



W.P.No.20555 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.20555 of 2023

and

WMP.No.19936 of 2023

S.909, Anangoor Primary Agricultural Co-operative Society Limited,
Anangoor,
K.Ayyampalayam Post Office, Jedarpalayam – Via,
Paramathi Velur – Taluk, Namakkal District.
Rep. by its President,

...Petitioner

Vs.

G.Devi

...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the Award dated 19.02.2015 passed by the Learned Labour Court, Salem in I.D.No.192 of 2007 and to quash the same.

For Petitioner : Ms.Amrutha Srinivasan

For Respondent : Mr.K.V.Shanmuganathan



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ORDER

This Writ petition has been filed seeking quashment of the Award dated 19.02.2015 passed by the Labour Court, Salem in I.D.No.192 of 2007.

2. The case of the petitioner is that, the respondent was working as a saleswoman in the fair price shop of the petitioner Society. While so, on 02.03.2006, during the Inspection conducted by the Social Officer, it was found that, the respondent misappropriated about 35 Kgs of rice and 11.5 Kgs of Sugar through bogus bills and thereby, she was placed under suspension. Thereafter, a charge memo dated 03.03.2006 came to be issued, pursuant to which, the respondent, vide her reply dated 25.04.2006 submitted that, she had remitted a sum of Rs.644/- involved in the irregularities and sought for time to submit her explanation and subsequently, submitted her explanation. Being not satisfied with the explanation submitted by the respondent, the petitioner society ordered for Domestic enquiry and subsequently, the respondent was dismissed from service, vide order dated 07.10.2006. Challenging the said dismissal order, the respondent raised an industrial dispute in I.D.No.192 of 2007 before the



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Labour Court, Salem and after contest, the Labour Court, passed an award dated 19.02.2015, directing the petitioner society to reinstate the respondent with 50% back wages and continuity of service. However, the above said award was not communicated to the petitioner society either by their Counsel or by the Labour Department and only upon receipt of notice from the Labour Court, Salem, in connection with the Execution Petition in E.P.No.8 of 2022 filed by the respondent, the petitioner society came to know about the present impugned award passed in I.D.No.192 of 2007. Hence, challenging the above said award dated 19.02.2015 passed in I.D.No.192 of 2007, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, the respondent, being a saleswoman was dealing with essential commodities and such essential commodities cannot be allowed to be sold by the respondent for her personal gain, as the same is against the interest of the public. Further, she earlier suffered two punishments for similar misconduct and taking into consideration all the above said facts and taking note of the seriousness of the misconduct committed by her, the petitioner society dismissed the respondent from service. Further, the respondent herself, vide her reply



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dated 25.04.2006 admitted the misconduct committed by her, due to which the petitioner society incurred huge loss, however, the Labour Court had mechanically passed the present impugned award, ordering reinstatement of the respondent, that too, with 50% back wages and continuity of service, which is wholly unsustainable. Further, since the counsel appeared for the petitioner society before the Labour Court had passed away, the impugned award was not communicated to the petitioner and the petitioner society was under the impression that the dispute was pending and only upon receipt of notice in connection with E.P.No.8 of 2022 filed by the respondent, the petitioner came to know about award and immediately after obtaining the necessary papers, the petitioner approached this Court, by way of filing the present Writ petition with a delay of about 8 years and the said delay cannot be put against the petitioner, as the same is neither wilful nor wanton. Hence, he prayed for appropriate orders.

4. Learned counsel appearing for the respondent submitted that, though disciplinary proceedings were initiated as against the respondent and the same ended in dismissal from service, however, the said deficiency in stocks occurred not due to the negligence of the respondent and not a



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wanton action of the respondent with an ill-motive to misappropriate the petitioner society fund. However, for the said failure, the respondent had submitted a regret letter and subsequently, remitted a sum of Rs.644/- involved in the irregularities. While so, for the said misconduct imposing a maximum punishment of dismissal from service is wholly unsustainable and therefore, the Labour court had rightly set aside the dismissal order passed by the petitioner management and ordered for reinstatement of the respondent, taking into consideration the period of service rendered by the respondent. However, till date, the said order of the Labour court was not complied with by the petitioner society, which led in filing of Execution petition in E.P.No.8 of 2022. Further, though the present impugned award ordering reinstatement of the respondent with 50% back wages and continuity of service was passed in the year 2015, however, the petitioner has come up with this Writ petition after a lapse of eight years, that too after filing of Execution petition by the respondent. Hence, this Writ petition is liable to be dismissed solely on the ground of laches and accordingly, prayed for dismissal of this Writ petition.



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5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the respondent was employed as sales women in fair price shop of the petitioner and for alleged misconduct committed by the respondent, she was initially placed under suspension and was subsequently dismissed from service. The major allegation made against the respondent is that, she misappropriated the stocks of the petitioner's fair price shop and there was a deficit of about 35 Kgs of rice and 11.5 Kgs of Sugar. However, it is pertinent to note that, the respondent herself in her regret letter had accepted the misappropriation and had also offset the loss incurred by repaying the same.

7. Though, it is the claim of the learned counsel for the respondent that, when the respondent herself admitted the error committed by her and appropriated the loss incurred to the petitioner society, imposing a punishment of dismissal from service is highly disproportionate and thereby, the Labour court had rightly set aside the dismissal order, vide impugned award, however, even then, there must be a punishment for the



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misconduct committed by the respondent, which misconduct she herself admitted. The respondent cannot be absolved from the offence without any punishment, more so, an offence, which she has admitted and had offset the loss incurred. The repayment of the amount would not wipe out the offence committed by the respondent and will not restrict the petitioner from initiating disciplinary proceedings and imposing punishment.

8. In the case in hand, as the respondent herself admitted the guilt, there must be a punishment for the same. However, erroneously, the Labour Court had directed reinstatement with back wages, without imposing any punishment on the respondent. Hence, to that extent, this Court is inclined to modify the impugned award passed by the Labour court.

9. Accordingly, this Writ petition is disposed of by modifying the award passed by the Labour Court with the following directions:-

(i) The petitioner management is directed to reinstate the respondent back into service with 50% back wages within a period of two weeks from the date of receipt of a copy of this order along with continuity of services and other attendant and terminal benefits.



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WEB COPY (ii) However, a punishment of stoppage of increment for a period of one year without cumulative effect is imposed on the respondent.

(iii) No costs. Consequently, the connected Miscellaneous petition stands closed.

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NCC	: Yes/ No
Speaking Order	: Yes/ No
Index	: Yes/ No



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M.DHANDAPANI., J.

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