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WP.No.7802 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

WP.No.7802 of 2011
and
MP.Nos.1 & 2 of 2011

The Management,
P.Agaram Primary Agricultural Co-Operative Bank Ltd.,
P.Agaram & Post,
Vellore Taluk,
Vellore District.

... Petitioner

Vs.

1. The Principal Labour Court,
Vellore, Vellore District.
2. K.Raghu

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, calling for the records in I.D.No.16 of 2008 dated 26.02.2010 on the file of the first respondent herein and quash the same.

For Petitioner : Mr.P.S.Shanmugasundaram

For Respondents : R1-Court
R2-No Appearance

ORDER



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The petitioner-Society has filed the instant writ petition assailing the order of the Labour Court in I.D.No.16 of 2008 dated 26.02.2010.

2. The brief facts which are necessary for disposal of the instant writ petition is that, the 2nd respondent herein joined the Petitioner-Society as a Salesman on 20.10.1983 on daily wages. It appears that during his service, he was issued with a Charge Memorandum for alleged misconduct vide Charge Memorandum dated 13.05.2004. On receipt of charge memorandum, an explanation was given. After receipt of explanation, not satisfying the same, a domestic enquiry was initiated and the Enquiry Officer has submitted a positive report on 28.06.2004 holding that all the charges have been proved. The Petitioner-Society has accepted the Enquiry Officer's report and called for further explanation from the delinquent/employee. Thereafter, on considering the same, issued the order of termination vide order dated 24.07.2004.

3. Against which, when the delinquent/employee raised an Industrial Dispute, the learned Presiding Officer of the Labour Court, by invoking the powers under Section 11A of The Industrial Dispute Act has set aside the punishment of the termination of service and ordered reinstatement with 25% back wages. The said order is now under challenge before this Court.

4. Mr.P.S.Sivashanmugasundaram, learned counsel appearing for the petitioner would vehemently contend that the award of the Labour Court does



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not contain any reason to modify the punishment for very serious charges.

According to the learned counsel, the charges 1 to 3 are the minor charges viz., unauthorised absence for a particular period, and for not receiving charge memorandum. The charge Nos. 4 to 6 are in respect of misappropriation of funds and also not acted with due diligence in protecting the property of the Society. The Enquiry Officer has found that except the charge no.3, all other charges have been proved.

5. The learned counsel would invite the attention of this Court in respect of the charges of misappropriation. Wherein by preparing a bogus bill, the delinquent/employee has misappropriated a sum of Rs.2,274/-. It is also brought to the notice of this Court that the delinquent/employee has caused shortage of wheat to the quantity of 601 kgs. It is the submission of the learned counsel for the petitioner that the Labour Court has simply gone into the reason assigned by the Enquiry Officer for one charge, and has shown leniency on misplaced sympathy in favour of the delinquent/employee. This Court has perused the judgment of the Labour Court. Wherein the Labour Court has observed that the petitioner is the victim of circumstances and that the alleged misconduct are not deliberate, therefore, found that the punishment imposed against the delinquent is shockingly disproportionate and interfered



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with the same.

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6. At this juncture, the learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court held in ***Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd. Vs. Secretary, Sahakari Noukarara Sangha*** reported in **2000 (4) L.L.N.571**. Wherein the Hon'ble Supreme Court has categorically held that when a case of misappropriation is proved, the delinquent cannot be rewarded or legalised by reinstatement with full or part of back wages. Apart from that, the learned counsel for the petitioner would also rely upon the yet another judgment of the Hon'ble Supreme Court held in ***Divisional Controller Vs. A.T.Mane*** reported in **2004 (4) L.L.N 796**. Wherein, the Hon'ble Supreme Court has held in paragraph 13 as follows:-

“13. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating Corporation's fund, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”



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7. Therefore, as per the above ratio, it is well settled principle of law that whenever there is a misconduct of misappropriation, it must be viewed seriously. Though the Labour Court has gone into the facts in respect of shortage of Wheat quantity, has not touched upon the other charge of misappropriation. There is not even any discussion on the charge of misappropriation. In that background, only based upon the reasoning of pilferage assigned by the Enquiry Officer for the shortage of Wheat quantity has shown leniency.

8. As rightly contended by the learned counsel for the petitioner, for the another charge of misappropriation and for preparing bogus bill and misappropriated a sum of Rs.2,274/-, there are no discussion by the Labour Court. While perusing the Enquiry report, the Enquiry Officer has recorded the finding that the delinquent/employee did not explain as to the falsity over the preparation of bogus bill. Therefore, in the absence of any explanation, the Enquiry Officer has rightly found that the charge has been proved. Even the Labour Court has not recorded any reason to deviate from the Enquiry report.

9. It is well settled principle of law that while exercising the power



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under Section 11A of the Industrial Disputes Act, when the Labour Court accept the finding of the Enquiry Officer, unless the punishment is shockingly disproportionate, has no authority to interfere with the punishment imposed by the appointing authority qua management.

10. Therefore, here is the case where the Enquiry Officer has given a positive finding that there was a misappropriation. Though the Labour Court concurred with the Enquiry report, such finding was not discussed in the award of the Labour Court. However, on the discussions in respect of the other charges, the Labour Court has set aside the punishment of termination, which course of action of the Labour Court is not in accordance with law and is contrary to Section 11A of the Industrial Disputes Act. Thus, this Court finds scope to interfere with the order of the Labour Court, while exercising the power of judicial review as the findings of the Labour Court is perverse. Thus, the order of the Labour Court is set aside and the order of termination issued by the petitioner is ordered to be restored.

11. In the result, this writ petition is allowed. No costs. Consequently, connected MPs are also closed.



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Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No

To

1. The Principal Labour Court,
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C.KUMARAPPAN, J.

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