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W.A.No.921 of 2021 and
W.A.No.22395 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. S. SUNDAR

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A.No.921 of 2021 and
W.P.No.22395 of 2017
and
C.M.P.No.5425 of 2021 and
W.M.P.No.23491 of 2017

W.A.No.921 of 2021:

The Management of Tiruvarur
Consumer Co-operative Wholesale Stores Limited,
rep. by its Managing Director,
No.39, Mela Vadambokki Street,
Tiruvarur.

... Appellant/ Petitioner

Vs.

1. T.Vetrithingal
2. The Presiding Officer,
Labour Court, Cuddalore.

...Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act,
against the order in W.P.No.29838 of 2013, dated 23.07.2014.

For Appellant : Mr. M.Gnanasekar
For R1 : Mr. A. Praveen Kumar
For R2 : Labour Court



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W.P.No.22395 of 2017:

The Management of Tiruvarur
Consumer Co-operative Wholesale Stores Limited,
rep. by its Managing Director,
No.39, Mela Vadambokki Street,
Tiruvarur. ... Petitioner

Vs

1. T.Vetrithingal
2. The Presiding Officer,
Labour Court, Cuddalore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a writ of Mandamus forbearing the 2nd respondent from
passing award in C.P.No.35 of 2013 filed by the 1st respondent, pending on
the file of the 2nd respondent.

For Petitioner : Mr. M. Gnanasekar
For R1 : Mr. A. Praveen Kumar
For R2 : Labour Court

COMMON JUDGMENT

[Judgment of the Court was delivered by K.RAJASEKAR,J.,]

Writ Appeal No.921 of 2021 has been filed by the petitioner in
W.P.No.29838 of 2013 against the order dated 23.07.2014 passed by a
learned Single Judge in W.P.No.29838 of 2013, in and by which, the
Award dated 04.07.2013 passed in I.D.No.48 of 2003, on the file of the
Labour Court, Cuddalore, has been confirmed.



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2. Writ Petition No.22395 of 2017 has been filed to issue a writ of Mandamus forbearing the second respondent from passing an award in C.P.No.35 of 2013 filed by the first respondent/workman, pending on the file of the Labour Court.

3. For the sake of better understanding, the appellant and respondents will be referred to as the 'Management' and 'Workman', respectively.

4. The workman was working as an Accounts Manager in the Co-operative Society at the Head Office. He was served with a Charge Memo, on 15.05.2001 containing five charges. The prime charge against him is that he had not properly supervised the Assistants and Salesmen, who were involved in misappropriation of funds of the Society. After receiving an explanation from the workman, the enquiry was concluded and he was removed from service on 26.08.2002. Challenging the punishment of removal from service, the workman has approached the Labour Court.

5. The charges against the workman is that he failed to find out the misappropriation that took place in the Society. Even though, the



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Enquiry Officer found him not guilty, the Appointing Authority has taken a different view and after calling for an explanation from the workman on 26.08.2002, an order of dismissal was passed against him. Moreover, his past services have not been taken into consideration. Though, according to the workman, the punishment awarded is excessive and the same is an act of unfair labour practice.

6. The Management has taken a stand that since the workman is in-charge of the Accounts Section, he failed to notice remittance of lesser amount of money than the actual sale proceedings made by the salesmen. The Enquiry Officer has not adverted to the charge of dereliction of duty. Therefore, the Special Officer, after calling for an explanation from the workman, had taken a final decision. Since huge amount has been misappropriated by the salesmen, the punishment has been imposed. It is the case of the Management that, there is no dis-proportionality in the punishment, as the order of dismissal has been passed only after providing sufficient opportunity to the workman. Hence, the Management has prayed for dismissal of the Industrial Dispute.



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7. After recording the evidence of both sides, the Labour Court has given a finding that several members working under the workman herein are together responsible for misappropriation of funds and the workman is not personally responsible for the same. In consonance with the order of dismissal passed by the Special Officer, the Labour Court by invoking powers under Section 11-A of the Industrial Disputes Act, 1947, had considered the proportionality of punishment and the punishment of removal from service was modified into one of reduction of rank by one step, but ordered continuity of service, back wages and other benefits. The workman also reached the age of superannuation on 30.06.2007. Hence, no reinstatement was ordered.

8. The Management challenging the Award, filed a Writ Petition in W.P.No.22395 of 2017 and this Court considered the submissions of the Management and confirmed the Award of the Tribunal and also accepted the reason given by the Tribunal for interfering with the order of punishment.



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9. Admittedly, the workman herein has not misappropriated any money and there was no such allegation against him and he has also not wrongfully gained any amount by his negligent act. There are 43 branches under the control of the workman herein and in all the 43 branches, staff in the cadre of 'Assistant' are available to peruse the records and to prepare a Note regarding the regular transactions of the branch and place the same for approval before the workman herein. This being the case, making the workman liable for misappropriation of funds by way of dismissing him from service, is disproportionate to the charge of misconduct alleged against him. The learned Single Judge has also recorded the findings based on the documents produced that no action was taken against those Assistants, which is highly discriminatory and refused to interfere with the order of the learned Single Judge.

9. On reading of the order of the Tribunal makes it clear that in the light of the law enunciated in the decisions of the Gujarat High Court in ***RM Parmar vs. Gujarat Electricity Board [1982 Lab LC 1031]***, taking into consideration the proportionality of the punishment, the Tribunal has interfered with the punishment. The relevant paragraphs from the findings



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of the Tribunal in I.D.No.48 of 2003 in paragraph Nos.13 and 14 is as

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*“13. It was held in the decision reported in **1982 Lab LC 1031 [RM Parmar vs. Gujaraj Electricity Board]** that it is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counterproductive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.*

14. It was also held that the main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the others to be careful in the discharge of their duties. It was further held that unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed.”



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11. The learned Single Judge has accepted the above said finding, and by following the dictum laid down by the Hon'ble Apex Court in ***Harjinder Singh vs. Punjab State Warehousing Corporation [2010 3 SCC 192]*** and in ***Syed Yakoob vs. K.S.Radhakrishnan [AIR 1964 SC 477]***, refused to interfere with the award passed by the Labour Court.

12. The learned Single Judge has further held in paragraph 43 is as follows:

“The learned Senior Counsel for the petitioner has stated that pursuant to the award, the liability of the Management is around Rs.2,00,000/- towards backwages. The first respondent served for more than 26 years at the time of dismissal. There was no other allegation in his career as per the records. Further, the Labour Court gave coherent reasons for interfering in the matter of punishment for the charges since it came to the conclusion that the first respondent was nothing to do with the misappropriation and the act of negligence did not warrant extreme penalty of dismissal, in the facts and circumstances of the case. The award cannot be termed as a perverse one. In view of my aforesaid conclusion, I am not inclined to interfere with the award of the Labour Court.”



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13. In *the Chairman and Managing Director, Coal India*

Limited and another vs. Mukul Kumar Choudhuri, [2009 15 SCC 620],

the Hon'ble Apex Court while considered the proportionality of the punishment with regard to the proved charge of unauthorized absence for more than six month has considered the earlier Judgments and summed up position of proportionality in administrative law in England and India thus, paragraph 22 and after considering various previous Judgments including *the Management of Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association and Another [2007 4 SCC 669]* it is observed as follows:

“26. It was then contended on behalf of 53 workmen that if the objectionable act on the part of the workmen was going on strike, all workmen ought to have been treated equally and even-handedly. The Management was not right in reinstating 134 employees immediately by depriving similar benefit to 53 employees. It was, therefore, submitted that in the facts and circumstances of the case, the High Court was right in considering that aspect. Keeping in view the fact that they (134 workmen) had joined work and resumed duty, they were paid wages also. Since other employees (53 workmen) had not joined duty, the action of the Management of non-payment of salary



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may not be interfered with. But if they would be visited with other penal consequences of stoppage of increment/increments, the action would be arbitrary and unreasonable.”

14. The Labour Court has properly considered the charges levelled against the workman herein and by invoking provision under Section 11-A of the Industrial Dispute Act, has held that, the workman has neither misappropriated funds nor has unlawfully gained any amount. He has also referred to have rendered long unblemished service. Furthermore, he has not directly dealt with the Salesmen who are involved in misappropriation. It is also noted that some of the Assistants, under whom 'Salesmen' are directly worked have not been charged for misappropriation of funds prior to the passing of award, the Labour Court has also taken note of the fact that, the workman was also superannuated.

15. Under the said circumstances, the Labour Court, after due consideration has modified the punishment of dismissal from service into one of reduction of rank by one step for dereliction of duty and the same has been confirmed by the learned Single Judge. Both the Tribunal as well



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as the learned Single Judge has not chosen to, instead of remitting the matter to the appropriate Authority for re-consideration of imposing punishment, with a view to shorten the litigation, the quantum of punishment has been interfered with by the Tribunal and the same is confirmed by the Learned Single Judge. This Court is not inclined to interfere with regard to the proportionality of the above findings. The Tribunal has only ordered back wages, continuity of service and other benefits. This Court is of the view that there is no reason to interfere with the Award of the Labour Court and the Writ Appeal is liable to be dismissed.

16. As far as the Writ Petition is concerned, the prayer itself is for the Writ of Mandamus to forbear the Labour Court from passing the Award in C.P.No.35 of 2013 filed by the workman herein, on the ground that, the Award passed in I.D.No.48 of 2003 is challenged by filing Writ Petition No.27082 of 2007. The Writ Petition has been dismissed and the Writ Appeal has also been filed before this Court and today, this Writ Appeal has also been dismissed and the Writ Petition in W.P.No.22395 of 2017 has now become infructuous.



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17. In the result,

(1) W.A.No.921 of 2021 is dismissed.

(2) W.P.No.22395 of 2017 is dismissed as infructuous.

(3) No costs.

(4) Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (K.R.S., J.)
05.07.2023

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. Appellate Authority under Tamil Nadu Shops
and Establishment Act-1947,
Special Deputy Commissioner of Labour
DMS Compound, Teynampet,
Chennai – 600 006.



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AND
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