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W.P.No.1737



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.17373 of 2010
and M.P.No.1 of 2011

The Management,
Salem District Consumer,
Co-operative Wholesale stores,
Rep. by its Joint Registrar/Special Officer,
Seetharaman Road, Salem.

...Petitioner

VS.

1.The Presiding Officer,
Labour Court,
Salem.

2.R.Raman (deceased)

3.R.Vijayakumar

4.Navamani

5.Kanagambal

...Respondents

*(R3 to R5 substituted as LRs of deceased R2
as per order dated 12.09.2019 in M.P.No.1 of 2014
in W.P.No.17373 of 2010)*

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari to call for the records of the award passed in
I.D.No.419 of 2004 dated 02.11.2009 on the file of the 1st respondent quash the
same.



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For Petitioner : Mr.P.K.Shivakumar
for Mr.M.S.Palaniswamy

For Respondents : R1 – Labour Court
R2 – Deceased
R3 to R5 – served

ORDER

The Writ Petition has been filed challenging the award of the Labour Court wherein the Labour Court had set aside the order of dismissal and ordered reinstatement of the second respondent without back wages and continuity of service.

2.Heard Mr.P.K.Shivakumar, learned counsel appearing for Mr.M.S.Palanisamy, counsel on record for the petitioner. However, when the matter was taken up today, there was no representation on the side of the respondents either in person or through counsel.

3.The second respondent employee had died and his legal heirs had been substituted in his place by orders of this Court dated 12.09.2019. The Court notice sent to the third and fourth respondents have been returned with the endorsement "refused" and as regards to the fifth respondent, notice is yet to be delivered. But, however, the private notice sent by the petitioner had been served upon the impleaded respondents and proof of service had been filed enclosing the acknowledgement cards duly signed by the respective parties.



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4.Learned counsel for the petitioner would submit that the second respondent was employed as Packer in the petitioner's wholesale store on 21.12.1984. He was then posted as a Salesman in the petitioner's Society. He would submit that when the second respondent was in service, he had indulged himself in misconduct and it was found that there were certain shortages in the stocks of the petitioner's Society for which he was responsible and a charge memo was issued to him vide proceedings dated 20.04.1988. The second respondent had submitted his detailed explanation on 16.09.1988 as being not satisfied with the said explanation, an Enquiry Officer was appointed to enquire into the charges and the Enquiry Officer had also submitted his Report holding that the charges framed against the second respondent have been proved. The second respondent was further served with a show cause notice along with the copy of the Enquiry Officer Report and had been called upon the second respondent to give his explanation. The second respondent had submitted his explanation after having been not satisfied with the explanation given by the second respondent, the petitioner had passed an order of dismissal on 27.06.1989.

5.He would submit that the second respondent did not file any appeal against such order of dismissal but had initiated an industrial dispute challenging the order of dismissal in the year 2003 after more than 14 years of



the order of dismissal. The Tribunal had not given any finding but had held that the Disciplinary Proceedings conducted against the second respondent was fair.

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The second respondent also confined his arguments only regarding the correctness and findings of the Enquiry Officer and to the proportion of the punishment. The Tribunal had given a finding that the shortage /deficit of stock as founded by the Enquiry Officer during which period the second respondent was working is not based on record and is perverse and had also held that the second respondent had not voluntarily caused the above deficit in stock and had misappropriated the amount.

6.He would further submit that the aforesaid findings are totally perverse and contradicting each other. He would submit that the Tribunal had factually given a finding that the second respondent had caused a deficit in stock but there is no reason to hold that he had voluntarily caused the deficit in stock. Having given such a finding to come to a conclusion that there was no deficit in stock had not been proved based on record is again wholly contradictory. It has also recorded a finding of fact that the value of the deficit stock had been compensated by the second respondent by remitting various amounts towards such stock deficit which itself would conclude that the second respondent had caused loss to the Society. He would further submit that the Tribunal itself had held that there was a delay of nearly 14 years in raising an industrial dispute for



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which reason alone, the second respondent was denied back wages and continuity of service as there was no limitation at that point of time in raising an industrial dispute. He would submit that the same could not be a reason to initiate an industrial dispute much beyond 14 years which would cause disturbance to the functioning of the petitioner Society. He would rely upon a judgment of the Hon'ble Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T.Murali Babu** reported in **(2014) 4 SCC 108** and therefore, he would seek indulgence of this Court to set aside the order impugned in this Writ Petition.

7.I have considered the rival submission made by the learned counsel for the petitioner and perused the material available on record.

8.It has not been factually disputed that the second respondent had been terminated from service in the year 1989 and that he had raised an industrial dispute in the year 2003. Only for which reason, the Tribunal had denied back wages and continuity of service. The second respondent had not preferred any Writ Petition to challenge such denial of back wages and continuity of service. It is true that even though a statute does not prescribe limitation for seeking a remedy it does not cloth the person seeking appropriate relief under the statute to seek such a relief at a much belated time.



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9.As rightly pointed out by the learned counsel for the petitioner society, the Hon'ble Apex Court in a judgment reported in **(2014) 4 SCC 108** had set aside the Division Bench of this Court by holding that there was a delay of four years in approaching the Court for a relief under Article 226 for which, there was no explanation. Similarly, a thorough reading of the application by the second respondent also do not show any justifiable reason for the delay in approaching the Industrial Tribunal. It is also relevant to note that a judgment of the Hon'ble Apex Court in the case of **Union of India and Other vs. N.Murugesan and Others** reported in **(2022) 2 SCC 25 (2022) 2 SCC 25**. In the aforesaid judgment, the Hon'ble Apex Court has clearly elucidated what is delay, acquiescence and laches.

10.The case of the second respondent was that he was dismissed in the year 1989. He had not immediately challenged the order of dismissal and had sought to raise an industrial dispute only in the year 2003 that too without any justifiable reasons. This would mean that the second respondent had accepted the order of dismissal i.e., acquiescence with the order of dismissal. There had been unexplained laches on the side of the second respondent which would disentitle him to any relief.



11. Be that as it may, the Industrial Tribunal had also given its finding on the merits of the case. As rightly pointed out by the learned counsel for the petitioner, the Tribunal had given his specific finding that the second respondent had admitted deficit in stock and also has signed accepting such deficit and that a perusal of the entries in the intent and the sales day book, it was found that the second respondent had caused the deficit in the stock. But, however, had held that there is no reason to hold that the second respondent had voluntarily caused the deficit in stock to misappropriate amount.

12. For better appreciation, the relevant portion of the award is extracted hereunder:

“The petitioner had admitted the above deficit and put his signatures. Even though a perusal of the above entries in the intend and sales day book, it is seen that the petitioner has caused deficit in the stock, definitely there is no reason to hold that he voluntarily caused the deficit in the stock to misappropriated the amount.”

But contrary to such finding in the subsequent paragraph had held that the findings of the Enquiry Officer in holding the second respondent guilty of deficit is not based on record and is perverse. The said paragraph is also extracted hereunder:



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“So, in the above state of evidence it cannot be held that the finding of the enquiry officer holding that the petitioner was guilty for the deficit in the stock worth of Rs.19083.23/- when he was working as Ponni Co-operative Super Market during the period of October 87 to 22.3.88 is not based on record and it is perverse. But at the same time as observed earlier it has not been established that the petitioner had voluntarily caused the above deficit in the stock and thereby misappropriated the above amount.”

13. Such a conclusion arrived at by the first respondent in spite of having found that the second respondent had admitted his delinquency and also having found that from the records produced before it that there was a shortage/deficit in stock is wholly perverse and contrary to the facts available before it. For the said reason, I am inclined to interfere with the award passed by the first respondent.

14. In fine, the Writ Petition is allowed and the award impugned in this Writ Petition is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

15.11.2023

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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Labour Court,
Salem.



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K.KUMARESH BABU, J.

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