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W.A. No.231 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.231 of 2024 and C.M.P. No.1384 of 2024

The Management
Thirukunam Panchayat Board
by its President
Thirukunam Village
Anniyur Post
Villupuram District

Appellant

v

1 S. Ravindran
2 The Presiding Officer
Labour Court
Cuddalore District

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 28.10.2022 passed in W.P. No.33925 of 2013.

For appellant Mr. S. Saravana Kumar

R1 Name printed, but, no appearance

R2 Labour Court



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JUDGMENT

(delivered by **S. VAIDYANATHAN, J.**)

This writ appeal is focussed against the order dated 28.10.2022 passed by a Single Bench of this Court in W.P. No.33925 of 2013.

2 For the sake of clarity, the appellant, the first respondent and the second respondent will be alluded to as the Panchayat, the workman and the Labour Court, respectively.

3 The facts giving rise to the institution of this writ appeal lie in a very narrow compass.

3.1 The workman, who joined the Panchayat as a Clerk on 16.07.1998, was retrenched from service on 07.06.2008, orally. Aggrieved, the workman raised an industrial dispute in I.D. No.59 of 2009 before the Labour Court.

3.2 The Labour Court, *vide* award dated 07.10.2013, finding that initiation of disciplinary proceedings is mandatory in a case of retrenchment, especially *qua* a workman who had put in a decade of service and that disciplinary proceedings was not initiated, ordered for reinstatement of the workman with backwages and other benefits.



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3.3 The Panchayat assailed the award of the Labour Court in W.P.No.33925 of 2013, in which, the Single Bench, by order dated 28.10.2022, upholding the award of the Labour Court, dismissed the writ petition.

3.4 Thereagainst, the Panchayat has preferred this writ appeal.

4 Heard the learned counsel for the Panchayat and the perused the materials available on record.

5 The case of the Panchayat is that the workman has committed a serious misconduct, viz., defalcation of funds; he also deserted the job; he did not return for work from March 2007; there was no proper explanation also from him to the charge memo (Ex.M.1); hence, a resolution was passed by the Panchayat disengaging him from service and appointing another person to the post held by the workman by issuing an appointment order (Ex.M.6). The President of the Panchayat (M.W.1) has stated, in his evidence, that the dismissal order was affixed in the place of the workman and even then, the workman did not turn up for work for more than a year and hence, he was removed from service.



6 The Labour Court, after analysing the evidence on record and finding that the Panchayat did not produce attendance register to show that the workman remained continuously absent, held that the burden is on the Panchayat to prove the charges by producing the relevant records and inasmuch as the Panchayat had failed to discharge the said burden, the Panchayat cannot be heard to say that the workman had abandoned the work. Eventually, the Labour Court concluded that the action of the Panchayat in not conducting enquiry attracts Section 25-F of the Industrial Disputes Act, 1947, as has been held by the Supreme Court in **D.K.Yadav v J.M.A. Industries Ltd. [(1993) 3 Scale 39]** and **Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court [(1990) 3 SCC 682]** and ordered for reinstatement with backwages and other benefits.

7 The Single Bench has come to the conclusion that there was retrenchment and that the Panchayat has not complied with the mandatory provisions of Section 25-F, *ibid.* Though the order impugned herein says that in case of retrenchment, disciplinary proceedings should be conducted, which is not so, we are of the view that in case of misconduct, domestic enquiry will have to be conducted before inflicting any type of punishment on the workman and in case of retrenchment attracting Section 2(oo), *ibid.*, the Panchayat will have to comply with Section 25-F, *ibid.* In the instant case, on both counts, *viz.*, misconduct and



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retrenchment, the Panchayat has not conducted enquiry while retrenching the workman nor has it offered compensation under Section 25-F, *ibid.* to the workman.

8 In such perspective of the matter, we hold that the award of the Labour Court is perfectly valid, which has been rightly not interfered with by the Single Bench.

9 During the course of arguments, Mr. Saravana Kumar, learned counsel for the Panchayat, submitted that the workman has agreed to take up employment sans backwages. However, neither the workman is present before this Court nor the settlement reached between the parties has been produced before this Court. Hence, we are not inclined to consider the said submission made by Mr. Saravana Kumar.

In fine, this writ appeal stands dismissed, sans costs. Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
18.01.2024

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To
The Presiding Officer
Labour Court
Cuddalore District

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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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