



W.P.No.20184 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.20184 of 2010

The Management
The Dharmapuri District Printers
Service Industrial Co-op. Society Ltd.,
38, P.R. Srinivasa Rao Street,
Dharmapuri – 636 701.

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.A.Rajaram

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the impugned award dated 12.11.2009 in I.D.No.521/2004 passed by the 1st respondent and quash the same.

For Petitioner : Mr.K.Ashok Kumar

For R1 : Court

For R2 : Mr.R.Md.Nazarullah



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ORDER

This writ petition has been filed against the award passed by the Labour Court, Salem in I.D.No.521 of 2004 dated 12.11.2009.

2. The 2nd respondent was an employee i.e. Cashier working in the petitioner Society. During the period 1998-1999 it is the allegation of the Management against the respondent employee that he had misappropriated funds by creating bogus bills and vouchers, therefore disciplinary proceedings was initiated, disciplinary enquiry was conducted ultimately the Management found the employee guilty therefore he has been removed from service, as against which, the employee filed the I.D. before the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 to set aside the dismissal order dated 17.09.2003 and seeking to reinstate him in service with backwages and continuity of service.

3. The Labour Court as a preliminary issue has found that the disciplinary enquiry was not conducted properly by the employer in consonance with the principles of natural justice, therefore the Labour



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Court has permitted the parties to let in fresh evidence before it accordingly both the Management as well as the employee produced the evidences both oral as well as the documentary evidence and having considered all those evidences recorded before the Labour Court, the Court has come to the conclusion that, the dismissal order made by the Management against the employee dated 17.09.2003 cannot be sustained, therefore the Labour Court passed the impugned award setting aside the dismissal order dated 17.09.2003 and directed the Management to reinstate the employee in service with full backwages, continuity of service and all other attendant benefits. Aggrieved over the same, the present writ petition has been directed at the instance of the petitioner/ Management.

4. Heard Mr.K.Ashok Kumar, learned counsel appearing for the petitioner and Mr.R.Md.Nazarullah, learned counsel appearing for the respondent employee.

5. The learned counsel for the petitioner has submitted that, mainly on two grounds the award was passed setting aside the order of dismissal passed by the petitioner Management by the Labour Court. He would



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submit that, in the first ground the Labour Court has found that, the Secretary who initiated the disciplinary proceedings and passed an order of dismissal does not have the jurisdiction, as such a jurisdiction as per Clause 13 of the bye-laws of the Society is vested only with the Sub-Committee consisting of President and Director. Therefore, when such a Sub-Committee was functioning the Secretary cannot usurp the jurisdiction and therefore for want of jurisdiction itself the order of dismissal is infirm and has to go, therefore that was the first ground on which the Labour Court found that the order of dismissal is unsustainable.

6. In this context, the learned counsel appearing for the petitioner Management would contend that, at the end of year 1999 itself since many number of Board of Directors have resigned or left the Board, it become necessitated to appoint an Administrator, accordingly before December 1999 an Administrator has taken charge. Therefore, at the time when the charge memo dated 06.04.2000 was issued against the employee it was the Administrator who was in charge, therefore it cannot be stated that the Sub-Committee was in office and therefore the Sub-Committee alone since empowered to initiate disciplinary proceedings



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and issue charge memo against employee, the Administrator ought not to have exercised such power. Such an argument advanced before the Labour Court cannot be countenanced. However, despite the fact that the Administrator is taken charge in December 1999, the learned Judge of the Labour Court has held that the Sub-Committee was not in office during the relevant point of time i.e. at the time of initiation of disciplinary proceedings against the employee. This finding of the Labour Court, according to the learned counsel appearing for the petitioner, is against the factual matrix, therefore the first ground has to go, he contended.

7. Insofar as the second ground i.e. merits of the case is concerned, the learned counsel would contend that, the Labour Court has not considered the full gamut of the voluminous evidences both oral as well as documentary wise placed before the Labour Court. In this context, according to the learned counsel, the Labour Court has only relied upon the oral evidences let in on behalf of the Management but due importance has not been given by the Labour Court on the documentary evidence, where a series of documentary evidence from Exs.R.1 to R.35 were marked that has not been considered in proper perspective by the learned



8. I have considered the said submissions made by the learned counsel appearing for the petitioner and also heard Mr.R.Md.Nasarullah, learned counsel appearing for the respondent employee.

“14) Now, coming on to the allegations of making



bogus entries in the vouchers and the registers and thereby misappropriation of funds and making entries without issuing papers to one Madeswaran of Vijaya Printers and thereby misappropriated the fund by the petitioner as mentioned in Ex.R.2 charge memo, again the respondent society has relied on the oral testimonies of R.W.1 Madhu and R.W.2 Manivannan and Ex.R.1 series, R.3 series, R.4 to R.19 vouchers and T.A. Bills. Even in the explanations offered by the petitioner Ex.P.1. P.3 he has categorically stated that only on the vouchers authorised and signed by the President, Secretary and the Accountant of the respondent society, he admitted the amount. He would further state that only the Secretary has to supervise the travelling of the employees as mentioned in the camp register. R.W.1 Madhu would admit during his cross-examination he did not officiate in the respondent society for the period April 1998 till March 99. It is pertinent to note that the petitioner was alleged to have been committed misconducts only during that period.”

10. Therefore the documentary evidences i.e. Ex.R1 series, R3 series, R4 to R19 series i.e. vouchers and T.A. bills have been considered by the Labour Court where they found that each and every voucher and bills have been signed by the President, Secretary and the Accountant,



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then only the Cashier released the amount, therefore the responsibility has been singly fastened on the shoulder of the employee Cashier alone.

11. This Court specifically asked whether any action had been taken against the Secretary or Accountant and the President of the Society who signed those documents are concerned, the learned counsel submitted that, no such action had been taken against any of them except this employee alone.

12. This factor has been considered by the learned Judge in para 14 of the order which has been quoted herein above. Insofar as the oral evidences is concerned, the R.W.1 had deposed stating that, he had come to the Society only after 1999 therefore during the relevant period i.e. 1998-1999 he was not in the helm of affairs.

13. Like that, the R.W.2 also deposed and therefore the deposition of R.W.1 Madhu and R.W.2-Manivannan had been taken into account by the learned Judge and this has been recorded in paragraph 15 and 16 of the order.



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14. Therefore, on merits it has not been proved by the Management that, the employee alone is responsible for any alleged preparation of bogus vouchers and bills based on which the money has been shifted from the account of the Society illegally.

15. This aspect since has not been proved by producing evidences cogently before the Labour Court, the Court has come to the conclusion, of course rightly, that the charges framed against him has not been proved, therefore the very basis for such a disciplinary action which ended in the dismissal of the service passed against the respondent employee goes, therefore the learned Judge has ultimately concluded that the order of dismissal dated 17.09.2003 is liable to be set aside accordingly he has set aside.

16. Once the order of dismissal is found to be an unsustainable one and it has been set aside by the Labour Court, the law is well settled that unless contrary is proved the employee is entitled to get the reinstatement with backwages and continuity of service which had been allowed by the Labour Court in the order which is impugned herein.



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17. After having gone through the order and other materials placed before this Court and considering the merits of the case, I am of the view that the order impugned does not warrant any interference from this Court. Hence, the writ petition fails accordingly it is liable to be dismissed. Resultantly, this writ petition is dismissed. However, there shall be no order as to costs.

23.01.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes / No

Sgl

To

The Presiding Officer,
Labour Court,
Salem.



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R.SURESH KUMAR, J.

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