poothalapuram Post,
Vilathikulam Taluk,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the first respondent in his order in I.D.No.87 of 2001, dated 11.05.2011 and quash the same and consequently to direct the second respondent to reinstate the petitioner in to service with all back wages and continuity of service.

For Petitioner	: Mr.M.Solaisamy
For R-1	: Labour Court
For R-2	: Mr.Jerin Mathew for Mr.M.E.Ilango
For R-3	: No representation

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 11.05.2011 in I.D.No.87 of 2001, and consequently to direct the second respondent to reinstate the petitioner into service with all back wages and with continuity of service.



2.The petitioner was appointed as a Salesman in the second respondent Cooperative Bank and he was directed to look after the Fair Shop at Poothalapuram Village. After the change in management, the petitioner alleges that the President developed animosity against the petitioner. The said President adopted several tactics to oust the petitioner from service with the help of the third respondent. On 20.12.2000, the second respondent issued a charge memo for the allegations given below:

- i) The petitioner had not discharged his duty well.
- ii) The petitioner had not remitted the collection amount immediately with the bank.
- iii) The petitioner had not come to the duty regularly, and
- iv) The petitioner had caused the deficiency in stock.

3.The petitioner submitted a reply on 02.01.2001. But the second respondent with the intension to oust the petitioner from service has appointed the third respondent to conduct domestic enquiry. The petitioner received notice on 13.01.2001 and the enquiry was conducted on 27.01.2001. The second respondent society has alleged the same allegations against another person namely Murugesan. The petitioner requested the Enquiry Officer to permit one R. Arunachalaperumal, office bearer of Employees Union to be present at the time of enquiry but, the third respondent rejected the same. The domestic enquiry was not conducted following any principles of natural justice. The Enquiry Officer did not serve the list of management witnesses and then did not allow to cross examine them. The enquiry report was submitted on 01.02.2001 stating the charges are proved.

4.The second show cause notice, dated 02.02.2001 was issued and the petitioner submitted his reply on 19.02.2001. The petitioner also requested not to remove him from service, due to the family situation. In spite of the request, the petitioner was dismissed from service on 14.03.2001. The petitioner has stated that for the same charges one Murugesan was reinstated on 24.02.2001. Aggrieved over the dismissal order, the petitioner had filed an application under Section 2 A of Industrial Disputes Act, before the Regional Conciliation Officer, Thoothukudi and no settlement order was passed on 23.07.2001.

5.Thereafter, the petitioner preferred I.D.No.87 of 2001 and the respondent management has not raised any preliminary issue before the Labour Court. Thereafter the Labour Court has passed the final order, dated 11.05.2011 confirming the dismissal order. Aggrieved over the same, the petitioner has filed the present Writ



Petition.

6.The second respondent has filed counter affidavit denying all the allegations stated by the petitioner. The respondents have stated that the misconducts committed by the petitioner are grave in nature and therefore, the petitioner's pleading to reinstate in service was rejected. The respondents have replied to the allegation that the said Murugesan, Salesman charges are smaller in nature and the delinquent have has paid the amount. The petitioner has not remitted the amount. Hence, there is no violation of Article 14. The petitioner never pleaded to reopen the domestic enquiry and the petitioner has accepted the charges and he has not cross examined the management representative. Therefore, the punishment awarded to the petitioner is legally correct.

7.Heard Mr.M.Solaisamy, learned Counsel appearing for the petitioner and Mr.Jerin Mathew, learned Counsel appearing for the second respondent.

8.The learned Counsel appearing for the petitioner submitted that the allegation against the petitioner and the said Murugesan are one and the same, but the said allegation was denied by the respondents stating that the said Murugesan has already repaid the amount and the petitioner has not repaid the amount.

9. On perusing the records it is seen that there are some of variation in the amount alone but, the charges are one and the same. The second ground that was raised before this Court is that the Enquiry Officer, who conducted the domestic enquiry was defending the case before the Labour Court on behalf of the management, which is violation of principles of natural justice and this Court holds that there is violation of principles of natural justice. The respondents have submitted that the petitioner has not submitted any record denying the charges and has not pleaded to rehear / reconsider the enquiry.

10. It is seen that the age of the petitioner is 49 at the time of filing this Writ Petition and now, the petitioner is on the verge of retirement. Taking all these considerations into account, this court is of the considered view that if the matter is remitted back to the Labour Court for reconsideration, this would meet the ends of justice.

11.Therefore this Court is directing the Labour Court to rehear the entire issue within a period of six months from the date of receipt of a copy of this order and pass an order afresh.



The Labour Court may consider the entire issue uninfluenced by the observations made above. Both the parties are at liberty to make any additional grounds before the Labour Court.

12. Accordingly, the Writ Petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

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,
Labour Court,
Tirunelveli, Tirunelveli District.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-36909[F] dated 01/12/2021)

W.P. (MD) No. 4471 of 2013
30.11.2021

SVN (CO)
SB(14.12.2021) 4P 3C