



W.P.No.29165 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

C O R A M

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

**W.P.No.29165 of 2010**

S.Natarajan

... Petitioner

**Vs.**

1. The President / Management,  
Vellore District Consumer,  
Co-operative Wholesale Stores Ltd.,  
14, Officers Line, Vellore District.

2. The Presiding Officer,  
Principal Labour Court,  
Vellore.

... Respondents

**PRAYER:** The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent award in I.D.No.13 of 2000 dated 01.04.2009 and quash the same with consequential direction to the first respondent to reinstate the petitioner in service with backwages and continuity of service.

For Petitioner : M/s.T.Yazhini  
for M/s.J.Saravana Vel

Respondent No.1 : M/s.M.S.Palanisamy

For Respondent No.2 : Court

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W.P.No.29165 of 2010

## **ORDER**

This Writ Petition has been filed by a Salesman of Co-operative Wholesales Stores Limited questioning the Award of the Labour Court in I.D.No.13 of 2000 dismissing the Industrial Dispute raised by the petitioner challenging the order of dismissal passed by the first respondent.

2. The brief facts, that are necessary for disposal of the Writ Petition are as follows:-

(i) The petitioner was employed as Salesman in the first respondent shop from January, 1992. In April, 1996, the petitioner was placed under suspension pending charges. A charge memo dated 21.05.1996 was issued alleging that the petitioner was responsible for shortage of stock to the tune of Rs.1,32,095/- based on the inspection. Thereafter, since the petitioner had denied the charges, a domestic enquiry was conducted.

(ii) It is the case of the petitioner that the enquiry was conducted without even paying any subsistence allowance. It is admitted that the petitioner did not even participate in the enquiry. By a report dated 15.04.1999, the Enquiry Officer found that the petitioner was guilty of the charges.



W.P.No.29165 of 2010

Thereafter, the first respondent, after issuing a second show cause notice dismissed the petitioner from service on 03.07.1999.

(iii) The petitioner raised an Industrial Dispute in I.D.No.13 of 2000. It is submitted that the Tribunal had passed a Preliminary Award dated 23.12.2003 holding that the domestic enquiry was not conducted in compliance with the principles of natural justice. Accepting the case of the petitioner that subsistence allowance was not paid, the Tribunal found that the enquiry conducted against the petitioner was in violation of the principles of natural justice. Thereafter, the Tribunal gave further opportunity to the Management/ first respondent to prove the charges.

3. It is admitted that the workman also examined himself as W.W.1 and marked Exhibits W.1 to W.41. On behalf of the Management, three witnesses were examined and Exhibits M.1 to M.54 were marked.

4. After elaborately discussing the evidences and the statement of witnesses, the Tribunal found that the shortage of stock to the tune of Rs.1,32,095/- is proved and that the petitioner is responsible for deficit. Since the Tribunal did not find any acceptable explanation for the shortage from the



W.P.No.29165 of 2010

petitioner, it is held that the charges are proved against the petitioner. After recording that the petitioner as a Salesman, was entrusted with dominion over the assets of the respondent and that causing loss or deficit to the assets will give raise to doubts regarding the honesty and integrity of the petitioner, the Tribunal held that the punishment of termination is not disproportionate to the charges proved.

5. The learned counsel appearing for the petitioner raised several grounds while challenging the Award of the Labour Court. The learned counsel would contend that the value of the stock as per the inspection of Auditor is totally flawed, particularly, when the Labour Court failed to consider the grievance of the petitioner that the place in which, the stocks have been stored, was not under the exclusive control of the petitioner and therefore, the petitioner was not responsible for the loss of stock or deficit of stock.

6. The learned counsel for the petitioner then submitted that the Labour Court having found that the domestic enquiry is vitiated for violation of principles of natural justice ought to have held that the termination is improper and directed to reinstate.



W.P.No.29165 of 2010

7. Thirdly, the learned counsel submitted that the Tribunal has recorded its finding in a perfunctory manner and therefore, the Award of the Labour Court is contrary to the law settled by the Hon'ble Supreme Court in ***Firestone's*** case.

8. Pointing out that the stocks belong to three Textiles Divisions were also kept in the same room and that there is no independent control over the area, where the stock is kept, the learned counsel contended that the Award of Tribunal holding the petitioner responsible for the shortage is erroneous.

9. This Court carefully considered the reasonings of the Labour Court and the material placed before the Labour Court for appreciation. The Labour Court has applied its mind to all the points raised by the learned counsel for the petitioner before the Labour Court in detail. The charges against the petitioner are proved by the material evidence. There is no dispute with regard to deficit in stock. The contention that the stocks of three Textiles Divisions were also stored in the same place may be a fact. The petitioner, who is a Salesman, has not accounted for the shortage.



W.P.No.29165 of 2010

10. From the affidavit filed in support of the Writ Petition, this

Court is unable to find any basis for the submission of the learned counsel appearing for the petitioner. The learned counsel for the petitioner is unable to substantiate her submission regarding the storage of stocks. From the stock verification report, it is seen that the petitioner has made an endorsement. The petitioner has not raised the issue at the appropriate stage regarding the probability of loss or deficit of stock due to act or omission of somebody else. With the findings of the Tribunal and the documents produced before the Labour Court and this Court, this Court is unable to find any substance in the arguments of the learned counsel for the petitioner. Though the Tribunal has recorded its finding in the preliminary order that the domestic enquiry conducted was in violation of principles of natural justice, particularly, by referring to the non-payment of subsistence allowance during the enquiry, the Tribunal has given opportunity to the Management to lead evidence and prove the charges before the Labour Court. This cannot be faulted. Before the Labour Court, the Management examined three witnesses and marked 54 documents to prove the charges against the petitioner. The petitioner, who is the Salesman cannot be heard to say that he is not responsible for stock or deficit of stock. It is the duty of the petitioner to account for the loss or deficit when ever it was pointed out. The petitioner raised a preliminary issue saying that he has not



W.P.No.29165 of 2010

admitted the shortage in stock by referring to the fact that the petitioner had not signed or acknowledged deficiency when the report was prepared by the competent authority. The petitioner has made an endorsement after seeing contents of the stock verification report. None of the grounds raised by the petitioner is substantiated in view of the facts established by the Management.

11. This Court does not find any merit in this Writ Petition and accordingly, the same is dismissed. There shall be no order as to costs.

**02.02.2023**

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To

1. The President / Management,  
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14, Officers Line, Vellore District.
2. The Presiding Officer,  
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W.P.No.29165 of 2010

S.S.SUNDAR, J.

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W.P.No.29165 of 2010

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