



WEB COPY

W.P.(MD)No.12798 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM

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

W.P. (MD)No.12798 of 2012

and

M.P. (MD)No.1 of 2012

The Management,
Iluppaiyur Primary Agricultural Co-operative Bank,
Now Iluppaiyur Primary Agricultural Co-operative
Credit Society Limited,
Iluppaiyur, Thiruchuli Taluk,
Virudhunagar District - 626 117. ... Petitioner

vs.

1.The Presiding Officer,
Labour Court, District Court Building,
Melur Road, Madurai-625 020.

2.Panneerselvam ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 1st respondent relating to I.D.No.51 of 1999 and to quash the order, dated 16.02.2012, that setting aside the order of dismissal passed by the petitioner against the 2nd respondent.

For Petitioner : Mr.S.Seenivasagam

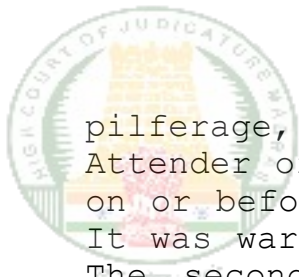
For R1 : Labour Court

For R2 : Mr.S.Mohandass

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order passed in I.D.No.51 of 1999 dated 16.02.2012, whereby it has set aside the order of dismissal passed by the petitioner against the 2nd respondent.

2. The petitioner is the management and the second respondent is the delinquent. The second respondent was working as Clerk in the petitioner Society and he was assigned with the duty of selling manure and pesticides through a resolution passed to that effect on 26.08.1992. Accordingly, he took charge of those articles from the Secretary on 04.09.1992. A casual inspection of the stock of materials found *prima facie* some irregularities in the stock and remittance of sale proceeds, so as a first measure to arrest such



pilferage, directed him to hand over the charges to Mr.A.Sethuraman, Attender of the Society and remit value of the deficit in the stock on or before 15.03.1993 through his express memo, dated 09.03.1993. It was warned that failure of his compliance will cause suspension. The second respondent acknowledged the memo in the presence of Circle supervisor of Virudhunager District Central Bank, on 30.03.1993 voluntarily remitted Rs.35,000/- but the second respondent failed to act as per assurance. Therefore, he was placed under suspension on 03.04.1993 and also failed to hand over the stock as per memo, dated 13.04.1993. Hence, he was directed to hand over the charges within seven days.

3.The second respondent was served with a charge memo, dated 22.05.1993 and he submitted an explanation on 06.06.1993. The enquiry was conducted and after the enquiry, the Enquiry Officer submitted his findings on 08.07.1995 and it was held that all the charges were proved. Based on the enquiry report, the disciplinary authority imposed the punishment of dismissal from service on 20.07.1993 with effect from 03.04.1993. Challenging the dismissal order, the second respondent raised an Industrial Dispute in I.D.No.51 of 1999. After going into the entire enquiry report and the evidence on record, the Labour Court passed an award stating that the punishment of dismissal is disproportionate, modified the punishment and directed the petitioner management to reinstate the second respondent with continuity of service within three months from the date of receipt of copy of the order but without backwages and other benefits. The second respondent has not preferred any appeal against the Labour Court award. The management has preferred this Writ Petition.

4.The contention of the management is that the Labour Court can interfere with the domestic enquiry only if the punishment is disproportionate and if the domestic enquiry is conducted without offering adequate opportunity to the delinquent. The Labour Court has categorically held that there is no violation of principles of natural justice and hence, but the Labour Court has failed by passing such an order by modifying the punishment.

5. The second respondent has relied on the affidavit filed before the Labour Court and the documents marked before the Labour Court. It was also submitted that against this cause of action, arbitration proceedings was also initiated and in the said proceedings his property is attached under attachment before judgment and now the final orders are also passed confirming the arbitration proceedings against which the second respondent has preferred an appeal and the same is pending. A criminal case was also initiated and the criminal case was ended up in acquittal of the second respondent. Against the surcharge proceedings, the second respondent has preferred a CMA CS and the same is pending.



6. The contention of the second respondent is that even if the arbitration proceedings and the surcharge proceedings ended up against the second respondent, the management is protected by the attachment of his property and the terminal benefits applicable to the second respondent is also pending before the management. Therefore, the management is not at loss and prayed to disburse the terminal benefits that is applicable to the second respondent to the tune of Rs.14,61,960/-.

7. Heard Mr.S.Seenivasagam, learned Counsel appearing for the petitioner and Mr.S.Mohandass, learned Counsel appearing for the second respondent.

8. The charge against the petitioner is that he has misappropriated to the extent of Rs.1,52,806.90/- by causing deficit in the stock of manure, misappropriated Rs.5,000/- by non remittance of sale proceedings of the manure, willfully failed to hand over the books and forms, caused defame and disrepute to the Bank. It is seen from the Labour Court order that the stocks were received by Watchman, acting Secretary and the Accountant. There is a categorical finding that the second respondent has not received stocks and it is also been held by the Labour Court that it is not the case of the management that the second respondent has not brought the stocks to the shop, it is only that the second respondent has not accounted it in the register. Therefore, the Labour Court has come to the conclusion that it is not misappropriation, it is only deficiency of stock and there is no intention to misappropriate the property. The relevant portion of the Labour Court award is extracted here under:

"8) It is true that the court has power to invoke Sec.11A of I D Act in a case of discharge or dismissal or termination when punishment is disproportionate to the charges. The petitioner's counsel submitted that the petitioner had never received the stock worth about of Rs.2,50,000/- and stocks were received by other persons such as watchman, acting secretary and accountant and the petitioner is not responsible for the deficit of stocks and stocks were not entrusted to the petitioner. It is not the case of the petitioner that the stocks alleged to have been received by others were not brought to the shop and also not brought to the account. Once the petitioner was in-charge of the society, he must account for it. The petitioner's counsel submitted that the deficit of stock is not misappropriation. In case of misappropriation, the respondent must prove that the delinquent had intention to appropriate the property at the time of entrustment of property. In case of deficit of stock, it may occur in day today functioning of the society. Once entrustment is proved, the petitioner has to explain as to under what



circumstances it occurs. It is seen that surcharge proceedings were initiated against the petitioner. According to respondent during inspection it was found there was deficit of stock worth about Rs.1,52,806.90ps and non remittance of sale proceeds of Rs.5000/-"

WEB COPY

9.As far as the sale of Rs.5,000/- is concerned, the learned Counsel appearing for the second respondent vehemently argued that it has been clearly explained before the Labour Court and all forums that the same was not proved by the management, because no evidence was produced or stated in the counter filed before any forum by the management. Hence, there is no misappropriation of Rs.5,000/- also. The claim of the petitioner that the same is already handed over and the fact was not considered by the enquiry officer.

10. This Court is of the considered opinion that the Labour Court has come to the conclusion correctly that the amount is not misappropriated, if it is not misappropriation then dismissal from service is a disproportionate punishment. Hence, this Court is not inclined to interfere with the Labour Court award where it has granted reinstatement with continuity of service without back wages. However, now the petitioner has attained superannuation. Therefore, there is no question of reinstatement. Therefore, the petitioner management is directed to grant continuity of service and disburse the terminal benefits to the second respondent and the said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

11. As far as the alleged misappropriation is concerned, the contention of the second respondent is that it is protected even if the other forums held it as misappropriation, then the management has already attached the petitioner's property. Therefore, this Court is of the considered opinion that the management shall either attach the property and recover the proceedings after disposal of the other proceedings or can deduct the amount from the terminal benefits and disburse the balance.

12.With the above direction, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

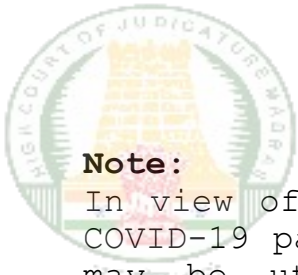
Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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, District Court Building,
Melur Road, Madurai-625 020.

W.P. (MD) No.12798 of 2012
09.03.2022

ck(CO)
TR(31.05.2022) 5P 2C