



W.P.No.17466 OF 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
09.11.2023

PRONOUNCED ON
27.11. 2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.17466 of 2011
and M.P.No.1 of 2011

M.Pushparaj

... Petitioner

Vs

1.The Management of
Kancheepuram District Consumers
Co-operative Whole Sale Stores Ltd.,
No.93, Prakasam Salai,
Chennai – 600 018.

2.The Presiding Officer,
II Additional Labour Court,
Chennai-1.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in its award made in I.D.No.711/2011 dated 13.07.2009 quash the same and consequently direct the respondent to pay the petitioner's backwages, retiral and other attendant benefits to the petitioner and pass such further orders.



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For Petitioner : Mr.P.Solomon

For R1 : Mr.L.P.Shanmugasundaram

For R2 : Labour Court

ORDER

This Writ Petition had been filed by the workmen challenging the Award made in the Industrial Dispute upholding the order of punishment imposed by the 1st respondent.

2. Heard Mr.P.Solomon, learned counsel for the petitioner and Mr.L.P.Shanmugasundaram, learned counsel appearing for the 1st respondent.

3. The learned counsel for the petitioner would submit that the petitioner had joined in the services of the respondent on 09.09.1986 as a Salesman and had been continuously working as a Salesman without any blemish. However, the petitioner was suspended on 17.06.1997 by the proceedings of the 1st respondent while he was working at M.K.N.Road, Ration Shop-1, Alandur. Thereafter, on 30.08.1997, he had been issued with a charge memo as having caused deficit of Rs.8,087/- in controlled



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items and Rs.28,776/- on the uncontrolled items in the Ration shop. The said charge memo, according to the respondent had been issued as the petitioner had failed to pay the deficit stock amount that was found. He would submit that after the enquiry, the petitioner was terminated from service on 12.02.1999. He would contend that the order of termination, even though was passed on 12.02.1999, was to take effect from the date of his initial suspension which according to him is bad in law. He could be only terminated from the date of passing of the order and not from an earlier date.

4. He would vehemently contend that the deficit that had been caused at the Ration Shop was not in the behest of the petitioner. He would submit that it is not the case of the 1st respondent that the petitioner had misappropriated the products found in deficit nor it was the case of the respondent that he had sold the product and had not accounted the said money. He would submit that the products are all consumable products which are bound to have some deficit due to non maintenance or due to the rat menance. He would further submit that during the period of



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suspension, the petitioner had not been paid subsistence allowance and on that ground alone the entire disciplinary proceedings will have to be vitiated by the principles of natural justice and the disciplinary proceedings are liable to be interfered with.

5. He would further rely upon the settlement that had been arrived upon between the Management and the employees of the year 2001, wherein it was agreed between the parties to only deduct the deficit that has been found in the Shop from the salary of the concerned employee. Therefore, he would submit that the order of punishment was too harsh and it is always open to the 1st respondent to deduct the deficit amount found in the Shop in his control and deduct the same. Therefore, he would pray this Court to interfere with the order of punishment as confirmed by the Tribunal and direct reinstatement of the petitioner with all necessary attendant benefits and backwages. He would submit that the charges that has been framed against the petitioner are vague as the same did not in clear terms substantiate what were the products that were found in deficit.



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6. Mr.L.P.Shanmugasundaram, learned counsel for the 1st respondent would submit that the claim of the petitioner that he had not been paid subsistence allowance is wholly a false statement as during the cross-examination before the 2nd respondent, the petitioner had admitted that he had been paid the subsistence allowance and the Tribunal has taken note of such admission, to discard the argument of the petitioner that non payment of subsistence allowance itself would vitiate the proceedings and had answered against the petitioner. He would further submit that on finding of deficit products, the petitioner was called upon to pay the shortage amount. However, the petitioner had not paid the same nor as he challenged the same. He would submit that the details of the product of shortage had been intimated to him in those proceedings which had become final as against the petitioner.

7. He would further submit that even the payment of such deficit amount would not absolve the petitioner from being proceeded with disciplinary proceedings for not maintaining the products in a proper



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manner. He would submit that the petitioner had admitted the various other delinquencies like not receiving the products as contemplated as he has admitted that whenever the products has been delivered to his Shop he would not take any inventory of what is the quantity of the product that has been delivered. He would submit that such person cannot be allowed to continue in a public distribution system as his conduct was only be detrimental to the system which is being run only for the benefit of the public. He would further submit that it is not the case of the petitioner that he had not been given a fair and proper hearing. He would further submit that the settlement that has been relied upon by the petitioner cannot be applied to him as the settlement had come only in the year 2001 with prospective effect and cannot be applied to the case of the petitioner which relates back to the year 1995 to 1997 for which he was removed from service in the year 1999. He would submit that there is no illegality or infirmity in the order of dismissal passed by the 1st respondent and as having been confirmed by the 2nd respondent.

8. I have considered the rival submissions made by the learned



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counsels appearing for their respective parties and perused the materials available on record before this Court.

9. At the outset, the reliance placed upon by the learned counsel for the petitioner on a settlement that had come into effect from the year 2001 cannot be applied to the case of the petitioner as he had been removed from service much before his settlement that had been arrived at in the year 2001. Secondly, when the petitioner himself had admitted in the cross-examination that he had been paid the subsistence allowance which had also been extracted by the Tribunal in its order, I find there is no infirmity or illegality in the order of the Tribunal in holding that the petitioner had been paid the subsistence allowance and on that ground the disciplinary proceedings need not be interfered with. Further, it is an admitted case that the petitioner had already been issued with a show cause to pay the amount on the basis of deficit in the products in the Fair Price Shop in his control. The petitioner had not challenged the same nor has he paid the amount. When that be so, the petitioner cannot be heard to say that he had not committed any delinquencies for him to be proceeded



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against.

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10. In view of the aforesaid reasonings, I do not find any reason to interfere with the order of dismissal or the award passed by the 2nd respondent.

11. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.11.2023

gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

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2.The Presiding Officer,

8/11



II Additional Labour Court,
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K.KUMARESH BABU,J.

Gba

A Pre-delivery order made in
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