



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD).No.18326 of 2014

Veerachamy

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Special Officer,
The Management,
A-1254, Theni Agricultural Producers
Cooperative Marketing Society Limited,
Theni.

3.The Joint Registrar of Co-operative,
Theni Region,
O/o Joint Registrar of Cooperative Societies,
District Collector's Office,
Complex 1st Floor, Theni.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating with the order of the first respondent made in I.D.No.19/2009, dated 25.06.2013 and quash the same as it is illegal and in consequence to direct the second respondent to reinstate the petitioner with continuity of service, back wages and all attending benefits.

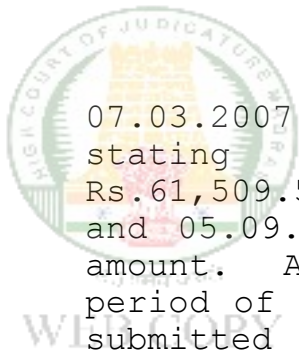
For Petitioner : Mr.R.Suriya Narayanan

For R-1 : Labour Court

For R-2 and R-3 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

The petitioner is working as Salesman in the Fair Price Shop for 17 years. He was regularized on 18.05.2007. On 06.03.2007, he was charged with stock deficit and was suspended from



07.03.2007 to 06.04.2007. A charge memo was issued on 05.04.2007 stating that there is stock deficit for Rs.61,509.50/-. The suspension period was extended from 06.04.2007 and 05.09.2007 and the petitioner was directed to remit the said amount. Another proceeding was issued on 05.09.2007 extending the period of suspension from 06.09.2007 to 05.12.2007. The petitioner submitted his explanation on 02.07.2007 through post. Without accepting the explanation, the second respondent has conducted an enquiry on 24.07.2007.

2. The contention of the petitioner is that he could not get the subsistence allowance and he could not participate in the enquiry proceedings effectively, since he was living under poverty. Moreover, the respondents compelled the petitioner to agree for the terms and forced the petitioner to pay Rs.32,686/- in four installments by raising debts from outsiders. The Management issued second show cause notice dated 29.12.2007 and the petitioner submitted reply on 12.01.2008 and on 12.06.2008, without considering the explanation of the petitioner, the second respondent dismissed the petitioner from service.

3. The contention of the petitioner since there is no loss to the Management as he has already settled the amount, the respondents ought to have considered the petitioner for reinstatement. Aggrieved over the order of dismissal, the petitioner filed I.D.No.19 of 2009. The contention of the petitioner is that the Labour Court failed to see that enquiry proceedings was not conducted properly. The respondents have not given any subsistence allowance and therefore the petitioner could not participate in the enquiry proceedings effectively. The respondents had not produced any witness and mark any documents through witness. The respondents relied on complaint given by the public and that was not marked or circulated to the petitioner. The Labour Court has not taken into consideration whether the natural justice was complied or not and there is no preliminary finding to that effect and the Labour Court has given a finding that the said issue was not raised by the petitioner. The contention of the petitioner is could not effectively participate in the enquiry proceedings, since he was not paid subsistence allowance and he was living under poverty.

4. Therefore, this Court is of the considered opinion that the petitioner is entitled to subsistence allowance and the person cannot be left under poverty and under such circumstances the respondent ought not to have conducted an enquiry. Hence, this Court is passing the following order:

a. The case is remitted back to the respondents

b. the respondents are directed to pay the subsistence allowance for the above mentioned period.



c. It is made clear that the petitioner is not entitled to any back wages or reinstatement. The matter is remitted back only to conduct enquiry alone.

d. The enquiry shall be completed within a period of three (3) months from the date of receipt of a copy of this order.

e. The respondents are directed to pay the subsistence allowance during the fresh enquiry also

5. With the above said direction, this Writ Petition is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar

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

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+1 CC to M/s.SPL GP (SR-8291[F] dated 24/02/2022)

W.P. (MD) .No.18326 of 2014
22.02.2022

Nsr

MS/17.03.2022/3P.5C