



W.P.(MD).Nos.2285 and 2286 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.2285 and 2286 of 2014

and

M.P.(MD).Nos.1 and 1 of 2014

W.P.(MD).No.2285 of 2014

The Management of A.1480,
Pannaikkadu Co-Operative Stores Limited,
Pannaikkadu,
Kodaikanal Taluk,
Dindigul District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Trichirappalli.

2.Muruganandam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the award of the Labour Court, Trichy passed in I.D.No.292/1995 dated 26.04.2013 and quash the same.



W.P.(MD).Nos.2285 and 2286 of 2014

W.P.(MD).No.2286 of 2014

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The Management of A.1480,
Pannaikkadu Co-Operative Stores Limited,
Pannaikkadu,
Kodaikanal Taluk,
Dindigul District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Trichirappalli.

2.Rajagopal

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the award of the Labour Court, Trichy passed in I.D.No.293/1995 dated 26.04.2013 and quash the same.

(In both Writ Petitions):

For Petitioners : Mr.V.O.S.Kalaiselvam

For R-1 : Labour Court

For R-2 : Mr.Mohammed Suhail,
For M/s.Ajmal Associates.

COMMON ORDER

The Writ Petitions have been filed for Writ of Certiorari to quash the award of the Labour Court dated 26.04.2013 passed in I.D.No.292 of 1995 and

293 of 1995.



W.P.(MD).Nos.2285 and 2286 of 2014

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2. The brief facts as stated in the affidavits are that the second respondents in both the Writ Petitions had worked in the office of the petitioner's Society were convicted for offences by the Essential Commodities Court, Madurai in STC No.3 of 1987 and STC.No.4 of 1987 with one year rigorous imprisonment with the penalty of Rs.25,000/- and also one year rigorous imprisonment with the penalty of Rs.1000/-, in case the penalty is not paid. The judgments were rendered by the two different Judges and the offences committed by them are held to be proved beyond all reasonable doubt. Based on the conviction, independent charges are leveled against the second respondents and the independent Domestic enquiries are held. Upon proven misconducts held in the enquiry independent orders dated 01.12.1993 were passed and terminated them from their services. Aggrieved over the termination orders, the petitioners raised industrial disputes under Section 2A of the Industrial Disputes Act and the Labour Court vide its common award dated 26.04.2013 has held that the charges levelled against the second respondents are not proved and hence, directed the petitioner's Management to pay 50% of the back wages till the date of their respective superannuation.

3. The allegations against the second respondents are that two barrel of Sunflower Oil i.e. 400 Kgs were diverted which meant for distribution for the



W.P.(MD).Nos.2285 and 2286 of 2014

ration cardholders and the second respondents sold it in the open market for their personal gain. The contention of the petitioner's Management is that on 24.09.1984, 2000 Kg of Sunflower oil was lifted from Tamil Nadu Civil Supplies Godown, Madurai to be supplied to the fair price shop. The said 10 barrels were taken delivery by one Rajakumarasamy. However, while delivering them to fair price shop, 2 barrels of Sunflower oil were taken and diverted. The second respondents were working as Accountant and Cashier respectively. The further contention of the petitioner's Management is that the records were falsified by the second respondents and manipulated to show that 10 barrels of Sunflower oil were taken delivery and distributed to fair price shop. The Kodaikanal Special Revenue Inspector in his surprise inspection in the month of October 1984 has found deficit of 400 liters of Sunflower oil. Based on the stock register and the stocks received, it is noted that the stock register shows some deficit. In Aladipatty fair price shop, the page number 60 of the stock register shows that from 24.09.1984 to 19.10.1984, the Sunflower oil alleged to have been delivered to the said fair price shop was not brought into the stock register. Therefore, it is evident that the second respondents have diverted the Sunflower oil and hence, the charge memo was issued. Since their explanation was not satisfactory, enquiry was conducted. Moreover, the original documents are with the Essential Commodities Court, Madurai. Thereafter, with the permission of the Court, the original documents were perused by the



W.P.(MD).Nos.2285 and 2286 of 2014

petitioner's Management in the Court premises and the xerox copies are marked in the domestic enquiry. The second respondents were paid subsistence allowances during the period of their suspension and they had participated in the enquiry. Finally, after affording opportunity by following the principles of natural justice, the charges were held to be proved. For the same cause of action, criminal cases were filed on two different counts. In the Criminal Court, the charges were held to be proved and the second respondents were found guilty and one year rigorous imprisonment with fine was imposed against which the second respondents preferred Criminal Appeals in Criminal Appeal Nos.750, 753 and 756 of 1991 and the Criminal Appeals were allowed vide order dated 25.11.1991, based on the jurisdictional issue, the matter was remitted back to the appropriate Court. Now, the criminal case is pending for further trial before the appropriate Court. In the meanwhile, the second respondents were dismissed from service. Challenging the same, the second respondents preferred Industrial Dispute before the Labour Court. Pending proceedings, the second respondents had attained superannuation, therefore, the Labour Court has granted 50% backwages until superannuation with cost. The second respondents relied on the contents that were raised before the Labour Court and prayed to confirm the order, since the second respondents are nearing 68 years and 70 years of age respectively.



W.P.(MD).Nos.2285 and 2286 of 2014

4. Heard Mr.V.O.S.Kalaiselvam, learned counsel for the petitioner and Mr.Mohammed Suhail, learned counsel for M/s.Ajmal Associates, appearing for the second respondents and perused the records.

5. It is seen from the records that the criminal case was remitted back for fresh trial by the jurisdictional Court and the same is pending for trial. The contention of the petitioner's Management is that since the criminal case is pending, the second respondent in both the Writ Petitions are not entitled to any terminal benefits. Moreover, they were dismissed from service in the Domestic Enquiry. The Labour Court has not granted adequate opportunity to the Management to prove that the natural justice was granted to the second respondents. The Labour Court without passing any preliminary award has passed final award directly. Whenever the Labour Court found the Management has not granted natural justice, the Labour Court ought to grant an opportunity to the Management to prove the natural justice was granted. No such opportunity was granted to the Management. When a specific plea was raised by the Management to grant opportunity, in case, if it is found natural justice was not granted during Domestic Enquiry, the Labour Court is bound to grant an opportunity to the Management. Therefore, the Management has submitted before this Court that the order passed by the Labour Court is perverse and further submitted that in order to grant opportunity to the



W.P.(MD).Nos.2285 and 2286 of 2014

Management to prove that natural justice was granted to the second respondents, the case may be remitted back to the Labour Court.

6. On perusal of the Labour Court award, it is seen that the Labour Court has framed the said issue as first issue and has rendered a finding that sufficient opportunity was not granted to the delinquents. In such circumstances, the Labour Court ought to have granted opportunity to the Management to prove the natural justice was granted. No such finding was rendered by the Labour Court. Therefore, this Court is of the considered opinion that as far as this issue is concerned, the Management is in advantageous position.

7. The next issue that was raised by the Management is that the Criminal Court has convicted the delinquents, the delinquents are not entitled to any terminal benefits. The Appellate Court has only remitted back on the question of jurisdiction and not on merits.

8. The contention of the second respondent is that one Rajakumarasamy has committed the irregularities and this was reported by the second respondent before the authorities. However, during Police Enquiry, the Police has reported the second respondents are also involved in the said irregularities. Therefore, the proceedings were initiated against the second respondents based on the



W.P.(MD).Nos.2285 and 2286 of 2014

police enquiry. The Learned Counsel appearing for the second respondents submitted that as on date, the second respondents had attained superannuation and they are nearing 68 and 70 years. In such circumstances, if the matter is remitted back to the authorities for re-consideration, it will seriously prejudice the second respondents.

9. This Court has taken the rival submission on the either side and has given its anxious consideration. It is seen from the records that the charge memo was issued after 7 ½ years from the date of occurrence. Since the Labour Court has held that the allegations were not proved and since the second respondents are nearing 68 and 70 years, this Court is of the considered opinion that the award of the Labour Court ought to be confirmed in order to meet the ends of justice. Moreover, based on the belated charge memo also this relief is granted. Therefore, this Court is confirming the award of the Labour Court and the petitioner's Management are directed to pay 50% of back wages to the second respondents until their superannuation.

10. The Labour Court has allowed the petitions of the second respondents on payment of costs. This Court is setting aside that portion of the order where the cost is imposed.



W.P.(MD).Nos.2285 and 2286 of 2014

11. In view of the above, the Writ Petitions are partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

31.10.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

The Presiding Officer,
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Trichirappalli.



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W.P.(MD).Nos.2285 and 2286 of 2014

S.SRIMATHY, J.

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W.P.(MD).Nos.2285 and 2286 of 2014

31.10.2022