



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2022

Pronounced on : 15.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.7829 of 2012

D.Venkatesan

...Petitioner

Vs.

1. The Management,  
M/s.E.I.D.Parry (India) Ltd,  
Nellikuppam,  
Cuddalore District.

2. The Presiding Officer,  
Cuddalore Labour Court,  
Cuddalore District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with the proceedings of the 2<sup>nd</sup> respondent in I.D.No.277/2007 dated 30.06.2011 and quash the same consequently direct the 1<sup>st</sup> respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mrs.M.Muthu Yazhini  
for Mr.K.Thilageswaran

For R 1 : Mr.Anand Gopalan  
for M/s.T.S.Gopalan and Co

For R2 : Court

O R D E R

This writ petition is filed challenging the order of the labour Court confirming the order of dismissal passed by the first respondent on the premise that the petitioner had committed theft of diesel and thereby found guilty of misconduct in terms of the company certified standing orders.

2. The petitioner joined the respondent management as a Mazdoor in April 1994 and was promoted as a tractor operator in January 1997. On 04.05.2005, the applicant was working in the



second shift from 02.00 p.m. to 10.00 p.m. by operating a Front End Loader equipment. Around 06.40 p.m. the petitioner handed over the Walkie-talkie to the other driver one Mr.Elangovan and returned around 07.10. p.m. after taking food. When the petitioner got back he found that there was certain enquiries being made with regard to theft of diesel from another Front End Loader parked in the Bagasse Yard. The petitioner was informed by Elangovan, that he had seen two Security Officers enquiring a contract employee by name Suresh with regard to the theft of diesel. The petitioner received back the walkie-talkie from Elangovan and continued to operate the Front End Loader. Around 09.20 p.m the petitioner left for control room to enter the log book. As it was raining the petitioner waited in the tool room and reached the main gate to punch the card at 10.10 p.m. Then the Assistant Security Officer Mr.Shanmugam informed the petitioner that he was called by the Senior Manager Mr.S.M.Ramesh. After, a brief enquiry the petitioner left home around 11.30p.m. The petitioner continued to attend the night shifts on 05.05.2005 and 06.05.2005.

3. Whiles, a show cause notice was served on the petitioner to the effect as to why action should not be taken against the petitioner while informing the petitioner that he was placed under suspension for misconduct in terms of Section 21(b)(iv) of the Company Certified Standing Orders. The petitioner submitted his explanation. Not satisfied with the petitioner's explanation, the respondent management initiated the domestic enquiry. The petitioner was denied permission to engage an advocate to assist him in the enquiry and was informed that he can possibly take the assistance of his co-workers. The petitioner took the assistance of Mr.Adhinarayan. On the basis of the domestic enquiry report, the management issued a second show cause notice dated 01.12.2005 which was responded by the petitioner vide reply dated 12.12.2005. The management not convinced with the reply/explanation given by the petitioner ordered the dismissal of the petitioner vide order dated 20.06.2006. The petitioner preferred an appeal against the said order of dismissal before the Industrial Tribunal, as conciliation failed. The labour Court framed the following question.

Whether the petitioner is entitled for reinstatement with continuity of service, back wages and other attendant benefits as prayed for in this petition?

4. The labour Court found that the Security Shift In-charge D.Shanmugam and the Security Assistant K.Ramanathan while on rounds near the bagasse yard found that a hose was connected to diesel tank of No.2 Front End Loader parked in that place and diesel was being drained into the can. Both personnel suspecting



some foul play kept a watch, at that time, the petitioner reached the spot driving the No.1 Front End Loader removed the hose, closed the lid of the plastic can and handed over the can filled with diesel to the said Suresh and moved away with his vehicle from the spot. The Security Officers apprehended Suresh and enquired him about the diesel can. Suresh informed that the diesel can was being taken only at the instance of the petitioner for the purpose of handing over the same to the petitioner's brother. The statement of the Security Officers were also obtained and marked as Ex.M15 and Ex.M16 which corroborates the fact that the petitioner was in fact involved in the theft of diesel. Suresh had accepted theft of diesel vide his statement dated 04.05.2005, marked as Ex.W2 and Elangovan had given a statement dated 05.05.2005 marked as Ex.W3, and that a complaint was also lodged against the said Suresh before the Nellikuppam Police Station, by the security guard and F.I.R. was registered. Importantly, said Suresh admitted to theft of diesel, vide Ex.M19, and also stated that it was committed at the behest and for the benefit of the petitioner.

5. The labour Court also found that the domestic enquiry was conducted in a fair and proper manner. Pursuant to the complaint lodged by the management, Suresh was convicted and a fine of Rs.1,000/- was imposed in terms of the order in C.C.No.300 of 2005 dated 20.03.2007.

6. Importantly, the labour Court found that K.Ramanathan and D.Shanmugam who were Security Officers clearly stated in their statements that they had seen petitioner handing over the diesel can to the contract driver namely Suresh. After narrating the facts the labour Court has found that no document was produced on the side of the petitioner to disprove his involvement and prove that only Suresh had committed the theft of diesel. The Labour Court also found that the order of dismissal was proportionate and thus not entitled for reinstatement as prayed in the order of dismissal was justified.

7. The disciplinary authority as well as the tribunal having found that the petitioner was involved in the theft of diesel, the said finding of fact does not appear to be perverse, inasmuch as there is evidence in the form of statements obtained from the security agencies and the co-driver apart from the fact that there has been confession of theft of diesel by the said Suresh. In the circumstances, it may not be open or appropriate for this Court in exercising its jurisdiction under Article 226 of Constitution of India to interfere with the finding of fact unless such finding is perverse and based on no evidence, nor can adequacy/ sufficiency of evidence be examined under Article 226.

8. With regard to the question of quantum of punishment,



the labour Court having found that the petitioner had committed theft of diesel and thus guilty of misconduct, the punishment of dismissal from service is proportionate and warranted. For in a case of theft, it is not the quantum which matters but the act which results in the loss of confidence of employer in employee. In this regard, it may be relevant to refer to the following judgment:

A.P. SRTC v. Raghuda Siva Sankar Prasad, (2007) 1 SCC 222 : (2007) 1 SCC (L&S) 151 : 2006 SCC OnLine SC 1170 at page 226

20. The learned Judges of the High Court have also failed to appreciate that once an employee has lost the confidence of the employer, it would not be safe and in the interest of the Corporation to continue the employee in the service. The punishment, imposed by the management in the facts and circumstances of the case, is not disproportionate and that the punishment of removal from service is just and reasonable and proportionate to the proved misconduct.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.

Karnataka SRTC v. M.G.Vittal Rao, (2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171 : 2011 SCC Online SC 1489 at page 454

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee.

9. In view of the same, this Court is of the view that the labour Court award does not warrant any interference.

10. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Psa

Sub Assistant Registrar



To :

1. The Management,  
M/s.E.I.D.Parry (India) Ltd,  
Nellikuppam,  
Cuddalore District.
2. The Presiding Officer,  
Cuddalore Labour Court,  
Cuddalore District.

+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.35857

+1cc to Mr.K.Thilageswaran, Advocate, S.R.No.35412

W.P. No.7829 of 2012

SKM(CO)  
UMA(29/06/2022)