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W.A.No.9 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
and

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.A.No.9 of 2021
and
C.M.P.No.153 of 2021

The Management,
Salem District Consumer,
Co-operative Wholesale Stores,
Rep by its Joint Registrar / Managing Director,
Seetharaman Road,
Salem.

... Appellant

Versus

1.The Presiding Officer,
Labour Court,
Salem.

2.G.Ramamoorthy

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order passed in W.P.No.17372 of 2010 dated 28.08.2019 on the file of this Court and also the Award in I.D.No.249 of 2005 dated 24.09.2009 on the file of the 1st respondent.

For Appellant : Mr.M.S.Palaniswamy



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For Respondent : K.Elango
for I.Arokiasamy

J U D G M E N T

S. VAIDYANATHAN.J.

AND

R. KALAIMATHI,J.

The present writ appeal has been filed challenging the order of the learned Single Judge dated 28.08.2019 in W.P. No. 17372 of 2010 confirming the award of the Labour Court dated 24.09.2009 passed in I.D. No. 249 of 2005.

2. The workman/2nd respondent in this appeal had joined the service of the appellant Co-operative Wholesale Stores as Salesman in the year 1984. While working as a Salesman in Ponni Co-operative Super Market,alleging stock deficit to the tune of Rs.31,144.09 and that the 2nd respondent absented himself without prior permission from the Management, charge memo was issued and a detailed enquiry was conducted by Management.Based on the



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report of the Enquiry Officer, the 2nd respondent/employee was dismissed from service vide order dated 20.04.1991. An industrial dispute was raised by the employee before the Labour Officer, Salem and on failure of conciliation, the dispute was taken on file in I.D. No. 249 of 2005 by the Labour Court, Salem. The Labour Court held that the domestic enquiry conducted by the Management was fair and proper and by exercising powers under Section 11A of Industrial Disputes Act, 1947 (hereinafter 'I.D.Act' for short), the Labour Court, by award dated 24.09.2009, set aside the order of dismissal and directed reinstatement of the employee without backwages and continuity of service. The said award was confirmed by the learned Single Judge in the writ petition filed by the Management. Hence, the present writ appeal, at the instance of the Management.

3. The main contention of the appellant Management was that the 2nd respondent/employee had committed misappropriation to the extent of Rs.32,000/- apart from absenting himself from duty without prior permission. In the enquiry conducted by the Management, the charges levelled against the employee have been held proved and the domestic enquiry has also been held to be fair and proper by the Labour Court.



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Further, the employee had raised the industrial dispute only in the year 2005 and there was delay, which does not warrant the Labour Court to interfere with the punishment imposed and the Labour Court should have rejected the dispute on the ground of laches. When the employee had raised the industrial dispute after a period of 14 years, no relief ought to have been granted by the Labour Court and the learned Single Judge should have interfered with the award on that score alone, apart from the fact that the employee had misappropriated the amount. Learned counsel for the appellant also referred to the judgment dated 22.10.2021 of this Court in W.A. No. 194 of 2020 ***[The Special Officer, ZC.99, Manakkudi Primary Agricultural Co-operative Credit Society V. The Joint Registrar of Co-operative Societies and another]*** in support of his contention.

4. On the other hand, learned counsel for the 2nd respondent/workman would submit that this is not a case of misappropriation and that there was shortfall in the stock and the factum of deficit was proved before the Labour Court. However, the Labour Court, by exercising powers under Section 11A of I.D. Act, finding that the punishment imposed was exceedingly disproportionate to the gravity of the charges proved, had interfered with the punishment imposed and directed reinstatement without backwages and



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continuity of service. Further, the learned counsel would contend that the past record of the 2nd respondent was also not bad and though there was delay in raising the industrial dispute, the Labour Court has, in its entirety, deprived backwages and that it is sufficient punishment, which does not require interference by this Court, more so, when learned Single Judge has confirmed the award of the Labour Court based on the finding of fact rendered by the Labour Court.

5. Heard both parties.

6. The undisputed facts are that the 2nd respondent/employee joined the service of the appellant/Management in the year 1984, that on account of deficit in stock to the tune of Rs.31,144.09 and unauthorised absence, charge memo was issued and based on enquiry conducted, he was dismissed from service by order dated 20.04.1991. Similarly, the domestic enquiry held was fair and proper is also not in dispute, apart from the fact that there was a delay of 14 years in raising the industrial dispute. It is no doubt true that the Hon'ble Apex Court has held in case of delay, no relief shall be granted. Though the Management would have documents to establish the charges or prove they have a meritorious case in their favour and even if an application is filed for production of documents, when the dispute has been raised



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belatedly, there is no necessity on the part of the employer to produce documents or there is no need for the employer to retain the records for a long period of time. In this case, in the industrial dispute raised by the employee, the employer has produced documents to establish that the enquiry was conducted in a fair and proper manner. Though the charges have been proved in the domestic enquiry, we are not inclined to agree with the contention of the Management as the charge against the employee was one of deficit in stock and not with regard to misappropriation. The learned counsel has addressed arguments that when there is deficit in stock, it would mean misappropriation and when the employee has misappropriated the amount, the Labour Court ought not to have granted the relief.

7. We cannot agree with such submission. The charge is very specific and it is with regard to deficit in stock and not with regard to misappropriation. The reliance placed by the learned counsel for the appellant, on the decision in W.A. N0.194 of 2020 may not be applicable to the facts of this case. Apart from other charges, in that case, the employee had kept 250gms magnetic stone and when issuing civil supplies in each one kilo commodities, 250gms less commodities were issued and thereby the



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employee committed fraud and when the flying squad, on inspection found him guilty, the employee had misbehaved with them. Hence, the decision referred to by the Management may not be applicable to the facts of this case, in the light of the judgment of the Hon'ble Apex Court in ***Padma Sundar Rao (Dead) and Others V. State of T.N. and others reported in (2002) 3 SCC 533*** wherein at paragraph No.8, it has been held as follows:

“ Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

8. Moreover, the Labour Court has categorically rendered a finding that there was shortage of goods and that the charge of misappropriation was not proved and the relevant paragraph of the award



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while interfering with the punishment on the proportionality is extracted below:

“8. Now, coming on to the porportionality of the punishment imposed upon the petitioner accused it is seen that the petitioner is aged above 43 years. There was no bad antecedents against the petitioner. The petitioner has caused deficit in the stock which were handedover to him. There is no direct evidence to show that he misappropriated any amount by selling the stock to others. According to the petitioner, he could not report duty because he was not feeling well. So, in this circumstances, the imposing of punishment of economic death by terminating the service of the petitioner is so harsh and disproportionate. But considering the misconduct of making deficit in the stock on the part of the petitioner, this Court is of the considered view that by exercising the discretion vested U/s.11-A of the I.D. Act, lesser punishment of reinstatement in service without backwages and continuity of service may be imposed upon the petitioner for the proved misconduct on his part. The petitioner is entitled to the relief as above. Points are answered accordingly.”

The employee's past record is also clean. He has served the establishment of the employer for nearly 7 years including the period of suspension.

9. Though we are not inclined to accept the contention of the management insofar as the merits of the matter is concerned, however, we find much substance in the argument insofar as the delay aspect is concerned.



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The Hon'ble Apex Court while dealing with the delay in raising a dispute has summarised the legal position in paragraphs 42 to 44 in the case of ***Prabhakar Vs. Joint Director, Sericulture Department and another*** reported in ***(2015) 15 SCC 1***, wherein it has been held as follows:

“42. On the basis of the aforesaid discussion, we summarise the legal position as under:

42.1. An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2-A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that "any industrial dispute exists or is apprehended". The words "industrial dispute exists" are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.

42.2. Dispute or difference arises when one party makes a demand and the other party rejects the same. It is held by this Court in a number of cases that before raising the industrial dispute making



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of demand is a necessary precondition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exists.

42.3. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

42.4. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the



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Management and acquiesced into the said rejection.

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42.5. Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an "existing dispute". In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

43. We may hasten to clarify that in those cases where the court finds that dispute still existed, though raised belatedly, it is always permissible for the court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters.

44. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the ID Act, yet it is for the "appropriate Government" to consider whether it is expedient or not to make the reference. The words "at any time" used in Section 10(1) do not admit of any limitation in making an



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order of reference and laws of limitation are not applicable to proceedings under the ID Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry."

In Paragraph 43, the Apex Court has held that, if the dispute still existed, though raised belatedly, the Court shall take into account the aspect of delay into consideration and mould the relief. But in the present case on hand, the employee has not given any satisfactory explanation. He was dismissed from service on 20.04.1991 and industrial dispute has been raised only in the year 2005 and could be seen from paragraph 9 of the claim statement of the employee, wherein conciliation failure report has been given Reference No.Na.Ka.1050 of 2005 and submitted on 12.09.2005. It is not as if the dispute was raised immediately and failure report was given belatedly.

For the sake of convenience a chart is given below.

<i>Date of Joining</i>	<i>Suspension</i>	<i>Date of Dismissal</i>	<i>Conciliation Failure Report</i>
1984	13.10.1989	20.04.1991	12.09.2005



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From the above list of events, it is very clear that there was a delay of 14 years, which has not been explained properly. However, the punishment imposed on the employee with regard to the deficit of stock is disproportionate, more so, when the charge of misappropriation has not been established and proved before the Labour Court.

10. During the pendency of the writ petition, the employee had the benefit of Rs.250/- per month as wages under Section 17-B of the Industrial Dispute Act, 1947. According to the workman his last drawn pay is Rs.800/- per month and that the employer has paid lesser amount as monthly wages. We are not going into the actual wages that the workman was drawing on the date of dismissal.

11. Though we find much force in the argument of the Management that there is a delay in raising the dispute, in the present case on hand, the Management had produced documents in support of establishing its case. If it is a case of misappropriation, definitely, we would have rejected the claim of the Workman in its entirety and in that event, by accepting the case of the Management, it would lead to a finding that the Workman has committed



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misappropriation. The Workman has not committed any misappropriation, which is evident from the finding of the Labour Court and there was only a shortage of stock. He had rendered seven years of unblemished services and his past record was also good. When the misappropriation charges have not been proved, the punishment imposed by the employer is shockingly disproportionate. Of course, there is a delay in raising the dispute. Taking note of the totality of the circumstances, for the actual services rendered by the Workman for the period of 7 years, we are inclined to order compensation of Rs.2 lakhs inclusive of gratuity in lieu of reinstatement and other benefits, which will be a full and final settlement of all the claims due to him.

12. Though the employee is going to retire on attaining the age of superannuation on 31.07.2023, in terms of the award of the Labour Court as confirmed by the learned Single Judge, the employee has got to be put back in service and he will be attaining the age of superannuation on 31.07.2023. Taking note of the delay aspect, instead of putting him back into service, more so, when he has been left with only five months service, as stated above, we mould the relief to one of compensation of Rs.2 lakhs inclusive of



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gratuity, which will be full and final settlement and the same shall be paid to the employee/second respondent within a period of three months from the date of receipt of a copy of this order.

13. With the above observations and directions, the Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N., J) (R.K.M., J)
23.02.2023

Index :Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
nv/rsi

To

The Presiding Officer,
Labour Court,
Salem.



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and
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