



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.3114 of 2011

N.Pachainayaki

...Petitioner

-Vs-

1.The Presiding Officer,
Labour Court, Salem.

2.Management of Manjavadi Primary
Agricultural Co-operative Bank,
Lakshmapuram, Pappireddipatty,
Dharmapuri - 636 905.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to I.D.No.261 of 2002 and quash the impugned award dated 27.01.2009 passed by the 1st respondent and further direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr.KV.Shanmuganathan
R1 : Court
For R2 : Mr.M.S.Palaniswamy

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. Through a charge memo dated 06.11.2000, the petitioner was alleged to be responsible for stock deficit of 3 fertilizers, namely Potash, Vijay 17:17:17 and Urea and in connection with such deficit, he is alleged to have tampered with the registers. As per the charge memo, the value of deficit for Potash is Rs.15,239.34/-; for Vijay 17:17:17, the deficit value is Rs.21,152.30/- and for Urea, the deficit value is Rs.46.90/- On this basis, a domestic enquiry was conducted and



ultimately, the punishment of dismissal from service was imposed on 31.01.2001. The domestic enquiry conducted was found to be vitiated by the Labour Court. Thereafter, after evidences were let in, the Labour Court had found the order of dismissal to be justifiable, based on the evidence of RW1 and accordingly, dismissed the Industrial Dispute.

3. The learned counsel for the petitioner submitted that the Award of the Labour Court is on the basis of "no evidence", since there was no discussion with regard to a major portion of the charges pertaining to two types of fertilizers, for which, the stock deficit was alleged.

4. The learned counsel for the second respondent submitted that during the course of enquiry, the petitioner has admitted her guilt and had also deposited a portion of the deficit amount and since she himself has admitted her guilt, the order of dismissal is justified.

5. I find some force in the arguments advanced by the learned counsel for the petitioner. A perusal of the Award of the Labour Court reveals that the evidence of RW1 was considered in its entirety and the discussion therein reveals the stock deficit pertaining to the Urea alone. The order of dismissal was based on the charge that there were stock deficits of two other fertilizers, namely Potash and Vijay, the value of which is considerably high when compared to Urea. It is on the allegation that there was stock deficit of all these three fertilizers, the order of dismissal came to be passed. While that being so, when there was no discussion at all, with regard to the evidences of the deficit shortage of Potash and Vijay, the Award itself can be termed to be on the basis of "no evidence".

6. The learned counsel for the second respondent submitted that there was an admission of guilt by the petitioner during the course of enquiry. The Labour Court had found the domestic enquiry to have been vitiated. While that being so, any admission made during the course of such vitiated enquiry, cannot now be raised in order to substantiate the punishment.

7. Now that, this Court had found that the termination order, as well as the Award of the Labour Court, are unsustainable, the petitioner herein would be entitled for reinstatement, together with all attendant benefits.

8. Insofar as the payment of back wages is concerned, the Hon'ble Supreme Court, in the case of Deepali Gundu Surwase V.



Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

9. Since this Court had found that the dismissal order is per se illegal and in the light of the decision rendered by the Hon'ble Supreme Court cited above, the petitioner would be entitled for full back wages.

10. For all the foregoing reasons, the impugned order passed by the first respondent herein dated 27.01.2009 is quashed. Consequently, there shall be a direction to the second respondent herein to forthwith reinstate the petitioner back into service, together with full back wages, continuity of service and other service and monetary benefits, within a period of four (4) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed, accordingly. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar



hvk

To

WEB COPY

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Labour Court, Salem.
2. Management of Manjavadi Primary
Agricultural Co-operative Bank,
Lakshmapuram, Pappireddipatty,
Dharmapuri - 636 905.

+1 CC to Mr.K.V.Shanmuganathan, Advocate sr 9768

+1 CC to Mr.M.S.Palaniswamy, Advocate sr 10350.

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PCH(CO)
SP(09/03/2022)