



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
18.12.2023

PRONOUNCED ON
26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.30097 of 2010
and M.P.Nos.1 of 2010 and 1 of 2014

Udumalpet Sarvodaya Sangham,
Represented by its Secretary,
S.Thirumanasampandam,
Udumalpet,
Tiruppur District.

... Petitioner

Vs

1.The Authority,
Under Shop and Establishment Act/
Deputy Commissioner of Labour,
Coimbatore – 18.

2.V.Swaminathan

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records from the 1st respondent made in TNSE 1/2005 dated 21.10.2010 and quash the same and pass such further orders.



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For Petitioner : Mr.R.Parthiban

For R1 : Mr.S.Ravichandran
Additional Government Pleader

For R2 : Mr.S.Nedunchezhiyan

ORDER

The Writ Petition has been filed challenging the order passed by the first respondent in TNSE 1 of 2005 dated 21.10.2010 made in the file of Tamil Nadu Shops and Establishments Act/Deputy Commissioner of Labour, Coimbatore, directing the petitioner sangham to reinstate the second respondent into services.

2. Heard, Mr.R.Parthiban, learned counsel appearing for the petitioner, Mr.S.Ravichandran, learned Additional Government Pleader, appearing for the first respondent and Mr.S.Nedunchezhiyan, learned counsel appearing for the second respondent.

3. The learned counsel appearing for the petitioner would submit that the petitioner sangham is affiliated to Khadhi Village Industries Commission functioning under the Ministry of Industries. He would contend that the



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petitioner Sangham has 13 production and sales centers, which had fallen into recession due to the reduction of Khadi product consumers. He would submit that the second respondent was working as a Branch Manager in the petitioner Sangham, and while he was working in Madathukulam and Kolumam branches, he had sanctioned loan to his known persons by which he had misused his official position, and he would contend that it is the responsibility of the persons, who sanctioned the loans to recover it back.

4. He would further submit that in year 2003, the second respondent without any prior permission availed medical leave and did not join back his duty for more than six months. He would submit that as the petitioner was overloaded with financial crisis, had written letters to the second respondent to recover the due amounts to a tune of Rs.1,55,000/-, but the same did not evoke any response and when the petitioner enquired with the borrowers namely Iyyappan, Subramanian, K.P.Angamuthu, C.N.Sivam, Velusamy and Muthulakshmi, they had replied to the petitioner sangham stating that they have repaid the loan amount to the second respondent. Only under such circumstances, the petitioner Sangham came to know that the second



respondent has misappropriated the funds.

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5. He would further submit that for misappropriating the funds of the petitioner, the second respondent was issued with a show cause notice dated 27.09.2003, and the second respondent had also given his explanation. Thereafter, the petitioner had appointed an enquiry officer and the second respondent initially participated in the enquiry proceedings, but subsequently, he absented himself. He would contend that after considering the evidence, the enquiry officer found that the second respondent was guilty of the charges and the petitioner issued a second show cause notice dated 13.09.2004 to the second respondent calling for his explanation as to why he should not be terminated from service. Thereby, the second respondent did not choose to send any reply and hence, the petitioner sangham dismissed the second respondent from service by order dated 13.10.2004.

6. He would submit that as against the order of dismissal, the second respondent filed an application before the first respondent and the first respondent without proper appreciation of material evidence had set aside



the order of dismissal. Aggrieved against the order of reinstatement, the petitioner Sangham has filed this Writ Petition.

7. The learned counsel for the petitioner would further contend that the petitioner is a Sarvodaya Sangham duly appointed as an authorised agency by the Tamil Nadu Sarvodaya Sangham and that the Government of Tamil Nadu by G.O.Ms.No.1496 (Lab) Department of Industries and Labour and Corporation dated 03.04.1959 had exempted permanently all the Kadhivasthralayas of the Tamil Nadu Sarvodaya Sangham from the provisions of the Madras Shops and Establishments Act, 1947. Hence, he would submit that the first respondent had no authority to even entertain the claim of the 2nd respondent.

8. Countering his arguments, the learned Additional Government Pleader, appearing for the first respondent would submit that the first respondent has given a finding that the enquiry officer has not served any documents or evidences taken during the internal proceedings as against the second respondent, especially the evidences based on which the enquiry



officer concluded that the second respondent was guilty for the misappropriation of funds. He would also contend that it is to be noted that the second respondent was given certain documents only a day before of awarding the punishment of dismissal i.e., on 12.10.2004, therefore, the action of the petitioner would show that the second respondent was not given sufficient opportunity to defend his case. He would further submit that the enquiry officer failed to prove the allegation raised against the second respondent, as there were no evidences to show that the second respondent has misappropriated the funds of the petitioner sangham, based on these circumstances the first respondent held that the punishment awarded by the petitioner Sangham had to be set aside and had allowed the claim petition filed by the second respondent. Therefore, the order passed by the first respondent need not be interfered with and he seeks to dismiss this Writ Petition.

9. Mr.S.Nedunchezhiyan, learned counsel appearing for the second respondent would submit that the second respondent was employed under the petitioner sangham for more than 17 years. He would contend that the



second respondent discharged his duties, with utmost sincerity and he was not punished for any acts of misconduct on earlier occasions. He would contend that the second respondent was diagnosed with brain tumour and he was suddenly admitted in the hospital for an operation and the second respondent had reported the same to the petitioner, seeking some monetary help *vide* letter dated 27.03.2003. Thereafter, the petitioner has sent letters dated 01.07.2003 and 01.08.2003 to the second respondent calling him to permit the second respondent to attend the duties from 18.08.2003. He would submit that in the meantime, the petitioner had issued with a show cause notice dated 26.08.2003 to the second respondent and that the second respondent has given his explanation dated 03.09.2003 along with his medical certificate.

10. He would submit that since, the petitioner sangham had issued an order of suspension on 27.09.2003, alleging that the charge of misappropriation of funds to a tune of Rs.1,50,000/-, the second respondent has sent his objection letter dated 30.09.2003. He would contend that many times when the second respondent went to attend the enquiry, he stated that



the enquiry officer is not available and on few occasions, the second respondent was not able to attend the enquiry due to his ill health and he had also intimated the same to the petitioner through letters. On 13.10.2004 the petitioner has sent dismissal order to the second respondent without affording any reasonable opportunity. As against the order of dismissal, the second respondent had filed a petition claiming subsistence allowance before the concerned Authority, but the petitioner failed to pay the subsistence allowance for which the second respondent was entitled to and it was disbursed belatedly as installment payments.

11. He would further submit that the petitioner has no material evidence to hold that the second respondent was found guilty and reasonable opportunity was also denied. He would submit that by order dated 21.10.2010, the first respondent has allowed the petition filed by the second respondent in TNSE 1 of 2005, directing the petitioner sangham to reinstate the second respondent into service. Therefore, he would submit that there is no infirmity in the order passed by the first respondent and hence, he seeks to dismiss this Writ Petition.



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12. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

13. The learned counsel for the petitioner had made a preliminary contention as regards the jurisdiction of the 1st respondent to entertain the appeal filed by the second respondent.

14. The petitioner's Sangham had not raised the issue of jurisdiction either before the 1st respondent, in the counter affidavit filed by it or in the affidavit filed in support of the Writ Petition. But, however, for the first time, the petitioner has raised the contention of jurisdiction of the 1st respondent only during the course of hearing. In such circumstances, I am not inclined to entertain such a claim made by the petitioner.

15. The 2nd respondent had been charged by the petitioner for misappropriation of funds of the petitioner Sangham to a tune of Rs.1,50,000/- . The basis of the charge is that the second respondent had



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received the dues payable by its customers and not remitted the amount to the credit of the petitioner Sangham. From the discussions made by the first respondent in the order impugned, it could be seen that the second respondent had not presented himself for enquiry on many occasions and therefore, he was set *ex-parte* and the enquiry had proceeded with. On receipt of the report from the enquiry officer, the second respondent had also been issued with a second show cause notice calling for his remarks in the findings of the enquiry officer. The 2nd respondent had not submitted his reply to the second show cause notice and the same has also not been disputed by him. Thereafter, the order of dismissal had been passed. The first respondent while dealing with the appeal filed by the second respondent had examined various witnesses, who had supported the case of the second respondent. The first respondent based on the witnesses before it, had come to such a conclusion that the second respondent had not committed any delinquency of misappropriation and had further held that the second respondent had not been served with the copies of the document relied upon during the enquiry. To come to such a conclusion that the documents had not been supplied, it had relied upon a communication dated 12.10.2004



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addressed by the petitioner to the second respondent enclosing the copies of the documents that had been marked during the enquiry. The first respondent had extracted certain bits and pieces of the deposition of witnesses to come to such a conclusion that the 2nd respondent had not committed any misconduct.

16. It is an admitted fact that the 2nd respondent was in charge of collection of dues from the customers of the petitioner. It is not his case that the customers had not paid the money at all. In fact when the petitioner had called upon the customers to pay the said sum, they had all informed that the same had been paid to the 2nd respondent. The 2nd respondent had also not pleaded that he had not collected the amounts from the customers. In such a case, it could be only presumed that he had in fact collected the amount from the customers, but he failed to remit the same.

17. The second respondent admits that the show cause notice had been issued to him on 26.08.2003 calling upon the explanation and for also the alleged act of absentism. Even a perusal of the appeal petition filed by



the second respondent before the first respondent would show that the second respondent for various reasons had not been attending the enquiry regularly. Further, to the charge memo issued to him, the 2nd respondent had submitted his explanation.

18. It is not the case of the second respondent that he had never been served with the copies of the documents that was purported to be relied upon during the enquiry. He had also not asked for the details of the documents or the copies of the same, while he had submitted his explanation to the charge memo. Even after the appointment of an enquiry officer, he had not sought for any such documents. He had been appearing before the enquiry officer and had been seeking adjournments on many occasions and on very many occasions he had absented himself. Even during his appearance before the enquiry officer, he had not made any such claims. This conduct would only presuppose that the petitioner had supplied all the relevant documents to the second respondent. The first respondent had relied upon a communication dated 12.10.2004 to come to a conclusion that only on the said day, the documents have been supplied to the second respondent.



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19. The communication as extracted by the first respondent in the impugned order would show that on 12.10.2004, the documents marked during the enquiry alone were sent to the second respondent on his request, that would not mean that the second respondent had never been provided with the document that had been relied upon.

20. In view of the fore-going discussions and reasonings, I am of the view that the order impugned in this Writ Petition made by the first respondent is perverse and based on the reasonings which is not supported by any material documents, the first respondent also at the out set has not come to such a conclusion that the proceedings before the enquiry officer have been perverse for him to re-appreciate the evidence. Therefore, the order impugned in this Writ Petition would have to be interfered by this Court.

21. In fine, this Writ Petition is allowed and the order impugned in this Writ Petition is set aside. However, there shall be no order as to costs.



Consequently, connected miscellaneous petition is closed.

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26.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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K.KUMARESH BABU.,J.

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To

The Authority,
Under Shop and Establishment Act/
Deputy Commissioner of Labour,
Coimbatore – 18.

A Pre-delivery order made in

14/15



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