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W.P.No.3288 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2025

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.3288 of 2011

and

MP.Nos.1 to 4 of 2011

The Management,
Azhinjivakkam Primary Agricultural Co-operative Bank,
Rep. by its Special Officer,
Azhinjivakkam Village, Ponneri Taluk,
Chennai - 600 067.

...Petitioner

Vs.

1. S.Ramamoorthy
2. The Presiding Officer,
III Additional Labour Court,
High Court Campus,
Chennai - 600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, calling for all the records of the 2nd respondent
herein, dated 24.06.2009 pertaining to I.D.No.516 of 2003 and quash the
same.



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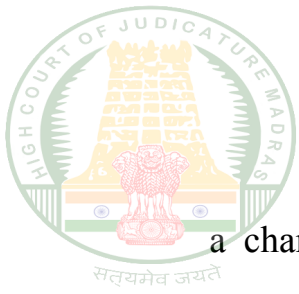
For Petitioner : Mr.N.Nithianandam

For Respondents : Mr.P.Anbarasan, for R1
: R2 - Court

ORDER

This Writ petition has been filed seeking quashment of the award of the 2nd respondent dated 24.06.2009 passed in I.D.No.516 of 2003

2. It is the case of the petitioner that it is engaged in the distribution of essential commodities to the public for which fair price shops have been established and the essential commodities are distributed to the public through the Public Distribution System. The 1st respondent was engaged as Salesman in the petitioner society at Neduvarambakkam and Chennivakkam Fair price shops. While so, during investigation, on 13.11.2002, stock deficit of the essential commodities were found out in the said shops to the tune of Rs.49,381.10/-, for which, proceedings were initiated against the 1st respondent and he was placed under suspension. The 1st respondent, vide letter dated 27.11.2002, admitted the stock deficit and admitted to remit the amount on or before 07.12.2002. Since the misconduct was grave in nature,



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a charge memo dated 03.12.2002 was issued against the 1st respondent which was duly received and acknowledged by the 1st respondent on the same day. On 04.12.2002, the 1st respondent informed the petitioner about remitting a sum of Rs.17,300/- out of the misappropriated amount and sought time to remit the balance of the amount, which was also permitted by the petitioner with a direction that the balance amount should be remitted within one week from 04.12.2002 and failure would lead to further course of action. However, the 1st respondent did not remit the balance amount and though he had in clear terms admitted the charges and there was no necessity to hold a domestic inquiry, however, a domestic enquiry was conducted by appointing a retired Sub Registrar as enquiry officer, who after conduct of enquiry and granting all opportunities, held the charges against the 1st respondent proved by submitting his report dated 05.02.2003 and a copy of the enquiry report was served on the 1st respondent calling for his objection, which, though received by the 1st respondent, no reply was submitted. Thereafter, the disciplinary authority concurring with the findings of the enquiry officer issued a show cause notice dated 24.02.2003, calling upon the 1st respondent to submit his explanation with regard to the



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proposed punishment and in spite of the receipt of the same, no explanation was submitted by the 1st respondent and thereby, vide proceedings dated 26.03.2003, a punishment of dismissal from service was imposed on the 1st respondent, consider the gravity of the charges. Aggrieved by the same, the 1st respondent raised an industrial dispute in I.D.No.516 of 2003 before the 2nd respondent on the ground that the enquiry was not conducted in a fair and proper manner and the charges have not been proved. Before the Labour Court, the 1st respondent examined himself as W.W.1 and marked Exhibits W.1 to W.7 and on behalf of the petitioner Society, M.W.1 was examined and exhibits M.1 to M.9 were marked. The Labour Court, on consideration of the oral and documentary evidence placed before it, by award dated 24.06.2009 allowed the dispute and directed reinstatement of the 1st respondent herein without backwages, however, with continuity of service and other attendant benefits, on the ground of violation of principles of natural justice. Aggrieved by the same, the present Writ petition has been filed.

3. Learned counsel for the petitioner society submitted that the 1st



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respondent, by his own admission had admitted the commission of misappropriation and had voluntarily remitted a sum of Rs.17,300/-, vide his letter dated 04.12.2002 and in spite of grant of time to remit the balance amount, the 1st respondent has not remitted the same, leading to the enquiry being conducted. It is the further submission of the learned counsel for the petitioner that the enquiry was conducted only as a precautionary measure, as by the very own admission of the 1st respondent and remitting of the sum of Rs.17,300/-, the 1st respondent has admitted the act of misappropriation and even if there has been some violation in the enquiry, that would not make the enquiry unsustainable. Any procedural violations in the enquiry alleged has to be looked at on the basis of the admission of the 1st responder and it cannot be looked in isolation. However, erroneously, leaving aside all the admissions made by the 1st respondent with regard to the misappropriation, the Labour Court has gone into the procedural violations without advertng to the admissions and without considering the gravity of the offence committed by the 1st respondent, which is wholly unsustainable and therefore, the same requires to be set aside.

4. Per contra, the learned counsel appearing on behalf of the 1st



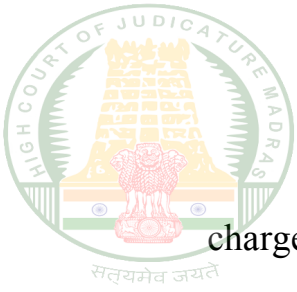
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respondent-workman submitted that merely because the amount has been deposited by the workman, the same cannot be a ground to claim that the workman has admitted the misappropriation. Further, it is submitted that, even if the allegation of admission is raised, once an enquiry is conducted, it has to be conducted in accordance with law and violation of principles of natural justice will hit at the root of the enquiry and the Labour Court, appreciating all the aforesaid facts, allowed the dispute which does not require any interference at the hands of this Court. Accordingly, he prayed for dismissal of this writ petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. The genesis of the present case stems out of the alleged misappropriation committed by the 1st respondent who was engaged as a Salesman in the fair price shop run by the petitioner. During the inspection, misappropriation to the tune of about Rs.49,000/- were found out, which resulted in the suspension of the 1st respondent, leading to issuance of



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charge memo, for which explanation was submitted by the 1st respondent.

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Thereafter, the 1st respondent had through his letter dated 04.12.2002 deposited of sum of Rs.17,300/-, which fact is not disputed by the 1st respondent and time was granted to the 1st respondent to deposit the balance amount, which has not been done by the 1st respondent leading to the conduct of the enquiry. From the above, it is clear that, there is a clear admission on the part of the 1st respondent with regard to the misappropriation committed by him. When the 1st respondent has admitted the offence of misappropriation and has deposited a portion of the misappropriated amount, there arises no necessity for conduct of enquiry, as the 1st respondent has admitted the charges raised against him. However, only as a precautionary measure, the enquiry has been conducted leading to the submission of the report of guilt against the 1st respondent.

7. The main ground on which the Labour Court has interfered with the order of dismissal is that, during the period of suspension, 17B wages has not been paid to the 1st respondent and the enquiry report has not been provided to the 1st respondent. Further, in similar cases where the



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delinquents have remitted the misappropriated amount, the Courts as also the Disciplinary Authority have taken a lenient view and continued the services of such delinquents and therefore, held that the 1st respondent is also entitled for a similar relief and accordingly directed reinstatement.

8. Even at the very outset, it can be safely held that the order passed by the Labour Court is totally perverse, arbitrary and unsustainable. The gravity of the charge alleged against the 1st respondent has been admitted by the 1st respondent and he remitted the sum of Rs.17,300/- which is part of the amount quantified towards the misappropriation. When there is a clear admission on the part of the 1st respondent with regard to the charges leveled against him, the enquiry which is conducted against him only being a precautionary measure, the violations therein will not enure to the benefit of the 1st respondent to the extent of hitting at the admission of the 1st respondent with regard to committing the misappropriation.

9. The violation of principles of natural justice would have a bearing



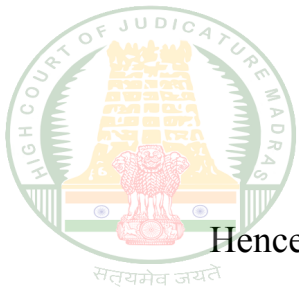
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only where the delinquent is denying the charges levelled against him. Only in such cases, an enquiry is contemplated to find out the culpability of the delinquent in the commission of the offence.

10. In the present case, the 1st respondent has admitted the commission of the offence and has paid part of the amount so misappropriated and after admitting the offence of misappropriation, the 1st respondent cannot now turn back and say that there is procedural violations in the conduct of enquiry. Once there is a clear admission by the 1st respondent, no necessity arises for the petitioner to prove the charges and if an enquiry has been taken up as a precautionary measure to prove the charges, the procedural violation cannot be put against the petitioner to grant the benefit to the 1st respondent who had committed the offence.

11. The aforesaid aspects have not been properly appreciated by the Labour Court while allowing the dispute raised by the 1st respondent and granting reinstatement and the charges levelled against the 1st respondent being very grave in nature, no leniency can be granted to the 1st respondent.



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Hence, the order of the Labor Court deserves to be interfered with and accordingly, the order of the labour court dated 24.06.2009 directing reinstatement of the 1st respondent, which is impugned in this Writ petition is set aside. However, liberty is granted to the 1st respondent to workout his remedy in the manner known to law, if so advised.

12. With the above observations and directions, this Writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

05.02.2025

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To:

The Presiding Officer,
III Additional Labour Court,
High Court Campus, Chennai - 600 104.

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M.DHANDAPANI, J.

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