



W.P.No.17309 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.12.2023

PRONOUNCED ON : 31. 01.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.17309 of 2009

The Management,
Salem District Consumer Co-operative
Wholesale Stores Ltd.,
Seetharaman Salai,
Salem – 636 009 . . . Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.S.V.Rajaram . . . Respondents

PRAYER: PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records in I.D.No.368 of 2002, on the file of the Labour Court, Salem, the first respondent herein, quash the award dated 10.07.2008 read with the order dated 11.09.2006, passed therein.

For Petitioner : Mr.M.R.Raghavan



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W.P.No.17309 of 2009

For Respondents : R1 - Court
R2 – Mr.K.V.Shanmuganathan for R2
ORDER

The Writ Petition has been filed challenging the order of the first respondent made in I.D.No.388 of 2002 on the file of the Labour Court, Salem, directing the petitioner management to reinstate the second respondent back into service.

2. Heard, Mr.Raghavan, learned counsel appearing for the petitioner, and Mr.K.V.Shanmuganathan, learned counsel appearing for the second respondent.

3. The learned counsel appearing for the petitioner would submit that the second respondent had joined in the service of the petitioner Management on 24.04.1982 and his last drawn salary was Rs.1850/-. On 07.04.1997 the second respondent was suspended from service based on the charge memo. The charges against the second respondent was that he committed shortage of provisional commodities and oil items to a tune of Rs.4,81,474.85 and misappropriated the amount; secondly he received more commodities than necessary for sale and violated the office order; thirdly he prepared alternative commodity list in order to commit fraud, thereby



W.P.No.17309 of 2009

committed loss to the petitioner management; fourthly he has not shown the particulars of sold items to the Inspecting authority without registering those sold items; fifthly he remained absent from 04.04.1997 to 15.04.1997 unauthorisedly; sixthly he misappropriated the funds of Rs.12776.45 writing in the register that there was shortage of commodities at shop No.2, Namakkal and the second respondent has shown a long statement that there was no purchase from 01.03.1997 to 20.03.1997 and had given false information to the Inspecting authority regarding the same on 20.03.1997.

4. He would further submit that the second respondent alleges that he had given his explanation to the charges framed against him but the petitioner Management has not received any such explanation letter. He would further submit that after the enquiry, additional charge memo was issued to the second respondent on the basis of the enquiry report, for which the second respondent has given his explanation in which he has admitted that he took leave without permission from the Management. He would contend that the petitioner was not satisfied with the explanation given by the second respondent and ordered for domestic enquiry and the second respondent has also participated in the same. He would submit that the second respondent has admitted that he was in the duty during the



W.P.No.17309 of 2009

suspension period and the second respondent was given sufficient opportunity.

5. He would contend that in the explanation given by the second respondent dated 19.08.1997, the second respondent had admitted that the shortage of Rs.1,79,493-10 was with him and he had paid Rs.1,10,023-40 for the shortage committed by him and proceedings were also initiated against the second respondent proceedings under the Tamil Nadu Co-operative Societies Act and in those proceedings, the Joint Registrar, Salem held that the second respondent is liable to pay a sum of Rs.2,90,916-17. He would submit that the second respondent had admitted that there is a shortage of Rs.4,77,878-10 and those amounts has to be paid by the salesman of other shops and the second respondent is only liable to pay a sum of Rs.1,79,493-10.

6. He would contend that the explanation given by the second respondent for the charge memo and the two additional charge memos, is that he admits the charges, but his defence is that, only on the direction of the Branch Manager, he has done all those things. When the second respondent himself admits the shortage of goods to a tune of Rs.12,776-45



W.P.No.17309 of 2009

the liability is upon the second respondent to give satisfactory explanation, but the second respondent has defended only the account of the Branch Manager. He would submit that the petitioner Management has also taken action against the Branch Manager and dismissed him from service. Therefore he would submit that the second respondent was not loyal to his work and disciplinary proceedings were initiated against the second respondent twice on earlier occasions and he was also punished for the same. Hence the petitioner Management would seek indulgence of this Court to set aside the order of the Labour Court and to allow this Writ Petition.

7. Countering his arguments the learned counsel appearing for the second respondent would submit that the second respondent joined as a Salesman in the petitioner Management on 24.04.1982. He would contend that the petitioner Management had issued a charge memo alleging that the second respondent committed shortage of commodities in the provisional branch during the period April 1996 to March 1997 and based on the charges the second respondent was suspended from service on 07.04.1997 and on 29.05.2002 he was also dismissed from service. He would submit that the second respondent had denied the charges and submitted his explanation. The petitioner Management had accepted the explanation and



W.P.No.17309 of 2009

deferred further proceedings, but the Management had not reinstated the second respondent.

8. He would further submit that when the second respondent had approached the petitioner Management seeking to reinstate him into the services the petitioner has stated that they are awaiting for the permission from the Joint Registrar. He would submit that on 20.08.1999, the petitioner Management issued another additional charge memo and the alleged charge was that the second respondent had prepared alternative intend and not made entries of those commodities and there is also an allegation that he had committed shortage of commodities in shop No.2 and the second respondent took leave from 04.04.1997 to 15.04.1997 without obtaining permission. The second respondent has submitted his explanation on 30.08.1999, denying all the charges.

9. He would further submit that on 12.10.1999, an additional charge memo was issued alleging that the second respondent had deceived the Inspection Authority on 20.03.1997, by giving false information furnishing that there was no receipt of purchase in the provisional branch from



W.P.No.17309 of 2009

01.03.1997 to 20.03.1997 and the second respondent has also given his explanation on 23.10.1993. He would submit that an enquiry was conducted and the enquiry Officer had given a findings by holding that the second respondent guilty of all the charges. The second respondent was not served with any copy of the proceedings conducted by the enquiry officer.

10. He would submit that the charges framed against the second respondent is without any basis. The petitioner has not accepted the explanation given by the second respondent and aggrieved against the order of dismissal, the second respondent had raised an industrial dispute in I.D.No.388 of 2002 and the Labour Court has framed four issues. The first respondent has held that the second respondent has given his explanation for the shortages from April 1996 to March 1997 calculating the total amount as Rs.4,81,474-85. The highest shortage of Rs.4,77,878-10 falls in the month of March 1997 for which the explanation of the second respondent was that the workers working in the Co-operative Society have not paid the amounts.

11. He would further submit that the first respondent has held that there is a joint liability of the second respondent and the Branch Manager. But the second respondent alone was issued with charge memos and enquiry was also conducted against him and he was dismissed from service. The



W.P.No.17309 of 2009

petitioner management has not taken any action against the Branch Manager or other salesman those who received goods from the second respondent. So the second respondent alone cannot be punished and sent out of the petitioner Management. He would further submit that the first respondent has held that considering the age and non-employment of the second respondent which rendered his family without any income, the first respondent has set aside the order of dismissal and directed the petitioner Management to reinstate the second respondent into service without any continuity of service, backwages and future increments. Hence he would pray before this Court, not to interfere with the order of reinstatement granted to the second respondent and seeks to dismiss this Writ Petition.

12. I have heard the submissions made on either sides and perused the materials available on record placed before this Court.

13. The Tribunal originally had held that the enquiry proceedings as against the second respondent have been in violation of principles of natural justice and therefore, proceeded to examine the issue.

14. A perusal of the award relating to the charges and punishment



W.P.No.17309 of 2009

would show that the second respondent had also been found to have committed a delinquency as charged by the petitioner. However, the Tribunal has concluded that such delinquency had not been committed only by the second respondent, but the same could have been made only in connivance with the Branch Manager of the branch concerned and the Tribunal proceeded to give reason in respect of setting aside the order of dismissal on account that the petitioner alone cannot be victimized and the case of the petitioner should be considered sympathetically and the punishment reduced. The Tribunal had given a specific finding that the order of dismissal passed against the second respondent is based on sound principle, however, deserves to be set aside on his family background. For better appreciation, the relevant portion of the order impugned before this Court is extracted hereunder:-

19.... So, there is a joint liability of the petitioner and the Branch Manager. But this petitioner alone was booked charges, domestic enquiry was conducted and found proved. On the side of the respondent nothing is come forth about the Branch Manager or other salesman who those were received goods from the petitioner. Under these circumstances, the petitioner alone cannot be victimized and sent out of the respondent's society. Hence, considering the age and non-



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W.P.No.17309 of 2009

employment of the petitioner which rendered his family without any income, the case of the petitioner has to be considered sympathetically and the punishment has to be reduced. Even though the dismissal order of the petitioner is based on sound principle, which deserved to be set aside on his family background and the petitioner is ordered to be reinstated in service without any continuity of service, backwages and future increments.

15. As already stated supra, the Tribunal in dealing with the charges that had been framed against the second respondent independently had come to a conclusion that the petitioner is guilty of the misconduct, but had proceeded to set aside the order of dismissal and direct reinstatement in service afresh without continuity of service without any backwages without any future increments and allowances. The reason adduced by the Tribunal is that the case had to be considered sympathetically considering his family background. The said reasoning assigned by the Tribunal does not augur well. When an employee is found guilty of misconduct of such nature that had been complained against the second respondent and is considered sympathetically, as has been considered by the Tribunal as in this case, it



W.P.No.17309 of 2009

would lead to a situation where such delinquent employees are permitted to be continued in service. Such misplaced sympathy cannot be permitted to be invoked by the Tribunal particularly in the facts of this case.

16.In such circumstances, I find that the reasoning given by the Tribunal in setting aside the order of dismissal and directing reinstatement afresh without continuity of service, backwages and future increments allowances are wholly perverse, which requires interference of this Court.

17.In fine, the Writ Petition is allowed and the award made in I.D.No.368 of 2002, dated 10.07.2008, is set aside. However, there shall be no order as to costs.

31. 01.2024

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Index/ Yes/No

Speaking order: Yes/No

Neutral citation: Yes/ No

To

The Presiding Officer,
Labour Court,



Salem.

WEB COPY



W.P.No.17309 of 2009



WEB COPY



W.P.No.17309 of 2009

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W.P.No.17309 of 2009

31. 01.2024