



W.P.No.7475 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.7475 of 2011

and

M.P.No.1 of 2011

The Utiramerur Taluk Co-operative
Housing Society Limited,
(No.CGT/H.S.G.42),
Rep. by its Special Officer,
Nookalamman Koil Street,
Uthirameruru Post,
Kanchipuram District.

... Petitioner

Vs.

1.Banumathi
2.Bharathiraja

3.The Deputy Commissioner of Labour (Appeals),
Chennai,
Constituted under Tamil Nadu Shops and Establishment Act, 1947,
Chennai – 6.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the 3rd respondent in its proceedings TSE-II-1/2008 and dated 29.10.2010 and to quash the same as illegal, unjust and against the settled principles of law.



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For Petitioner : M/s.V.Srimathi
For Respondents : No appearance [R1 & R2]
Mr.M.Murali
Government Advocate [R3]

ORDER

This Writ Petition has been filed by the petitioner seeking for a Writ of Certiorari, to call for the records on the file of the 3rd respondent in its proceedings TSE-II-1/2008 and dated 29.10.2010 and to quash the same as illegal, unjust and against the settled principles of law.

2. The case of the petitioner is that, the respondents 1 and 2 are the legal heirs of one Dhanapal, who was working as Attender in the office of the petitioner and during his course of employment, disciplinary proceedings was initiated against him after issuance of charge memo dated 21.06.2007 and the charges levelled against him are (i) that he had failed to discharge his official duties and responsibilities, (ii) that he had disobeyed the orders of the superiors (iii) that he had acted against the interest of Society and caused damage to the image of the Society and (iv) that he was on authorized absence w.e.f. 01.04.2007 without intimating or availing leave from the Society. Thereafter, an Enquiry Officer was appointed to conduct the enquiry and he had conducted the



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enquiry in accordance with law and drawn a proven minute. Based on the proven minute, the said Dhanapal was terminated from service on 30.04.2008. Aggrieved by the same, he had preferred an appeal before the 3rd respondent in TST-II-1/2008 and during the pendency of the said appeal, he died and hence, the respondents 1 and 2 were brought on record as his legal heirs for further process in the appeal. Thereafter, the 3rd respondent had allowed the appeal ordering that the terminal benefits to be paid to the respondents 1 and 2. Further, the 3rd respondent had also directed the petitioner to impose punishment for the 4th charge as per 18 of the bye-laws of the petitioner. Challenging the same, the petitioner-Society has filed the present writ petition.

3. Learned counsel for the petitioner submitted that bye-laws was produced before the 3rd respondent and the duty and responsibilities of the deceased employee was established before the 3rd respondent. However, the 3rd respondent had set aside the order of termination and directed the petitioner to impose punishment for unauthorised absence committed by the deceased employee as per 18 of the bye-laws and also directed the petitioner to settle the entire terminal benefits to the respondents 1 and 2, which is unsustainable and the same is liable to be interfered with.



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Accordingly, he prays for allowing the writ petition.

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4. On the above contentions, heard the learned Government Advocate appearing for the 3rd respondent and perused the materials available on record.

5. Though name of the respondents have been printed in the cause list, however, they have not entered appearance either in person or through counsel. Considering the pendency of this writ petition, this Court is inclined to dispose of this writ petition based on the materials available on record.

6. Admittedly, the deceased employee was working as an attender in the petitioner-Society and in the year 2007, disciplinary proceedings was initiated against him. This court had perused the charges framed against the deceased employee, which reveals that three charges were vague and not specified the misconduct committed by the deceased employee. In respect of 4th charge viz., unauthorized absence, the petitioner established the same before the Enquiry Officer as well as before the 3rd respondent, thereby, the 3rd respondent had directed the petitioner to impose punishment in terms of 18 of the bye-laws.



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Considering the fact that the employee had passed away during the pendency of the appeal, now, this court cannot give such a liberty to the petitioner to impose punishment as against the deceased employee. Hence, this court is inclined to dispose of this writ petition in the following terms :-

(i) there shall be a stoppage of increment for two years without cumulative effect for the misconduct of unauthorized absence committed by the deceased employee;

(ii) the petitioner is directed to settle the entire terminal benefits with continuity of service and 25% back wages to the respondents 1 and 2, who are the legal heirs of the deceased employee Dhanapal, within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. With the above terms, this Writ Petition is disposed of. No costs.

Consequently, the connected miscellaneous petition is closed.

06.02.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.



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The Deputy Commissioner of Labour (Appeals),
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