



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2022

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.29711 of 2011

The Management,
Salem District Consumer Cooperative
Wholesale Stores Ltd.,
Pallapatti, Salem 636 009.

...Petitioner

Vs.

1. The Presiding Officer, Labour Court,
Salem.

2. S.Sannasi

...Respondents

PRAYER: Writ petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorari Mandamus to call for the records in I.D.No.109 of 2007 on the file of Labour Court, first respondent herein, and quash the Award dated 21.02.2011.

For Petitioner : Mr.M.R.Raghavan
For respondents : Mr.K.V.Shanmuganathan for R2

ORDER

This petition has been filed to quash the Award dated 21.02.2011 passed by the Labour Court in I.D.No.109 of 2007.

2. The case of the petitioner in brief, is as follows:

The petitioner is an institution formed in accordance with the provisions of the Tamil Nadu Cooperative Societies Act and has fair price shops under its control. The second respondent was employed as the Assistant Salesman in the petitioner society. During his employment, he caused stock deficit and misappropriated monies. Further, he caused breach of trust and he did not report to duty, without any intimation or prior permission. Hence charge memo was issued and further domestic enquiry was conducted. The enquiry officer found the



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second respondent guilty of the charges. Based on the report, show cause notice was issued and then the second respondent was dismissed from service on 25.05.2007. Aggrieved by the order of dismissal, the second respondent raised the dispute before the Labour court and it was numbered as I.D.No.109 of 2008.

2.1. The second respondent admitted the charges in the enquiry and he remitted a sum of Rs.1,12,233/- on various dates and also agreed to remit the balance of Rs.2,09,640.35 on or before 01.12.2006 and subsequently, paid the same as agreed. The Labour Court, after considering the oral and documentary evidence, found that the allegations as against the second respondent were proved. However, on humanitarian consideration, directed the petitioner to reinstate the second respondent in the management, without backwages or any other benefits and also observed that the punishment of dismissal from service imposed on the second respondent was excessive. According to the petitioner, the Labour Court having found that the charges were proved in accordance with law and the second respondent himself had also admitted that he had committed the misconducts, ought not to have interfered with the punishment imposed by the petitioner. Hence, this writ petition has been filed to quash the Award passed by the Labour Court.

3. The learned counsel for the petitioner submitted that the Labour Court has rightly come to the conclusion that the charges framed against the petitioner were proved, however, on humanitarian ground, held that the second respondent is entitled to continue the service and the above observation is unfounded. Further, the findings of the Labour Court in so far as the reinstatement in service is concerned, it is unsustainable in law and hence, the Award is liable to be set aside.

4. The learned counsel for the second respondent submitted that the second respondent has paid a sum of Rs.1,12,233/- and also paid the remaining amount of Rs.2,09,640 towards the deficit amount. Therefore, the Labour Court has considered the second respondent's grievance on humanitarian ground and directed the petitioner to reinstate him into the service. Therefore, the Award passed by the Labour Court, does not warrant any interference by this court.

5. In the Industrial Dispute No.109 of 2007, the Labour Court has come to the conclusion that the charges framed against the second respondent were proved. However, the Labour Court showed sympathy on the second respondent and has given direction to the petitioner management to reinstate the second respondent



into service for the reasons that he had already remitted the entire amount towards deficit stock to the management. According to the petitioner, the above concession given to the second respondent is contrary to the various decisions of the High Courts and also is unsustainable in law. Hence, the second respondent is not entitled for reinstatement of service in the petitioner management.

6. The learned counsel for the second respondent submitted that the punishment of dismissing the second respondent from service is excessive. Therefore, taking into consideration the fact that already the second respondent had paid the entire amount towards the deficit stock, alternative punishment may be awarded, by modifying as "Compulsory Retirement", instead of "dismissal from service". He also fairly submitted that the second respondent he is not entitled for any other benefits, except Gratuity.

7. At the time of admission, this court has not granted any interim order. After passing of Award by the Labour Court, the petitioner management had permitted the second respondent to continue the service in the management as Sales Man. Therefore, considering the fact that the second respondent had remitted the entire amount towards the deficit stock, within the time, as agreed, and after passing of Award, he is continuing the service for more than 10 years in the petitioner's management, this court is inclined to modify the dismissal order passed by the petitioner management as "Compulsory Retirement. Further, as per the decisions rendered by the Hon'ble Supreme Court as well as this court, the second respondent is entitled for Gratuity only and he is not entitled for any other benefits. Therefore, no prejudice or monetary loss would be caused to the petitioner management, if the punishment of dismissal from service is modified as compulsory retirement.

8. Accordingly, it is ordered as follows:

i) The impugned Award passed by the Labour Court dated 21.02.2011 in I.D.No.109/2007 is set aside.

ii) The punishment of dismissal from service, imposed on the second respondent by the petitioner management, is modified as "Compulsory Retirement".

iii) The petitioner management is directed to settle the Gratuity amount to the second respondent, on submitting his application, within a period of 12 weeks from the date of receipt of such application.



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9. With the above direction, this writ petition is disposed of . No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mst
To

1. The District Judge,
Chief Officer, Labour Court,
Salem.

+1 CC to Mr.K.V.Shanmuganathan, Advocate sr 3571
+1 CC to Mr.M.R.Raghavan, Advocate sr 2897.

W.P.No.29711 of 2011

MT(CO)
SP(09/02/2022)