



WP.Nos.17240 of 2018
& 967 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.17240 of 2018 & 967 of 2022
& WMP.No.20520 of 2018

The Managing Director,
Triplicane Urban Cooperative
Society Ltd., Chennai-5.

...Petitioner
In WP.No.17240 of 2018
& Sole Respondent in
WP.No.967 of 2022

Vs

1.The Presiding Officer, First
Additional Labour Court,
Chennai.

...R1 in WP.No.17240 of 2018

2.P.Chandrasekaran

...R2 in WP.No.17240 of 2018
& Petitioner in WP.No.967 of 2022

PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Certiorari to call for the records of the first respondent in
I.D.No.77 of 2015 dated 04.11.2017 and quash the same (WP.No.17240 of
2018); and

(ii) a Writ of Certiorarified Mandamus to call for the records relating



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to the award of the First Additional Labour Court, Chennai passed in I.D.No.77 of 2015 dated 04.11.2017, quash that portion of the award denying back wages and continuity of service and consequently direct the respondent Cooperative Society to pay back wages to the petitioner for the non employment period with continuity of service (WP.No.967 of 2022).

W.P.No.17240 of 2018

For Petitioner	:	Mr.M.Ravibharathi
For Respondents	:	Mr.S.T.Varadharajulu for R2

W.P.No.967 of 2022

For Petitioner	:	Mr.S.T.Varadharajulu
For Respondent	:	Mr.M.Ravibharathifor

COMMON ORDER

Since the issue involved in both Writ Petitions is one and the same, this Court is inclined to dispose of these Writ Petitions by this common order.

2. W.P.No.17240 of 2018 has been filed by the Management challenging the impugned award passed by the Labour Court in I.D.No.77



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of 2015 on the file of the I Additional Labour Court, Chennai and W.P.No.967 of 2022 has been filed by the workman challenging the portion of award in I.D.No.77 of 2015 insofar as the denial of reinstatement with backwages and continuity of service.

3. The facts leading to filing of these cases are as follows :

(i) During the relevant point of time, the workman was employed as Assistant Salesman in Tambaram Cooking Gas Godown of the Cooperative Society. When a surprise inspection was conducted by the officials of the Indian Oil Corporation, it was found that in the office of the Cooperative Society at Tambaram, the workman had forged and fabricated records as if gas cylinders were supplied to various non-existent customers and to customers, who had already left the place thereby causing a loss to the tune of Rs.28,46,023/-. Hence, a charge memo dated 19.12.2009 came to be issued, to which, the workman gave an explanation on 03.3.2010.

(ii) Not satisfied with that, a disciplinary action was taken against all the workers involved for the said misconduct. Pursuant to that, an inquiry



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was conducted. After conducting the inquiry, the Enquiry Officer found the charges levelled against the workman as proved. Thereafter, the second show cause notice dated 24.2.2014 came to be issued calling for explanation from the workman, to which, the workman had not submitted any reply. Considering the report of the enquiry, the workman was dismissed from service by order dated 20.5.2014.

(iii) Thereafter, the workman initiated conciliation proceedings before the Labour Officer concerned, which ended in failure. Then, the workman filed the industrial dispute before the first respondent seeking to set aside the order of dismissal and to direct the Cooperative Society to reinstate him with continuity of service, back wages and other benefits. In that, the Cooperative Society filed a counter.

(iv) During the pendency of the industrial dispute, the workman attained the age of superannuation on 30.9.2015. Ultimately, after contest, by the impugned award, the First Additional Labour Court, Chennai set aside the order of dismissal, directed the Cooperative Society to disburse the terminal benefits to the workman together with interest at the rate of 8% per



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annum within 30 days and declined the claim of the workman for reinstatement with continuity of service and back wages.

(v) Challenging the impugned award, the Cooperative Society filed WP.No.17240 of 2018. Aggrieved by that portion of the award declining the claim of the workman for reinstatement with continuity of service and back wages, the workman filed WP.No.967 of 2022.

4. The Cooperative Society filed a counter in W.P.No.967 of 2022 stating as follows :

The First Additional Labour Court, Chennai, in the impugned award, recorded that the anomalies and discrepancies found at the time of surprise inspection were fairly admitted by the workman and to certain extent, as in-charge of the office, he was jointly and severally liable, that when the workman was facing proceedings before various authorities, he could not be expected to attend duty, that on such score, he lost his entitlement to claim back wages and that the only remedy open to the workman would be the



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grant of terminal benefits, to which, he was absolutely entitled.

(ii) There was no second opinion that the loss sustained to the Cooperative Society was due to the misfeasance and malfeasance of the employees working there at the relevant point of time and the workman was vicariously liable for the loss. However, without proper appreciation of the facts, the First Additional Labour Court, Chennai set aside the order of dismissal and directed the Cooperative Society to disburse the terminal benefits.

(iii) The surcharge proceedings initiated against all the workers were dropped by order dated 12.1.2011 passed by the Deputy Registrar of Cooperative Societies (Non Credit), Kuralagam, Chennai. As against the same, the Cooperative Society filed an appeal in CMA. No.26 of 2011 before the Presiding Officer, Special Tribunal for Cooperative Society Cases (Chief Judge, Small Causes Court), Chennai and it was dismissed by judgment dated 05.7.2012 confirming the order dated 12.1.2011. Challenging the same, the Cooperative Society filed WP.No.10125 of 2013



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and it is pending.

(iv) The First Additional Labour Court, Chennai set aside the order of dismissal dated 20.5.2014 only on sympathetic ground. After a lapse of three years, the workman filed W.P.No.967 of 2022. Ultimately, he sought to dismiss W.P.No.967 of 2022.

5. Learned counsel appearing for the workman would submit that admittedly, the workman entered into the service in the year 1997. Alleging that gas cylinders were supplied to various customers by forging and fabricating the documents, he was dismissed from service on 20.05.2014 which resulted in raising an industrial dispute before the Labour Court, wherein it was held that the workman is entitled for terminal benefits except which, he is not entitled for any other benefits such as reinstatement with backwages and continuity of service. However, it is to be pointed out that the enquiry that is alleged to have been conducted prior to dismissal was not in a free and fair manner as no opportunity of hearing was given to the



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workman and that necessary witnesses were marked while conducting the enquiry. Further, no particulars were provided to the workman with regard to the alleged charges. Hence, the punishment of dismissal is not proportionate to the alleged misconduct. Since, the workman was retired from service in the year 2015 during the pendency of the industrial dispute, he is entitled for backwages from the date of dismissal till the date of retirement, however, the same was denied by the Labour Court which is not sustainable.

6. Heard the learned counsel for the Cooperative Society and the learned counsel appearing for the workman.

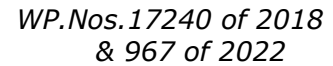
7. Admittedly, the workman was working as Assistant Salesman in the Cooperative Society since 1997. Alleging illegal distribution of gas cylinders to customers, disciplinary action was initiated against him. After conducting a domestic enquiry, he was dismissed from service in the year 2014. In this regard, the workman raised an industrial dispute before the



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Labour Court, wherein, it was held that the workman is entitled for terminal benefits and the other reliefs claimed such as reinstatement with backwages and continuity of service were denied.

8. However, it is seen from the impugned award that even in the preliminary inquiry, the workman has been examined as W.W.1 and Ex.W.1 to Ex.W.7 have been marked and on the side of the respondent, M.W.1 has been examined and Ex.M.1 to M.11 have been marked. Hence, it is evident from the impugned award that all the oral and material evidences from both sides have been well considered by the Labour Court while passing the impugned award. It is not the case of either side that the material documents have not been considered. It is within the realm of the Labour Court to appreciate the evidence and render a finding and a reading of the order impugned herein reveals that the Labour Court has taken into consideration all the materials before passing the said award. Merely because certain benefits have been granted to one side, while a portion of the benefits have been denied cannot form the basis to hold that there is a



9. It is further seen from the impugned award that the workman has made any averment in the claim petition with regard to him not being gainfully employed. In the absence of any material to show that he was not gainfully employed during the non-employment period, the workman is not entitled to any backwages. It is further seen that during the pendency of the industrial dispute, the workman had attained the age of superannuation on 01.05.2015. Hence, the question of reinstatement and other consequential reliefs does not arise. Therefore, rightly, the Labour Court has ordered that the workman is entitled to receive terminal benefits, which is a just and reasonable order.

10. For the reasons aforesaid, the Writ Petitions filed by both the management and the workman are dismissed. The management is directed



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to compute and pay the terminal benefits to the workman within a period of four weeks from the date of receipt of a copy of this order. However, it is made clear that the workman is not entitled for any interest on the terminal benefits from the date of dismissal till the date of award. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

19.09.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

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To
The Presiding Officer, First
Additional Labour Court, Chennai.



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M.DHANDAPANI,J

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