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W.P.No.9757 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9757 of 2013

and

M.P.No.1 of 2013

The Management
Salem Agricultural Producers Co-operative
Marketing Society Limited,
305 Suramangalam Main Road,
Salem 9,
represented by its Secretary Incharge

... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court, Salem.

2. M.Kandan

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent in ID No.228/2005, quash its order dated 21.05.2012 and remit the matter to the first respondent for giving an opportunity to the petitioner to lead evidence on merits.

For Petitioner : Mr.S.Haroon
for M/s T.S.Gopalan and Co.

For Respondents

R1 : Court
R2 : Not ready in notice
No appearance



W.P.No.9757 of 2013

ORDER

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This Writ Petition has been filed challenging the award passed by the first respondent in ID No.228/2005 dated 21.05.2012, thereby set aside the order of removal from service against the second respondent.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The petitioner is engaged in several lines of business viz., distribution of ration commodities through its fair price shops is one such activities. It has set up godowns in every Taluk head quarters where the controlled commodities are stored and from where they are being distributed to the fair price shops where the retail sale takes place. They have set up one godown at Omalur, Salem District. There were 400 fair price shops in Omalur Taluk. It is the responsibility of the petitioner society to arrange for liftment of stock from the Godown of TNCSC, transportation and delivery at the door steps of the fair price shops. The petitioner used to hire 10 lorries for each Taluk for transportation. The distribution from the godown to the fair price shops used to be done between 22nd of every month to 21st of subsequent month. For this purpose, there will be one Superintendent, 3 Section Assistants of which the



W.P.No.9757 of 2013

Senior most Assistant will be the godown movement in-charge and one delivery person for every vehicle hired for the day. The delivery person is also one who is used to do semi clerical work. The Taluk Supply Officer will issue allotment order indicating the quantity to be lifted and delivered to the various fair price shops in the Taluk. Therefore, without connivance and active participation of the staffs, who are deputed for lifting of the stock and deliver to the fair price shops, there is no scope for the stock to go out of the distribution system and fall into the hands of the antisocial elements.

4. While being so, in the Month of March 2005, on verification in one of the fair price shops in Omalur Taluk, a discrepancy was found indicating that there was an unauthorized diversion of stock. It was reported to the Special Officer of the petitioner society and the sales day book and purchase day book figure did not tally indicating that the stocks had been diverted after it was being lifted from the godown and before it was being delivered to the fair price shops. On verification, it was found that, between 24.02.2004 and 16.03.2004, 102.5 tonnes of levy rice had been pilfered and disposed off in the open market, causing loss to the tune of Rs.24.96 lakhs. Therefore, disciplinary action was initiated as against the second respondent and others for either directly involved or indirectly facilitated the pilferage of the stock during the transit



W.P.No.9757 of 2013

after liftment from the godown. The petitioner was issued with a charge sheet on 30.04.2004. After the domestic enquiry, on the basis of the enquiry report, the petitioner was dismissed from service on 28.02.2005. Aggrieved by the same, the second respondent preferred an Industrial Dispute.

5. The petitioner had taken a specific stand in the counter statement before the labour Court that the enquiry held into the charges against the second respondent was fair and proper and if for any reason the enquiry was found to be vitiated, the petitioner should be given an opportunity to lead evidence to justify their action. Before the Enquiry Officer, the petitioner had also marked 8 documents, such as show cause notice, explanations, enquiry proceedings, enquiry finding, second show cause notice, acknowledgments and order of dismissal. However, the first respondent found that the enquiry was conducted in violation of Principles of natural justice and the petitioner failed to place any evidence or document to justify the action taken against the second respondent. Therefore, the first respondent had set aside the order of dismissal and ordered to reinstate the second respondent with 50% of backwages.

6. It is seen from the counter that the petitioner failed to let in evidence



W.P.No.9757 of 2013

after giving an opportunity before the labour Court. Therefore, the first respondent rightly ordered to reinstate the petitioner with 50% of backwages.

No document was proved in the enquiry nor filed. If the loss is actually caused, it would have been mentioned and those documents would have been furnished during the enquiry. The actual offenders are the officials who have voluntarily failed to inform about the closure of scheme and the rice was continuously lifted by the contractors and fearing such actual fact the documents were not produced and the loss amount paid by the persons. It is further seen that now the criminal prosecution has been initiated as against the second respondent and others in C.C.No.446 of 2009 and it is pending on the file of the learned Judicial Magistrate No.II, Omalur, Salem District.

7. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1975 2 SCC 661** in the case of **Cooper Engineering Limited Vs Shri P.P.Mmundhe**, in which the Hon'ble Supreme Court of India after relying the Judgment of **Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Others, dated 15.12.1971**, where held as follows:-

“.....19. (4) "Even if no enquiry has been held by an



employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action".

(6) "The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective".

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

8. A perusal of counter filed by the petitioner before the first respondent categorically stated that if the Tribunal comes to the conclusion that the enquiry is vitiated, the petitioner reserves his right to lead evidence to justify their action.



W.P.No.9757 of 2013

9. A perusal of the impugned award revealed that even after a specific contention raised by the petitioner, it was not given an opportunity to lead evidence on its behalf. It is also seen that before the labour Court, the petitioner had marked documents such as show cause notice, explanations, enquiry proceedings, enquiry finding, second show cause notice, acknowledgments and order of dismissal.

10. The learned counsel for the petitioner also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2019 18 SCC 47**, in the case of **John D'Souza Vs Karnataka State Road Transport Corporation**, in which the Hon'ble Supreme Court of India held that while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11A of the Act. The Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an 'industrial dispute' referable for adjudication. It was further held that if the



W.P.No.9757 of 2013

labour Court finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified.

11. Therefore, the labour Court ought to have given an opportunity to the parties to adduce evidence. Without the same, it is found that the domestic enquiry was not conducted in a fair and proper manner. Therefore, the petitioner ought to have been given an opportunity of letting in evidence on its behalf.

12. Considering the facts and circumstances, the award passed by the first respondent in ID No.228/2005, dated 21.05.2012, is hereby quashed. The matter is remanded back to the first respondent for fresh disposal. It is made clear that the first respondent shall give sufficient opportunity to the petitioner as well as the second respondent to let in their respective evidences and it shall be completed within a period of three months from the date of receipt of a copy of this order. Further, it is also seen that the criminal trial is pending against the second respondent. Therefore, the learned Judicial Magistrate No.II, Omalur,



W.P.No.9757 of 2013

Salem District, is directed to complete the Trial in C.C.No.446 of 2009, within a period of three months from the date of receipt of a copy of this order.

13. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

24.07.2023
(5/6)

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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W.P.No.9757 of 2013

G.K.ILANTHIRAIYAN, J.

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To

1. The Judicial Magistrate No.II, Omalur, Salem District.
2. The Presiding Officer,
Labour Court, Salem.

W.P.No.9757 of 2013

24.07.2023