



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2022

CORAM

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

W.P. (MD)No.19652 of 2017

and

W.M.P. (MD)Nos.15929 and 18070 of 2017

WEB COPY

The Management,
A.387 Kodaikanal Co-operative Stores,
Kodaikanal.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, District Court Buildings,
Tiruchirappalli.

2.A.Kannan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award of the Labour Court, Trichy, passed in I.D.98 of 2000, dated 23.12.2016 and to quash the same.

For Petitioner : Mr.S.Arivalagan

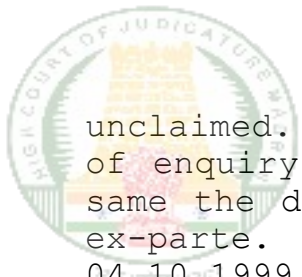
For R1 : Labour Court

For R2 : Mr.J.Thomas Raja Durai

O R D E R

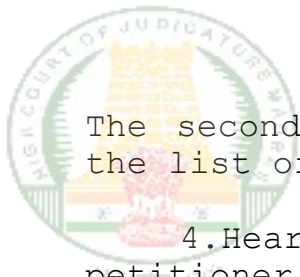
This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the award of the Labour Court, Trichy, passed in I.D.98 of 2000, dated 23.12.2016 and to quash the same.

2. The second respondent joined as Salesman on 12.05.1977 in the Cloth section of the Fair Price Shop. On 22.04.1999, he was placed under suspension and on 08.05.1999 a charge memo, was issued to him but failed to submit any explanation, but sought permission to peruse the documents. The second respondent was directed to peruse the documents before the Enquiry Officer in the domestic enquiry. The enquiry was fixed on 11.06.1999 and adjourned to 19.06.1999, at the instance of the second respondent. On 19.06.1999, the second respondent submitted a petition before the Enquiry Officer and sought acknowledgment for the receipt of the petition. When the Enquiry Officer admitted to mark the petition in the enquiry, the second respondent refused and walked out of the enquiry without signing in the enquiry proceedings. Thereafter, the petitioner did not attend the enquiry at all. Subsequent enquiry notice was served to the petitioner but, that was returned as



unclaimed. Then the enquiry was adjourned to 29.06.1999 and the date of enquiry was intimated through paper publication. In spite of the same the delinquent did not appear and hence, the enquiry was held ex-parte. The Enquiry Officer submitted his findings, dated 04.10.1999, wherein, the charges were held proved. The show cause notice, dated 30.10.1999 was issued to submit explanation for the proposed punishment of dismissal from service and a personal hearing was granted on 27.10.1999 to the delinquent. The delinquent submitted explanation to this notice and thereafter, based on the records and statements, the delinquent was dismissed from service, vide impugned punishment order, dated 30.10.1999. The allegation against the petitioner is that he has made wrong entries or increased value of the clothes in order to suppress the deficit caused by him and the deficit was found to the tune of Rs.2,11,482.15/-. Aggrieved over the dismissal order, the second respondent preferred the petition before the Labour Court. The Labour Court has set aside the award of punishment and directed the employer to grant continuity of service, backwages and other benefits to the second respondent. Aggrieved over the order of the Labour Court, the Co-operative Stores has filed this Writ Petition.

3.The second respondent has filed a counter affidavit stating that he was working as Salesman. On the day of fire accident, the petitioner left the premises on 07:00 P.M. as usual, which is evident from the endorsement made in the Register. It is stated that the fire accident took place at 08:00 P.M, at night. A time gap of one hour is huge gap, where unaccepted instances can occur. The enquiry is silent about the other persons who were present at the premises and who was in-charge of the place and maintains the Register in normal course. Based on these false allegations, the criminal case was also registered against the second respondent. The second respondent preferred a criminal complaint against the petitioner management for threatening the second respondent and his father-in-law and obtained some blank papers for foisting some false allegations against the petitioner. The second respondent has submitted that to avoid loss due to sale in reduced price, the petitioner used to change the numbers and included the same in the new rate and the same is sold with a profit of 30% from the purchased rate. This practice is followed by the petitioner for many years. During 1997, audit the then Audit Officer has raised objection and had advised the petitioner that the above practice is wrong. Even then, the above practice is being followed by the petitioner. Further the petitioner has also appointed a person to estimate stock of the petitioner and to maintain the stock, which is done periodically more specifically by the end of March and September, every account is maintained and supervised by the Manager, Deputy Secretary and Secretary. The present Writ Petition is liable to be dismissed for non-joinder of necessary parties. According to the second respondent, the Manager, the Secretary and the Deputy Secretary are the necessary parties in the Writ Petition.



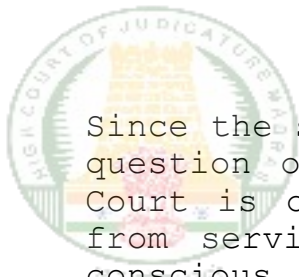
The second respondent has also filed written arguments along with the list of dates and events.

4. Heard Mr. S. Arivalagan, learned Counsel appearing for the petitioner and Mr. J. Thomas Raja Durai, learned Counsel appearing for the second respondent.

5. The contention of the petitioner is that the second respondent is the appropriate person to manage the cloth section. The petitioner is a Co-operative Store. Even though the second respondent is a Salesperson, he was assigned with a duty of affixing the rate in the products. The allegation against the petitioner is that he has affixed the higher rate in order to adjust the deficit occurred due to loss. According to the second respondent, this practice is carried out for a very long time and there was an audit objection as early as in the year 1997. The contention of the second respondent is that he is only a Salesman and he did not fix any rate, the person managing the stock in the Godown was assigned with the work and the products would reach the sales division along with the rate affixed in the products. He being a Salesman, he only carrying on the sales of the stocks. Therefore, the entire allegation against the second respondent is absolutely false. The contention of the employer is that it was found that the petitioner committed the offence and immediately after one hour, the stocks were engulfed by fire. But it is not the allegation against the second respondent by the petitioner that the second respondent caused the fire. The only allegation against the 2nd respondent, in the words of the writ petitioner, is that

"immediately after the fire accident, the stocks are verified in the presence of the 2nd respondent and the actual values of the cloth in the records also verified and found out that the 2nd respondent changed the code number of higher value in the cloths of lower value and thereby suppressed the deficit in the audit"

6. On perusing the allegation it is seen that the 2nd respondent has affixed the code number of higher value in the cloths of lower value, but the contention of the 2nd respondent is that this was the practice that is being followed for long time and there was an audit objection for such practice in 1997. The allegation of the petitioner is that the second respondent has affixed the rates. But the contention of the second respondent is that he being a salesman, the rates are already affixed in the stocks in the godown itself and that he only carrying on sales activities only and the allegation that the petitioner is affixing rates in the stocks is vehemently refused by the second respondent. Therefore, this Court is of the considered opinion that the allegation against the second respondent is more of suspicious one and not with any evidence or proof. The second respondent has attained superannuation and he is more than 60 years old. The Labour Court has granted an award for reinstatement.



Since the second respondent has attained superannuation, there is no question of reinstatement. On perusal of the entire records, this Court is of the considered opinion that the punishment of removal from service is on the higher side and the same is hitting the conscious of this Court. Therefore, to meet the ends of justice this Court is inclined to modify the punishment as stoppage of increment for 2 years without cumulative effect. The petitioner is directed to implement this punishment and thereafter, disburse the terminal benefits to the second respondent. The second respondent is given continuity of service without back wages. The said exercise shall be completed within a period of eight weeks from the date of receipt of the copy of the order.

7. With this direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-ii)

// 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, District Court Buildings,
Tiruchirappalli.

2. The Management,
A.387 Kodaikanal Co-operative Stores, Kodaikanal.

+1 CC to M/s.S.ARIVALAGAN, Advocate (SR-12741[F] dated 17/03/2022)
+1 CC to M/s.J.THOMAS RAJA DURAI, Advocate (SR-12590[F] dated
16/03/2022)

W.P. (MD) No.19652 of 2017
16.03.2022

NSN(CO)

TR(31.03.2022) 4P 5C