



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2022

PRONOUNCED ON :14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1787 of 2015

and

W.M.P.(MD).Nos.5364 and 6700 of 2017

and

M.P.(MD).No.1 of 2015

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The Secretary,
Trichy North Sarvodaya Sangam,
No.21, Old Nos.8 and 9,
Pidari Kovil Street,
Trichy-2.

... Petitioner

-Vs-

1.The Presiding Officer,
Labour Court,
Trichy.

2.N.Arumugam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in I.D.No.189 of 2004, dated 28.11.2014, quash the same.

For Petitioner	: Mrs.J.Anandhavalli
For R1	: Labour Court
For R2	: Mr.N.Bala Krishnan

ORDER

This Writ Petition is filed to quash the impugned order passed by the first respondent in I.D.No.189 of 2004, dated 28.11.2014.

2. This petition is filed by the Secretary, Trichy North Sarvodaya Sangam. The second respondent herein raised an Industrial Dispute in I.D.No.189 of 2004 before the first respondent challenging the order of dismissal dated 30.06.2004 passed by the petitioner's Sangam.

3. The brief facts of the case are that the second respondent was working as an Assistant in the petitioner's sangam from October 1983 and because of illness, he was on leave from May 2003. The second respondent had approached the then Secretary of the petitioner's Sangam on 03.07.2003 with Medical Certificate and was informed that while the second respondent was in service, there is a shortage of Rs.19,000/- found in audit and for that, he was



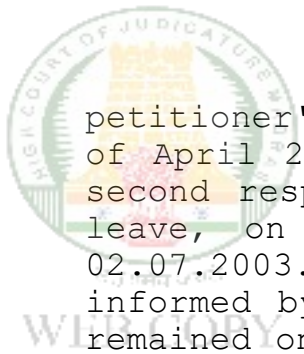
suspended from service and the petitioner's sangam had directed the second respondent to pay the amount and thereafter, his request for employment will be considered. Even after payment, the second respondent was not given employment and the subsistence allowance was also not granted. The further contention of the second respondent is that without giving due opportunity, the domestic enquiry was conducted against the second respondent on 27.05.2004 and based on the enquiry report, the second respondent was suspended from service on 30.06.2004. After the failure of conciliation proceedings, an Industrial Dispute was raised before the Labour Court by the second respondent.

5.The petitioner's sangam filed a detailed counter alleging that the second respondent has not obtained any permission for taking leave and has not approached for sanction of leave on medical grounds with the Medical Certificate. However, in the meantime, for the allegation of misappropriation of a sum of Rs.19,000/- and other misconducts, the second respondent was issued with a charge memo and he was dismissed from service.

6. Apart from the above pleadings, the second respondent filed a rejoinder and the petitioner's sangam also filed an additional counter. Considering the pleadings by the rival parties, the first respondent has passed an impugned order by setting aside the order of dismissal dated 30.06.2004. Since the second respondent attained the age of superannuation, the petitioner's sangam was directed to grant all monetary benefits and service benefits to the second respondent. Aggrieved over by the order of the first respondent, the petitioner herein has preferred this writ petition.

7. The contention of the petitioner is that the second respondent has admitted his alleged misappropriation of the amount of Rs.19,000/- and thereby, repaid the said amount in July 2003. The second respondent has not alleged any procedural irregularities in the domestic enquiry. The Labour Court has gone beyond the pleadings of the second respondent and ought not to have granted the relief. Since there is no pleading by the second respondent regarding the charges and its merits, it is not necessary for the petitioner's sangam to prove the same before the first respondent. The finding of the first respondent that the second respondent has not misappropriated the sum of Rs.19,000/- is erroneous and against the records. The contention of the second respondent that the finding of the first respondent that there is no proof that there was loss to the petitioner's sangam and thereafter, the punishment imposed on the second respondent that too, major punishment is illegal is perverse.

8.The second respondent has filed a counter stating that the second respondent was employed as Assistant from October 1983 services rendered during his services/ last drawn wages was Rs.4442-80 per month. The



petitioner's sangam transferred the second respondent in the month of April 2003 to the Godown of the petitioner's sangam. When the second respondent was working as an Assistant, he went on medical leave, on account of his illness during the month of May upto 02.07.2003. During his leave period, the second respondent was not informed by the petitioner's sangam that the second respondent had remained on unauthorized absence and he was neither asked to report for duties forthwith, nor the petitioner's sangam denied any leave. Therefore, the second respondent met the then Secretary of the petitioner's sangam on 03.07.2003 along with the Medical Fitness Certificate for joining duty. The second respondent was informed that he was suspended from service for the alleged stock deficit valued at Rs.19,000/- in the OFT Branch.

9.The contention of the second respondent is that the audit inspection was not held in his presence and he was not aware the truth of the alleged stock deficit. The second respondent contended that it was alleged through a letter dated 19.06.2003 of the petitioner's sangam that there was a stock deficit to the tune of Rs.12,000/- said to be found out in the same audit inspection. But, later it was orally informed that there is a stock deficit of Rs.19,000/- and the second respondent was denied employment and compelled to pay the deficit amount. The second respondent without any other alternative way and in order to continue his employment believing the representations of the then Secretary, remitted Rs.7,000/- on 26.07.2003 and Rs.12,000/- on 22.10.2003, for which receipts were issued, which are marked as Ex.W3 and Ex.W4. In fact, in the case of stock deficits, the usual practice is to adjust the deficit amount against the salary in instalments.

10. The further contention of the second respondent is that despite his remittance as directed by the then Secretary, the second respondent was not allowed to join duty as promised and he was kept under illegal suspension, without initiating any disciplinary action, nor issuing any written order. The petitioner's sangam has not paid any subsistence allowance despite several requests. On 02.05.2003, a notice was issued as against the second respondent calling for explanation and a show cause notice dated 14.05.2003 was also issued against the delinquent. The enquiry alleged to be held on 27.05.2004 cannot be considered as enquiry at all. The petitioner's sangam had not at all produced any evidence at any point of time to show that any enquiry as alleged was held. The arbitrary actions of the enquiry officer has been termed as an "enquiry". The letters dated 28.05.2003, 05.06.2003 and 24.07.2003 were not at all related to the alleged letter dated 02.05.2003.

11.It is the further case of the second respondent is that there is no evidence at all for the allegation of any misconduct or misappropriation. The specific contention of the second respondent is that there was no admission of any misconduct or misappropriation at any time. The defects pointed out in the letter dated



02.05.2003 cannot be termed as misconduct, at the most, can be termed as errors. Therefore, the second respondent prayed to dismiss the writ petition and to grant monetary benefits to the second respondent.

12. Heard Mrs. J. Anandhavalli, the learned counsel appearing for the petitioner and Mr. N. Balakrishnan, the learned counsel appearing for the second respondent respectively and perused the records.

13. It is seen from the records that the second respondent was on Medical Leave from May 2003 to 02.07.2003. Thereafter the second respondent had applied for Medical Leave along with Medical Certificate and he obtained Fitness Certificate on 03.07.2003 and sought permission to join the service. At that point of time, the second respondent was informed that he was suspended from service for the alleged stock deficit value of Rs.19,000/- and the second respondent has repaid the alleged stock deficit amount in July 2003. However the petitioner sangam has initiated disciplinary proceedings for alleged stock deficit as if it is misappropriation.

14. The plea of the petitioner is that the second respondent, having admitted the charges laid against him and has paid the amount and this would indicate that the charges are proved. However the claim of the second respondent is that there was a stock deficit but the same cannot be stated as misappropriation. Since the entries were not entered into the registers, there are some mistakes in reconciliation of accounts, hence there was stock deficit. The second respondent has also stated in the explanation letter to pardon for the mistake and has given an undertaking that he will not commit the same mistake.

15. It is seen that the Labour Court has rendered a finding that the management has not submitted any documents or witnesses to substantiate the alleged misappropriation charges and has taken the fact that the second respondent has paid the alleged misappropriation and has granted the relief. The second respondent has attained superannuation and the Labour Court has taken this fact into consideration and directed the petitioner to grant continuity of service and backwages and terminal and other benefits until the date of superannuation. The Labour Court ought to have imposed some punishment for the charge stock deficit. Hence the petitioner is directed to impose a punishment of recovery of additional amount of Rs. Rs.19,000/-. The said amount shall be recovered from the terminal benefits of the second respondent. However the award of Labour Court to grant continuity of service, backwages and terminal and other benefits is confirmed. This order shall be implement within a period of eight (8) weeks from the date of receipt of a copy of this order.



16. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/06/2022

Sub Assistant Registrar(CS)

vsg

To:

The Presiding Officer,
Labour Court,
Trichy.

+1 CC to M/s.J. ANANDHAVALLI, Advocate (SR-25539[F] dated
14/06/2022)

+1 CC to M/s.N. BALAKRISHNAN, Advocate (SR-26100[F] dated
16/06/2022)

W.P. (MD) No.1787 of 2015 and
W.M.P. (MD) .Nos.5364 and 6700 of 2017 and
M.P. (MD) .No.1 of 2015
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