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W.P.Nos.2721 of 2005 & 19482 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2023

PRONOUNCED ON : 23.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.Nos.2721 of 2005 and 19482 of 2003

and

W.P.M.P.No.24333 of 2003

W.P.No.2721 of 2005

S.Balusami

: Petitioner

-VS-

1.The Management,
Vellakoil Sarvodaya Sangh
Head Office, Uppulipayalam Road,
Vellakoil 638 111.

2.The Presiding Officer,
Labour Court,
Salem.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent relating to the Award passed in I.D.No.426 of 1992 on 30.12.002, quash the same insofar as the petitioner is denied payment of full backwages and consequently direct the first respondent to pay the petitioner full backwages for the period of his non-employment.



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For Petitioner : Mr.M.Kalyanasundaram
Senior Counsel
for Mr.M.Saravanakumar

For R1 : Mr.V.Kalayanaraman
for M/s.Aiyar & Dolia

For R2 : Court

W.P.No.19482 of 2003

Management,
Vellakoil Sarvodaya Sangh
Head Office, Uppupalayam Road,
Vellakoil 638 111.

: Petitioner

-VS-

1.The Presiding Officer,
Labour Court,
Salem

2.S.Balusami

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to I.D.No.426 of 1992 dated 30.12.2002 on the file of the first respondent and quash the same.

For Petitioner : Mr.V.Kalayanaraman
for M/s.Aiyar & Dolia

For R1 : Court

For R2 : Mr.M.Kalyanasundaram



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Senior Counsel
for Mr.M.Saravanakumar

COMMON ORDER

By consent of both parties, the cases are taken up together and common argument is heard and common Judgment is delivered.

2. W.P.No.19482 of 2003 is filed by the Management against the award passed in I.D.No.426 of 1992 dated 30.12.2002, wherein, reinstatement into service with 25% of backwages has been ordered by the Labour Court, Salem.

3. W.P.No.2721 of 2005 is filed by the employee against the very same award whereby, he has claimed 100% of backwages.

4. For the sake of convenience, the parties are referred to as per their litigative status in W.P.No.19482 of 2003.

5. The facts leading to filing of both the cases are as under:



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(a) The petitioner Management is a Registered Society engaged in the manufacture, production and distribution of Khadi and Village Industries products through the employment of rural artisans. The institution is backed, assisted and also controlled by the commission through the Regional Directorates in all respects. This institution is non-profitability.

(b) On 24.01.1981, the 2nd Respondent submitted a report to the petitioner management with certain papers, which is a working sheet removed from the accounts and records kept under the control of the manager of Muthur branch of the petitioner management without the knowledge and consent of the said manager involving the manager of the branch, Thangamuthu and another relating to some lapses alleged to have committed in the purchase of mats for sale by the institution. After making preliminary enquiries in the matter with the Branch in-charge, the petitioner issued a letter to the 2nd Respondent on 06.03.1991 calling for explanation to which, the 2nd Respondent sent a reply.

(c) Charge memo was sent on 13.03.1981 and the 2nd Respondent submitted his explanation denying the charges and charging the



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management with ulterior motives in order to tarnish the image of the institution before the public.

(d) The petitioner decided to hold an enquiry into the charges by a committee on 04.05.1981 and notices were sent to the 2nd Respondent. The 2nd Respondent appeared before the enquiry committee and filed a letter stating that he has filed a suit before the Civil Court and therefore, he is not participating in the enquiry and left abruptly.

(e) The 2nd Respondent filed a claim petition before the Deputy Commissioner of Labour, Coimbatore claiming subsistence allowance which was dismissed as not maintainable. The 2nd Respondent then filed W.P.No.2534 of 1984 before this Court. This Court, by order dated 24.07.1986 directed the 2nd Respondent to co-operate with the proper conduct of the enquiry and also directed the petitioner herein to complete the enquiry before 30.11.1986. The 2nd Respondent then filed W.A.No.828 of 1986 against the order only insofar as it related to the quantum arrived at. The Writ Appeal No. 828 of 1986 was dismissed on 15.12.1986.



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(f) In compliance with the order of this Court dated 24.07.1986 to complete the enquiry by 30.11.1986, this Court appointed Sri Ramani, Advocate, Dharapuram to conduct the enquiry. The 2nd Respondent took objection to the enquiry and did not attend the enquiry. After following the due procedure, exparte enquiry was held on 25.01.1986 and an order of dismissal from service was passed removing him from service from 11.12.1986. In the meantime, the 2nd Respondent moved the District Munsif Court at Kangeyam and obtained an order of injunction restraining the management from dismissing the petitioner or passing any order in the Enquiry proceedings.

(g) O.S.No.638 of 1985 filed by the 2nd Respondent was summarily tried and by judgment and order dated 23.02.1989, the suit was decreed with regard to the declaration and that the relief for mandatory injunction was dismissed. The petitioner herein filed A.S.No.31 of 1989 unsuccessfully while the 2nd Respondent did not file any cross appeal against the refusal of reinstatement. However, the petitioner filed S.A.No.1999 of 1989 and in C.M.P.No.16377 of 1989, injunction was granted restraining all further



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proceedings pursuant to the decree and judgment in O.S.No.638 of 1985 pending S.A.No. 1999 of 1989. The point that arose for consideration in appeal was whether the Civil Court has jurisdiction to grant the relief in Industrial disputes which is covered by a self contained code-Industrial Disputes Act.

(h) During the pendency of S.A.No. 1999 of 1989, the 2nd Respondent preferred a petition to the Labour Court, Coimbatore under Section 2-A of Industrial Disputes Act,1947 which was numbered as I.D.317 of 1991 (stood transferred to Labour Court, Salem due to bifurcation of the Coimbatore district), which was re-numbered as I.D.426 of 1992. Since already further proceedings in this matter has been stayed in S.A.No. 1999 of 1989, the petitioner herein further filed W.P.No.14340 of 1991 before this Hon'ble Court against I.D.No. 317 of 1991 and this Hon'ble Court stayed all further proceedings in I.D.No. 317 of 1991.

(i) S.A.No. 1999 of 1989 filed by the petitioner herein was allowed by this Hon'ble Court by order dated 25.04.1997 holding that the civil Court has no jurisdiction to try the suit pertaining to Industrial Disputes.



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Consequently, W.P.No.14340 of 1991 filed by the petitioner herein was also withdrawn.

6. After disposal of the writ petition in W.P.No.14340 of 1991 and the second appeal in S.A.No.1999 of 1989, the Labour Court has taken up the matter and in the trial, the employee has not let in any oral evidence or marked any documentary evidence. On the side of the Management, Ex.M.W.1 to Ex.M.W.56 were marked. On consideration of arguments advanced, the Labour Court has held that the internal enquiry conducted against the second respondent herein has been conducted in fairness and the charges though proved are not so grave or major warranting dismissal from service and accordingly, set aside the order of dismissal passed by the Management and ordered for reinstatement of service with continuity of service and also observed that the delay is caused due to the conduct of the second respondent herein (employee) and accordingly, granted 25% of backwages. Hence, the above writ petitions.

7. Heard the learned counsel on either side.



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8. The learned counsel for the petitioner Management submitted that already, the petitioner Management has paid a sum of Rs.3,00,000/- to the employee.

9. The learned Senior Counsel for the second respondent employee submitted that it is a clear case of victimization. Since the employee, namely, S.Balusami found out the malpractice in connection with purchase of mat by the Society and instead of taking action upon the report of the delinquent, the Management has chosen to victimize the employee. The learned Senior Counsel also relied upon the Judgment of this Court in the case of *Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M.Lad* reported in (2010) 5 SCC 775; *Colour-Chem Limited, Vs. A.L.Alaspurkar and Others* reported in (1998) 3 SCC 192; and *National Tabacco Co. of India and Others Vs. Fourth Industrial Tribunal & Ors* reported in *AIR 1960 Culcutta 249*.

10. On perusal of Ex.M.W.48, enquiry proceedings and statement recorded under Ex.M.W.49 to Ex.M.W.55, the Labour Court has rightly



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come to the conclusion that the Management has ordered for internal enquiry and all the procedures were duly complied with in the internal enquiry and notice of enquiry was duly served upon the second respondent herein for enquiry on 04.05.1981. However, though the second respondent appeared before the enquiry committee, has filed a letter stating that he has filed a suit before the Civil Court. Therefore, he is not participating in the enquiry and left without attending the enquiry. The position has been admitted by the second respondent herein before the Labour Court. The Labour Court also held that the delay is on the part of the second respondent herein. After perusing the report of the enquiry, I find that the internal enquiry committee has conducted the enquiry in a fair manner and there is no violation of principles of natural justice and due opportunity has been clearly given to the second respondent herein.

11. From the records, I find that the second respondent herein was placed under suspension on 17.03.1981 as could be seen from Ex.M.W.14 and he was removed from service as per the orders in Ex.M.W.33 and subsequently, there are proceedings on the writ jurisdiction of this Court and civil Court and thereafter, it appears that the second respondent/employee



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has moved the Labour Court in the above I.D.

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12. The sum and substance of the charges is that the second respondent had submitted a report on 24.01.1981 to the writ petitioner Management with certain papers annexed in thereto, whereby, he had removed a working sheet from the accounts and the records kept under the control of the Manager of the Muthur Branch of the Kadhi Craft Sarvodaya Sangam and he did so without the knowledge and consent of the said Manager and also it is alleged that some lapses are said to have been committed in the purchase of mats for the sale by the institution. The charges are said to have been proved in the internal committee. As observed by the Labour Court, I find that even if the charges are held to be proved, major punishment of removal from service could not be inflicted since the punishment of dismissal of service does not appears to be incommensurate with the proved charges. A similar reasoning has been recorded by the Labour Court and therefore, set aside the major punishment of dismissal of service and since the second respondent/employee was caused for delay as ordered for backwages of 25%. Hence, I find that the reasonings assigned by the Labour Court for setting aside the order of dismissal and for award of



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backwages at 25% are well founded and well merited and does not require any interference in the writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the Writ Petition filed by the Management in W.P.No.19482 of 2003 is hereby dismissed.

13. In respect of W.P.No.2721 of 2005 filed by the second respondent/employee, this Court finds that in spite of the receipt of the notice for the enquiry on 04.05.1991, the employee has not chosen to participate in the enquiry and he has not challenged any fairness of the internal enquiry before the Labour Court and he has not whispered anything before the Labour Court regarding that he has no plea of gainfully employed or non-gainfully employed or pleaded before the Labour Court or in the writ petition. Hence, in the absence of any such plea being raised either before the Labour Court or in the affidavit filed before this Court. I am of the considered view that 25% of backwages granted by the Labour Court is just and fair and hence, this writ petition is dismissed.

14. In the result, the Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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To

The Presiding Officer,
Labour Court,
Salem.



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RMT. TEEKAA RAMAN, J.

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Order made in
W.P.Nos.2721 of 2005 and 19482 of 2003
and
W.P.M.P.No.24333 of 2003

23.11.2023