



WEB COPY



W.P No.31386 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

CORAM

THE HONOURABLE MR. JUSTICE **P.DHANABAL**

W.P.No.31386 of 2012
and WMP.Nos.20362 of 2017 and 9913 of 2024

S.Manjuladevi

.. Petitioner

Vs.

1.The Presiding Officer,
III Additional Labour Court,
Chennai – 600 104.

2.The Management of
Koyarambedu Thodakkavelanmai
Kootturavu Vangi Ltd.,
(Via) Guduvancheri,
Kancheepuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its award made in I.D.No.1 of 2003 dated 25.06.2012 and quash the same in so far as it relates to without backwages and continuity of service and other attendant benefits and consequently directing the 2nd respondent to reinstate the petitioner with continuity of service and with backwages and other attendant benefits to the petitioner.



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For Petitioner : Mr.P.Solomon
For Respondents : R1- Court
No Appearance for R2

ORDER

This writ petition has been filed by the petitioner challenging the order passed in I.D.No.1 of 2003 dated 25.06.2012 on the file of III Additional Labour Court, Chennai.

2. According to the writ petitioner, she was working in the second respondent's ration shop as sales woman since 04.04.1987, and she was terminated from service on 29.08.2002. Her last drawn salary was Rs.1469/-. She was suspended on 08.05.1997 for the charges dated 10.05.1997 with regard to deficit of stock of kerosene and rice and for selling ration shop goods in the black market. The second respondent conducted the domestic enquiry from 6.2.1998 to 26.6.1999 without sanctioning the subsistence allowance, thereby she filed a writ petition before this Court in W.P.No.31722 of 2022. The second respondent levied penalty for the deficit of stock and sale of goods without bill. Since the penalty amount was not paid, show cause notice was issued and



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then domestic enquiry was conducted and as per enquiry report charges were proved. Thereafter, the petitioner was terminated from service.

Hence, the petitioner raised an industrial dispute before the Labour Court and on the side of the petitioner, she was examined as WW.1 and exhibits Ex.P.1 to Ex.P.7 were marked. On the side of the respondent management MW.1 was examined and marked Ex.R1 to R10. The Labour Court arrived at the conclusion and ordered for reinstatement of the petitioner without any backwages and continuity of service and other attendant benefits. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner was working as a saleswoman in the ration shop of the second respondent. On 15.02.1997, without inspecting the ration shop, the concerned authority took away all the ledgers, documents and forcibly obtained signatures from the petitioner. Thereafter, she was suspended from 07.04.1997. During the suspension period she was not paid subsistence allowances and domestic enquiry was conducted. As per the domestic enquiry, charges were proved and



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thereafter, she was removed from service. Subsequently, she raised industrial dispute and the Labour Court erroneously held that the enquiry was conducted properly. However, considering the punishment, was disproportionate and thereby ordered for reinstatement without any backwages and continuity of services and all other attendant benefits. Therefore, the order passed by the Labour Court is liable to be set aside. He further argued that due to the bifurcation of the District, the second respondent is now comes under the Chengalpattu District.

4. The learned counsel appearing for the second respondent would submit that the petitioner was appointed as a saleswoman in the ration shop at Kayarambedu. At that time, during the inspection, they found that there was a deficit in the petitioner's stock and that, without any bill she sold 315 litres of kerosene and 447 kgs of rice. Therefore the concerned authority levied penalty of 10,553/- and thereafter she was suspended. A domestic enquiry was conducted, and as per the domestic enquiry, the charges were proved. In the domestic enquiry, the petitioner did not participate, therefore ex-parte order was passed against her. As a result, the disciplinary authority passed the order to remove the petitioner



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from service. Challenging the said order, she raised industrial dispute.

Thereafter, the Labour Court, after careful consideration, fairly concluded that the domestic enquiry was conducted properly, however, the punishment was disproportionate and ordered for reinstatement without any backwages and continuity of service and all other attendant benefits. The order passed by the Labour Court is in order and the present writ petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.

6. It is an admitted fact that the petitioner was working under the second respondent's ration shop and the charges levelled against the petitioner are that without bills, she sold 315 litres of kerosene and 447 kgs of rice, therefore penalty was imposed for a sum of Rs.10,553/-. The petitioner also submitted her explanation that, without any reasons, the concerned authority took all the ledgers, bills and other records, thereafter they served notice that there was a deficit in the stock, and thereafter they suspended the petitioner and framed charges. It is also an



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admitted fact that the petitioner did not participate in the domestic enquiry, however the charges were proved as per the enquiry report.

The Labour Court, after examining the witnesses, concluded that the enquiry proceedings were properly conducted. However the punishment of removal is disproportionate, and thereby ordered for reinstatement without backwages and continuity of service and other attendant benefits. The Labour Court also observed in its order that before the domestic enquiry, the petitioner did not participate, and she must produce documents as proof of her innocence. Further, the petitioner has not taken any steps for the re-enquiry and failed to produce the documents available with her. However, the punishment awarded was disproportionate. The Labour Court has shifted the burden to the petitioner to disprove the charges, and she has not filed any documents. It is a well settled law that it is the duty of the department to prove the charges levelled against the delinquent employee and initial burden is on the part of the department to prove charges and then only the delinquent can disprove.

7. In this case, the department has not produced any



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documents to show the deficit of the stock and has only produced the charges, explanation and other documents and has not produced the sales bill which was seized from the petitioner's ration shop but failed to produce stock particulars. Therefore, the order passed by the Labour Court by holding that the petitioner has to produce the documents to disprove the charges is unsustainable. Even, according to the second respondent management, all the records were taken from the petitioner's ration shop. While so, it is the duty of the second respondent management to prove what was the sale and what the deficit of the quantity, but they have not produced any documents to prove the same. Therefore, the department has failed to prove the charges levelled against the petitioner, and the Labour Court also committed an error by holding that the petitioner has to prove that she has not committed any error. In view of the above discussions, this Court is of the opinion that the order passed by the Labour Court is liable to be set aside.

8. In the result, this writ petition is allowed and the order passed by the Labour Court in I.D.No.1 of 2003 dated 25.06.2012 is set aside, in respect of backwages and continuity of service and other



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attendant benefits. As far as the reinstatement is concerned, it is confirmed and the petitioner is entitled to get backwages with continuity of service and other attendant benefits. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No.
Internet/Yes/No
drl

To

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P.DHANABAL.J.

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