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W.P.No.18628 of 2004



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.06.2022
Pronounced on	14.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.18628 of 2004

1.S.P.Ammasi (Deceased),

2.Ranjitham,

3.Santhi,

4.Sasikala,

5.Sangeetha,

(P2 to P5-substituted as legal representatives in the place of the deceased petitioner as per order dated 19.11.2014 by WP.M.P.No.203 of 2014)

... Petitioners

Vs.

1.The Labour Court,
Rep. by its Presiding Officer,
Coimbatore.

2.The Management of Pandalur Industrial Co-Op.
Tea Factory rep. by its Managing Director,
Pandalur, Nilgiris – 643 233.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, calling for the records relating to the Award dated 13.11.2003 passed by the 1st respondent/Labour Court, Coimbatore in I.D.No.269 of 1998 and quash the same as being illegal and unjust and direct the 2nd respondent to reinstate the petitioner with continuity



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of service, backwages and all other attendant benefits.

For Petitioners : Mr.Sathish Kumar
for M/s.Row and Reddy

For Respondent 1 : Labour Court

For Respondent 2 : Mr.R.Parthiban

ORDER

The relief sought in this writ petition is call for the records relating to the Award dated 13.11.2003 passed by the 1st respondent/Labour Court, Coimbatore in I.D.No.269 of 1998 and quash the same as being illegal and unjust and direct the 2nd respondent to reinstate the petitioner with continuity of service, backwages and all other attendant benefits.

2. The case of the petitioner is that the petitioner has joined as Assistant Leaf Supervisor in the second respondent company on 1974, which processes the tea and sell the same. The duty of the petitioner is to weigh the tea leaves in the procurement centers and transport them by tractors to the factory. Subsequently, a letter dated 23.09.1997 was sent by one Kadiresan (Contractor) and Kanagarathinam (Helper) to the second respondent company stating that there was a deficit of one bag (40 kgs) out of 56 bags weighing 2109 kgs. Thereby, a show cause notice dated 24.09.1997 was



issued to the petitioner, holding him responsible for the loss of one bag weighing 40 kgs, which was denied by the petitioner.

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3. Further, the second responded company and the enquiry officer proceeded the enquiry and found that the petitioner has committed gross negligence regarding loss of one bag containing 40 Kgs. While so, second show cause notice was issued to the petitioner. Thereafter, the petitioner was dismissed from service vide order dated 11.02.1998. Aggrieved over the said order, the petitioner filed a petition in I.D.No.269 of 1998 before the Labour Court, Coimbatore. Further, the first respondent / Labour Court rejected the claim of the petitioner vide order dated 13.10.2003. Challenging the same, the petitioner has come up with the present writ petition, seeking the aforesaid relief.

4. Learned counsel appearing for the petitioner submitted that earlier a Circular / Agreement dated 21.12.1996 was entered between the second respondent company and the contractor (transport) regarding the procurement of tea leaves. The relevant condition of the said contract is extracted as follows:



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Condition No.4:

** If there is shortage / deficit of bags in transit, the transport contractor is responsible and he is liable to pay the twice the price as fixed by the 2nd respondent.*

Condition No.5:

** The transport contractor is responsible for any loss during transportation.*

5. He further contended that after the issuance of first show cause notice dated 24.09.1997, the second respondent company proceeded the enquiry and one viz., Pandian who is working as a Loadman in the second respondent company has confessed that he had committed theft of one bag weighing (40Kgs) out of 2109 kgs. In spite of the confessional statement given by the said Pandian, the second respondent company and the enquiry officer further proceeded with the enquiry and found that the petitioner has committed the theft, which is not sustainable one. Accordingly, he prays this Court to direct the second respondent to reinstate the petitioner with continuity of service. During the pendency of the writ petition, the writ petitioner was passed away and the legal representatives of the deceased writ petitioner are brought on record.



6. The learned counsel appearing for the second respondent has filed the counter affidavit and submitted that the petitioner was an Assistant Leaf Supervisor who was expected to be honest in discharging his duties. He has to go to the leaf centres, procure the tea leaves from the members and fetch them to the Factory by lorry/tractor and hand over the exact quantum of Tea procured. While weighing at the factory, the quantum procured and the quantum brought should tally, with respect to the bills and also the token number tied to the gunny bags. If any deficiency is found out, the Assistant Leaf Supervisor is responsible therefor. The respondent has to pay the value of the tea leaves procured from the members based on the bills issued to them.

7. The second respondent company procures tea leaves and by two modes of transport they brought the tea leaves to the factory, one is through the vehicles of the factory and the other by engaging lorries for hire and engaging contract workers. The Koomoolai Centre is one covered by the lorries owned by the factory and the employees of the factory directly are involved in the transaction. On 22.09.1997, the writ petitioner procured 56 bags (2109 kgs) in the Koomoolai leave center, however, 55 bags (2069 Kgs)



of tea leaves were handed over to the factory and thereby causing deficit of one bag of tea leaves weighing 40 Kgs, containing token number 20. One Pandian was engaged by the Writ Petitioner as a load-man on his own volition and without any direction from the management, apprised that writ petitioner instructed Pandian and accordingly he unloaded one bag of tea leaves and sold it away to a businessman in Pandalur Bazaar and in regard to the said issue, the second respondent company received a complaint.

8. He further contended that, as the act of the petitioner was an act of misconduct, in discharging his duties by unauthorizedly and dishonestly removing the assets of the respondent for his personal gains and it was in contravention of the rules and regulations, disciplinary action was initiated and the writ petitioner was suspended from service. While, the disciplinary proceedings was pending a show cause notice dated 24.09.1997 was issued calling for explanation. As the explanation dated 25.09.1997 was submitted by the petitioner, admitting that the missing of one bag but putting forth unacceptable reasons was unsatisfactory. Hence, the domestic enquiry was ordered into.



9. He further submitted that the domestic enquiry was conducted in accordance with the principles of natural justice, providing opportunities to the writ petitioner to participate in the enquiry. As the writ petitioner pleaded not guilty of the charges, the second respondent company examined 3 witnesses in support of the charges and Exhibits A1 to A4 were marked. The writ petitioner examined 2 witnesses in support of his defence and also gave a statement before the Enquiry Officer. The Enquiry Officer, by findings dated 09.12.1997, found the Writ petitioner guilty of charges, as per the show cause notice dated 24.09.1997. The second respondent company after

thoroughly considering the entire disciplinary proceedings and findings, gravity of the act of the petitioner coupled with his dishonesty, that too in a Government Factory which is running at loss, the interest of the members/poor ryots and his adverse past records has issued a 2nd show cause notice dated 05.02.1998 proposing dismissal from service and calling for explanation. The adverse past record was put on notice of the writ petitioner. The explanation dated 07.02.1998 was submitted by the petitioner was thoroughly considered and as it was unsatisfactory and considering the aspects aforesaid, the second respondent company decided to dismiss the



petitioner from service and accordingly dismissed him by an order of dismissal dated 11.02.1998.

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10. The learned counsel appearing for the second respondent further submitted that the second respondent company gave sufficient opportunities every time to the writ petitioner to mend himself but he was bent upon stealing and selling the tea leaves clandestinely as exhibited by his past record. The agreement dated 06.12.1997 or any other agreement relied on by the petitioner before Labour Court does not apply to him as Koomoolai leaf center is not covered by agreement for transport of tea leaves through contractor. As submitted supra, this Koomoolai leaf center is covered by the vehicle of the factory. The writ petitioner cannot pass on the responsibility on Pandian, since, this center is not covered by contract labourers. Moreover, there is absolutely no evidence for engagement of Pandian at the instructions of the second respondent company. Conversely, it is the writ petitioner who at his own risk and of his volition engaged him. Not only the writ petitioner has exhibited his ulterior and sinister motive coupled with dishonesty but also cheated the second respondent company by instructing Pandian to remove and sell one bag in the bazaar itself, while the lorry was on way to



factory. Having so done, he has acted as though he did not know anything about the missing bag. Pandian was not an employee of the factory. The Enquiry Officer has vividly discussed this aspect in his findings. The findings of the Enquiry Officer is based on material on record and not perverse.

11. The authorized representative of the petitioner made an endorsement on 27.06.2003 in the claim petition while taking up preliminary issue stating that he is not attacking the domestic enquiry. Therefore by consent Exhibits M1 to M23 were marked by the management and no document was marked by the petitioner. The domestic enquiry was therefore held valid, in view of his endorsement and the I.D., was argued under Section 11 (A) regarding the quantum of punishment.

12. The learned counsel further contended that the agreement dated 06.12.1997 was not filed and marked before the Labour Court by the Petitioner. The documents containing the past records were marked as Exhibit M19 to M23. The adverse past record of the petitioner is clearly mentioned in the Exhibit M.12 and show cause notice supported by the Exhibit M.19 to M.23 which speaks of the successive indulgence of the Writ



Petitioner in the theft of Tea leaves and thereby causing deficit/shortage to the Industry and consequent loss. He was a habitual offender who dishonestly and clandestinely removed the Tea leaves for his personal gains. Therefore, the award of the Labour Court dated 13.10.2003 is perfectly valid. The settlement dated 21.12.1996 does not applied to the petitioner and the centre and therefore making the contractor liable for the deficit does not arise and the shortage is admitted in the affidavit filed by the writ petitioner.

13. The fairness of the enquiry was not investigated by the Labour Court, since, the petitioner endorsed that he did not assail the enquiry. He cannot now state that the fairness of the enquiry was not gone into. The documents marked in the domestic enquiry, the additional documents as well as his past records were considered by the Labour Court, as the charge was proved in the enquiry. The Labour Court rightly rejected his claim. The

evidence of M.W.4 Pandian proved the contention of the second respondent company. The 1st evidence is the past evidence. When enquired it, the 1st instance, M.W.4 submitted Exhibit M.10 letter disclosing clandestine dealing of the writ petitioner. Thereafter Pandian cannot controvert his admission



after a long time and moreover, the Tamil Nadu Plantation Labour Rules does not apply to the petitioner.

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14. The learned counsel appearing for the second respondent company has relied on the various judgments of this Court and the Hon'ble Apex Court of India and the same are reads as follows:

(a) The decision of this Court in the case of Management, Malayasian Airlines vs. The Presiding Officer, Principal Labour Court, Chennai and another reported in 2011 (2) CTC 245, which reads as follows:

“7. The learned counsel for the Appellant is not in a position to point out any infirmity in the order of the Labour Court so as to hold that the order of the Labour Court is perverse. It is the settled law that the power of this Court under Article 226 of the Constitution of India is very limited and it is not for the Writ Court to convert itself into a Court of regular Appeal or Revision so the Writ Court to convert itself into a Court of regular Appeal or Revision so as to re-appreciate the entire evidence let in before the Labour Court. If only, it is established that the finding of the Labour Court is perverse, inasmuch as the same is based on no evidence or no reasonable man would have come to such a decision, it is not at all permissible in law to interfere with the said finding of

the Labour Court in exercise of the power under Article 226 of the Constitution of India. Even if it is possible that a different



conclusion could be arrived at by this Court on re-appreciating the entire evidence let in before the Labour Court, it is still not possible for this Court to substitute its conclusion in the place of the conclusion arrived at by the Labour Court. Therefore, when the Appellant is not able to show anything on record to brand the award of the Labour Court a perverse and when the Appellant is not able to point out any infirmity in the order of the Writ Court. We are of the view that the award of the Labour Court which was upheld by the writ Court does not require any interference at the hands of this Court.

13. A perusal of the above judgments would make it very clear that reinstatement with back wages is not automatic and it all depends upon the given facts and circumstances of each case. For instance, if the service of the workman is not required anymore for any reason or it is not feasible to employ him anymore then using its discretion, the Labour Court or this Court may instead of directing him to be reinstated in service, may order for payment of appropriate compensation. But, no such special circumstance is brought to the notice of this Court in this case, warranting such a course to exercise such a discretion to order for payment of compensation instead of reinstatement in service. Thus, the last limb of argument of the learned counsel for the petitioner also deserves to be rejected.”

(b) The decision of Hon'ble Supreme Court in the case of Management of Mathuranthakam Co-operative Sugar Mills Ltd., Vs. S.Viswanathan,



reported in (2005) 3 SCC 193, which reads as follows:

“11. This ding-dong battle on facts between the Management and the workman has reached this Court by way of this appeal and leave having been granted, it is for us not to decide which of the four views is justifiable and is to be upheld. Is it the view of the Management taken in the domestic enquiry? Or is it the view of the Labour Court? Or is the view of the learned Single Judge of the High Court? Or is it the view of the Division Bench of the High Court?

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final Court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a Court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings



given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

(c) The decision of Hon'ble Supreme Court in the case of M.Mani Vs. T.A.Mathivanan (Dead) through legal representatives, reported in (2018) 1 Supreme Court Cases 285, which reads as follows:

“12. The appellant, felt aggrieved, filed writ petitions in the High Court. The Single Judge, by order dated 31.07.2003 (Annexure P-11), allowed the writ petitions, set aside the award of the Labour Court and remanded the case to the Labour Court for deciding both the matters afresh. The Single Judge held that when the Labour Court held the departmental enquiry to be legal and proper then the only question that remained for the Labour Court to decide was as to whether the punishment imposed on two employees i.e., “dismissal” was just, legal and proper or it required any interference in its quantum and, if so, to what extent. Having observed this, the writ court remanded the cases to the Labour Court to decide the cases afresh on merits. This what the learned Single Judge in concluding para held.

25. In our considered view, the Single Judge (writ court) having held the enquiry to be legal and proper instead of remanding the case to the Labour Court should have himself examined the short question which had survived for consideration in the writ petition, namely, whether the punishment of dismissal was commensurate with the charges or it required any interference by the Court under Section 11-A of the Act.



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29. *In our opinion, this is a clear case where the departmental enquiry was held legal and proper. We also, on going through the record of the case, hold that the departmental enquiry was properly held and was, therefore, legal and proper. So far as the quantum of punishment imposed on the respondent is concerned, having regard to the nature of charge which stood proved in the enquiry, in our view, the order of dismissal from service was the appropriate punishment. It was commensurate with the charge.*

33. *In the case on hand, the appellant employer had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the enquiry officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employees was proved. This finding was based on preponderance of probabilities and could be recorded by the enquiry officer notwithstanding the order of criminal court acquitting the respondents."*

15. Heard the arguments advanced on either side and perused the materials placed on record.

16. It is not in dispute that the petitioner was engaged as Assistant Leave Supervisor and was to go to the Leave Centre to procure the tea leaves from the members of the respondent, who supply them, given them due bills



for having supplied the tea leaves, bring them by lorry/tractor to the

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respondent factory and hand over the same for re-weighment of stocks. A circular/agreement dated 21.12.1996 was entered between the 2nd respondent company and transport (Contractor) was not marked before the Labour Court and the same is admitted by both the parties. When, the tea leaves were transported from Koomoolai Leave Centre to the factory, one bag consisting of token No.20 bag (40 kgs) was found missing in the transit. Hence, there was a deficit of one bag out of 56 bags. The show cause notice dated 24.09.1997 was issued to the petitioner and he has also submitted his explanation on 25.09.1997 by denying the charges and stating that some people have seen Pandian (M.W.4), loadman, (outsider) lifting one yellow colour bag and therefore he cannot be charged for theft of one bag. Then, enquiry was conducted and during the cross examination, a confessional statement of Pandian dated 15.11.1997 accepting that he committed theft of one bag on 22.01.1997. The enquiry was conducted and the charges were proved vide Enquiry Officer findings dated 09.12.1997 and the second respondent company dismissed the petitioner from service on 11.02.1998.



17. Thereafter, the Industrial Dispute vide I.D.No.269 of 1998 was taken on record by the Labour Court, Coimbatore. It can be seen from the records and in the findings of the Labour Court that the petitioner has not

objected or attacked the domestic enquiry and he has no objection in regard to the same. According to Exhibit M.W.10, it is clear and evident that it is the petitioner who has called Pandian for work on his own volition and the said Pandian initially refused to come for work but the petitioner told him that he will give him salary and on the compulsion of the petitioner, the said Pandian has come to work. From this it is absolutely clear that the petitioner only engaged Pandian and not the second respondent company. Moreover, there is no evidence for engagement of Pandian (loadman) at the instruction of the second respondent company and it is the petitioner who instructed Pandian to keep one bag of tea leaves (40 Kgs) separately and sell them in the Baazar after unloading the remaining tea bags in the factory and as per the instruction of the petitioner the same was sold by Pandian for Rs.350 and handed over the money to the petitioner. However, the petitioner took Rs.300 and gave the remaining amount of Rs.50 to the said Pandian.



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18. In the letter dated 15.11.1997, it was stated by Pandian that he is the devotee of lord Iyyappa and he does not want to tell any lie because he will not safely return from Sabarimala and on 22.09.1997, they were in need of money for food and he only unloaded one bag of tea bag and sold it for Rs.350. The said pandian and his son in law shared the amount. This is

contrary to the statement made by Pandian which has been marked as M.W.10. One Pandian (loadman) was engaged by the petitioner and not by the second respondent management and from the counter affidavit it can be seen that the petitioner's adverse antecedent and indulged in the act of misconduct and successive indulgence in the theft of tea leaves and thereby causing deficit/shortage to the industry and consequent loss. He was habitual offender who dishonestly and clandestinely removes the tea leaves for his personal gains. The documents containing the past records were marked as Ex.M.19 to M.23 which proves that the petitioner is an habitual offender and successive indulged in the theft of tea leaves and causing loss to the industries. Therefore, the judgment relied by the learned counsel for the petitioner are not applicable to the present case on hand. From the findings of the Labour Court in the award dated 13.10.2003, it is crystal clear and



evident that it is the petitioner who has stolen the tea bag containing 40 Kgs, bearing token number 20 and sold for Rs.350 through Pandian and took Rs.300 and gave Rs.50 to Pandian and committed the theft.

19. It is a well settled law that this Court cannot interfere under Article 226 of the Constitution of India with the findings of the Labour Court, unless, it is perverse and arbitrary, and in the present case on hand, the findings of the Labour Court is based only on the evidence of the witnesses and material documents available on record.

20. Considering the above facts and circumstances of the case and the ratio laid down by the Hon'ble Apex Court of India, this Court do not find any infirmity in the award passed by the first respondent/ Labour Court, Coimbatore in I.D.No.269 of 1998 dated 13.11.2003 and the same is confirmed. In the result, this writ petition stands dismissed. No costs.

14.07.2022

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Index : Yes/No
Speaking Order/Non-Speaking Order

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To:

- 1.The Presiding Officer,
Labour Court,
Coimbatore.
- 2.The Management of Pandalur Industrial Co-Op.
Tea Factory rep. by its Managing Director,
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Pre Delivery Order in
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