



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2021

Pronounced on : 04.04.2022

CORAM

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

W.P.(MD)No.15993 of 2015

WEB COPY

P.Murugesan

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Tiruchirapalli.

2.The President,
National Horticulture Research &
Development Foundation (NHRDF),
Nasik-422 201
through Dr.Suresh Digade,
Deputy Director/representative to 2nd
respondent Society (NHRDF),
Who is presently having his office at
5/5B1B Shakthi Vinayakar Nagar,
Vellalore, Coimbatore- 641 111.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent Presiding Officer, Labour Court, Thiruchirapalli in I.A.No.4 of 2015, in I.D.No.100 of 2010, dated 28.07.2015, to quash the same and further to direct the first respondent, Presiding Officer to pass fresh order in the said I.A.No.4 of 2015 in I.D.No.100 of 2010 on merits, based on the material available on the Labour Court record.

For Petitioner : Mr.P.Murugesan
Party-in-person

For R1 : Labour Court

For R2 : Mr.V.O.S.Kalaiselvam

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent Presiding Officer, Labour Court, Thiruchirapalli in I.A.No.4 of 2015, in I.D.No.100 of 2010, dated 28.07.2015, and further to direct the first respondent, presiding officer to pass fresh order in the said I.A.No.4 of 2015 in I.D.No.100 of 2010 on merits, based on the material available on the Labour Court record.



2. The petitioner filed an interlocutory application in I.A.No.4 of 2015 praying to direct the first respondent to pay full salary with notional increase by 7th date of every calendar month as interim relief, from the date of filing of this petition to the date of commencement of final award of I.D.No.100 of 2010, which is pending for disposal. The petitioner has filed I.D.No.100 of 2010, under Section 2(A)(2) of Industrial Disputes Act and thereby, praying to set aside the domestic enquiry findings and pass an award reinstating the petitioner with full backwages and continuity of service with consequential benefits.

3.The petitioner was engaged as Technical Officer in the National Horticulture Research & Development Foundation (NHRDF), Nasik district. As per the work allotment order, dated 15.06.2009, the petitioner's duty is to procure and sell the seeds, contact the farmers, convince them to purchase the seeds and do clerical works allotted from time to time. The petitioner has raised a conciliation under Section 2k. Pending the conciliation, the Regional Center of the second respondent was shifted from Dindigul to Coimbatore on 13.09.2009. In the meanwhile, the conciliation ended in failure. When the industrial dispute was pending, the petitioner was transferred from Karnool to Varanasi and the relieving order was dated 20.08.2009. The petitioner requested to sanction travel advance and the same was denied. The salary for the month of August 2008 was not paid. Since the petitioner has not joined the new place, the respondents issued charge memo.

4. The contention of the petitioner is that the respondents conducted the enquiry without mentioning under which law and procedure it was conducted. However, the respondents conducted the enquiry without replying to the petitioner's contention. The petitioner did not get a chance to file his defence statement, since the requisite rules under which the enquiry was conducted was not served to the petitioner. Therefore, the petitioner submitted that the enquiry is conducted violating the principles of natural justice. Thereafter, the petitioner approached the respondents to pay TA / DA for attending enquiry. The advance of Rs.2,000/- was paid and was not even sufficient to meet the train fare. The petitioner requested the Enquiry Officer through email to supply the statement of written proof filed by the management for preparing written relief on the side of the petitioner. Finally, the petitioner submitted his written explanation. The respondents held that the charges are proved. Thereafter, the petitioner was imposed with a punishment of dismissal from service.

5.The respondents submitted that it is an organization for research development and having branch all over India. The second respondent is a known private organization and it is not receiving income from any business and the respondent is not a Central Government undertaking of Central Government. The respondent



organization is Society registered under Societies Registration Act, 1860 at Delhi. Thus, the work of the respondents is a "service" in nature without profit motive. The petitioner was working at Karnool as Technical Officer. He was transferred to Varanasi from Karnool by an order, dated 17.08.2009. The said order was issued by the Head Office situated at Nasik. The petitioner did not join at the transferred place, in spite of adequate opportunities. Therefore, a charge memo was issued to initiate disciplinary action. After enquiry, on 21.07.2010, the petitioner was dismissed from service. The contention of the respondents that the petitioner was working at Karnool and he was transferred to Varanasi and the Head Office situated at Nasik and the Head Office has initiated disciplinary proceedings and therefore, no cause of action arose either in Trichy or at Dindigul. However, the Conciliation Officer without considering the jurisdictional issue has conducted the conciliation proceedings and has issued failed report and the failed report was challenged and the claim is that the petition filed under Section 2 A of Industrial Disputes Act is without jurisdiction. A charge memo was issued by the Director of the respondent. The petitioner was served with all the documents and then, the domestic enquiry was fixed at Nasik. Without attending the domestic enquiry, the petitioner submitted a petition, questioning the appointment of the Enquiry Officer his authority to conduct domestic enquiry and pleaded that the enquiry is to be conducted either at Dindigul or Karnool. The claim of the petitioner was rejected by an order, dated 26.11.2009 and directed to attend the enquiry fixed on 26.12.2009. Then also, the petitioner failed to attend the enquiry, in spite of granting TA/DA as per rules. At his request Rs.5,000/- was deposited in the Savings Bank account towards TA and DA and the petitioner submitted a letter that he is intended to attend the enquiry on 30.01.2010 and expressed his inability to attend the enquiry without the ticket AC fare Rs.1,245/- for one seat which do not cover lodging and rooming charges. Since the petitioner repeatedly claim several amount or documents but the petitioner did not attend the enquiry and defend the case therefore, the respondents continued the domestic enquiry and concluded the same exparte.

6.The Enquiry Officer submitted his findings, dated 16.04.2010 and held the charges are proved. A second show cause notice, dated 17.05.2010, was issued directing the petitioner to submit an explanation for imposing a punishment of termination from service. The petitioner has not submitted any explanation. Thereafter, the respondents after considering the entire issue based on the records, the dismissal from service punishment was imposed on the petitioner, vide order, dated 21.07.2010. Since the misconduct of the petitioner is grave and the punishment of dismissal from service is proportionate to his charges and therefore, there is no illegality in the punishment. During the enquiry, the petitioner has examined himself as witness and marked exhibits 1 to 32. The respondents have not let in any oral evidence but marked exhibits M1



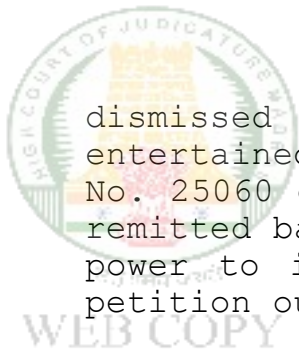
to M49. After enquiry, this Court has passed an order on merits, dismissing the industrial dispute on the ground that the Labour Court has no jurisdiction to decide the issue. The petitioner challenged the order in W.P.(MD)No.3222 of 2018 and this Court set aside the order and remitted the matter to the Labour Court to decide the case afresh after providing opportunities to either sides. The petitioner filed a Writ Appeal in W.A.(MD)No.1052 of 2018, challenging the order passed in W.P.(MD)No.3222 of 2018. This Court both in Writ Petition and Writ Appeal has held since the Branch Office of the management was at Dindigul when the dispute was originally raised so, the Labour Court has jurisdiction at Dindigul. Thereafter, the Labour Court has framed 8 points for consideration. After elaborately considering the same, the Industrial Dispute was dismissed and the parties were directed to bear the cost.

7. When the I.D.No.100 of 2010 was pending and the interlocutory application was filed in I.A.No.4 of 2015, seeking an interim award by directing the respondents to pay full salary with notional increase. The said application was dismissed, vide order, dated 28.07.2015. Aggrieved over the same, the present Writ Petition is filed. Pending this Writ Petition, the main I.D.No.100 of 2010 was taken up for hearing and the same was dismissed on 22.10.2018.

8. Heard Mr.P.Murugesan, the party in person and Mr.V.O.S.Kalaiselvam, the learned Counsel appearing for the second respondent.

9. It is seen that the order dated 22.10.2018 of the Labour Court was challenged in W.P. (MD) No. 25060 of 2018 and the same was allowed on the ground that the Labour Court has not considered the question of jurisdiction whether the Director has power to initiated disciplinary proceedings. Aggrieved over, the employer had preferred review application in Rev. Aplc. (MD) No. 5 / 2020 and the same was dismissed on 03.09.2020. Then the respondents had preferred writ appeal in W.A. (MD) No. 1215 / 2020. The writ petitioner preferred Cont.Pet.(MD) No. 144 / 2020. Both the writ appeal and the contempt were taken up for hearing. The writ appeal was partly allowed vide order dated 01.04.2021 directed the Labour Court to decide the issue whether the Director has power to initiated disciplinary proceedings and the contempt petition is closed.

10. It is seen from records when the ID No. 100 / 2010 was pending, the petitioner had filed an interlocutory application in I.A. No. 4 / 2015 and IA was taken up for hearing and the same was dismissed on 28.07.2015. Aggrieved over the same the petitioner had preferred the present writ petition in W.P.(MD) No.15993 / 2015 and aggrieved over the writ petitioner had preferred the present writ petition in W.P.(MD) No. 15993 / 2015. Since the ID No. 100 / 2018 was dismissed vide order 22.10.2018, the respondents had taken a



dismissed on 22.10.2018 and the present petition cannot be entertained. However the ID was challenged separately in W.P. (MD) No. 25060 of 2018 and then in W.A. (MD) No. 1215 / 2020 and the was remitted back to the Labour Court to decide whether the Director has power to initiated disciplinary proceedings. Now the present writ petition ought to be decided in the aforesaid facts.

11. In the present case the petitioner had challenged the order passed in I.A. and in the I.A. the petitioner had claimed interim award by directing the respondents to pay full salary with notional increase and pay the same. Since the Writ Petition was pending from the year 2015 onwards, this Court in order to resolve the issue between the petitioner and the respondent an interim order, dated 02.12.2021, was passed directing the respondents to pay Rs.2,000/- so that the petitioner would be given a chance to join the transferred post at Varanasi. When the DD was issued, the petitioner refused to take the same. Therefore, this Court again attempted and directed the respondents to pay Rs.2,000/- in cash before this Court and the learned Counsel appearing for the respondents paid Rs.2,000/- in open Court to the petitioner and the petitioner received the same. This Court directed the petitioner to join the duty at Varanasi within one week and send a Fax to Registrar and thereafter the case shall be posted for reporting compliance on 16.12.2021. The case was posted on 20.12.2012.

12.The contention of the petitioner that he booked his ticket from Dindigul and went to Varanasi and reported at the evening at 05:30 PM before the Office. Since the person in-charge of the Office was not available, the petitioner could not join. The respondents contended that if the petitioner is really interested in joining the Office, he ought to have reported in the morning. However, he has reached Varanasi in the evening and he did not present in person but he called up over phone, the Manager of that Branch. Since the Manager was not available at that point of time, he was directed to come the next day morning but the petitioner did not turn up in the next day morning. This attitude is not appreciable for several reasons. If the petitioner is really intended to join the service he ought to have reported in the morning. The petitioner ought to have been present in person and ought not to have called the officials over phone. If the officials are not available on that day at evening hours, the petitioner ought to have waited for next morning and be present physically for reporting. The petitioner failed to do so.

13.Therefore, this Court is of the considered opinion that the petitioner is not at all interested in taking up the job in the transferred post.

14.The next contention raised by the respondents is that the petitioner has not reached Varanasi at all. The tickets that are



not showing Varanasi at all. When this Court directed the petitioner and respondents to prove whether the ticket that has been produced is true or not, both the petitioner and the respondents produced certain documents. From that it could not be conclusively proved whether it is true that the petitioner has reached Varanasi or not. But as per the petitioner's statement, he has reached Varanasi but he has called up over phone. The petitioner himself admit that he was not present in person before the official but called up over phone. This creates some doubt whether the petitioner has reached Varanasi or not. This offer was taken by granting some equity to the petitioner but the petitioner was not interested availing the opportunity.

15. The interlocutory application I.A.No.4 of 2015 was dismissed and the main petition I.D.No.100 was dismissed on 22.10.2018. Now the I.D.No.100 of 2015 was remitted back to the Labour Court to decide whether the Director has power to initiate disciplinary proceedings and as far as other issues are concerned the Labour Court order was confirmed. Moreover, this Court has held that the petitioner is not interest in joining the service at Varanasi and in such circumstances the petitioner is not entitled to full salary with notional increase. Moreover, the petitioner was not suspended, the respondents were inclined to grant job at Varanasi but the petitioner is not inclined to join, in such circumstances the petitioner is not entitled to any interim award of full salary with notional increase.

16.Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

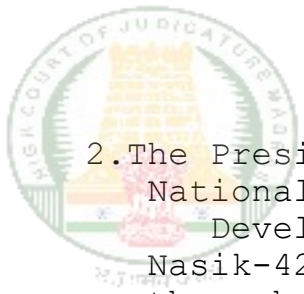
Note:

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

1.The Presiding Officer,
Labour Court, Tiruchirapalli.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The President,
National Horticulture Research &
Development Foundation (NHRDF),
Nasik-422 201
through Dr.Suresh Digade,
Deputy Director/representative to 2nd
respondent Society (NHRDF),
Who is presently having his office at
5/5B1B Shakthi Vinayakar Nagar,
Vellalore, Coimbatore- 641 111.

+2 CC to M/s.P.MURUGESAN, Advocate (SR-16248[F] dated 04/04/2022)

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-16281[F] dated
04/04/2022)

W.P. (MD) No.15993 of 2015
04.04.2022

RK(08/04/2022) 7P 6C