

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.14291 OF 1997

The Tamil Nadu Civil Supplies
Corporation Ltd.,
by its Senior Regional Manager,
Thanjavur. .. Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. Thiru. A.Veerawamy. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari as stated therein.

For petitioner : Mr.Meenakshisundaram

For respondents : R1 Court,
Mr.R.Ganesan for R2.

:O R D E R

The above Writ Petition has been filed by the petitioner praying to
issue a Writ of Certiorari to call for the records relating to the Award dated
13.12.1995 made in ID.No.354 of 1992 by the Presiding Officer, Labour Court,
Cuddalore, the first respondent, and quash the same.

2. The case of the petitioner is that the second respondent was the
Apprentice Trainee Shop Assistant in Amudham Village Shop 192, Aladi Karuppur
from 1.2.1979 to 30.1.1987 under Petitioner's Retail Trade Development
Training Programme; that since he failed to remit the collections on
30.1.1997, the shop was inspected by the Area Supervisor and found that stocks
of certain essential articles to the value of Rs.5324.75 were in deficit; that
he was relieved of his duties on 30 .1.1987; that a charge memo. dated
27.11.1987 was issued to the second respondent called upon him to explain
about the shortages and stock deficit reported to have been found at the time
of inspection on 30.1.1987; that the second respondent by his letters dated
21.11.1987 and 1.12.1987 addressed to the Senior Regional Manager has made
certain allegations against the Area Supervisor; that the second respondent
has also submitted his explanation dated 16.12.1987.

3. The further case of the petitioner is that an enquiry was held by Thiru.Chinnakkannu, Sub-Regional Manager, Tiruvarur on 21.12.1987; that the Enquiry Officer submitted his Enquiry report dated 15.3.1988 stating that the charge against the second respondent stood proved and that the report of the Assistant Manager, who enquired into the allegations of the second respondent against the Area Supervisor were baseless; that on the basis of the enquiry report, the petitioner passed an order terminating the second respondent from service from 31.1.1987.

4. The further case of the petitioner is that aggrieved by the said order of dismissal, the second respondent filed a petition before the Labour Officer under Section 2-A of the Industrial Disputes Act 1947 ; that the Labour Officer by his report dated 7.9.1990 reported failure of conciliation, against which the second respondent raised Industrial Dispute before the first respondent Labour Court under Sec.2A(2) of the Act; that the first respondent in and by the impugned Award dated 13.12.1995 made in ID.No.354 of 1992 directed reinstatement with continuity of service of the second respondent and back-wages and attendant benefits only from the date of his raising Industrial Dispute i.e. 5.10.1990 with liberty to the petitioner to proceed against the second respondent in respect of the misappropriation in accordance with law. It is only testifying the validity of the said order of the Labour Court, the petitioner has come forward to file this Writ Petition praying for the relief extracted supra.

5. Heard the learned counsel for the petitioner and the second respondent as well and the materials placed on record have also been perused.

6. During arguments, the learned counsel for the petitioner would submit that admittedly the second respondent was a Shop Assistant Trainee under Petitioner's Retail Trade Development Training Programme and paid a monthly stipend, would not be a workman under Section 2(s) of the Industrial Disputes Act 1947. At this juncture, the learned counsel for the petitioner would cite a decision reported in Tungabhadra Sugar Works (Private) Ltd., v. Labour Court, Mangalore and another(1983 II L.L.N 422) wherein it has been held:

" It is clear from the definition of "workman" in S.2(s) of the Industrial Disputes Act, 1947, that any person, including an apprentice, can be regarded as a "workman" if he is employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. In other words, the existence of the relationship of an employer and an employee is of the essence of the matter. Any person, whether he is an apprentice or not, can be regarded as a workman only if he is employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment are express or implied. "

7. The learned counsel for the petitioner would further submit that the first respondent/Labour Court has not given opportunity for the petitioner to lead evidence to substantiate the charges against the second respondent. At this juncture, the learned counsel for the petitioner would cite a decision of the Supreme Court reported in Cooper Engineering Limited v. P.P.Mundhe (1975 LAB.I.C.1441) wherein it has been held:

"When a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue."

On such arguments, the learned counsel for the petitioner would pray for the relief extracted supra.

8. The learned counsel for the second respondent sailing with the impugned Award of the first respondent/Labour Court would further submit that though serious allegations have been made against the Area Supervisor, no proper enquiry was conducted by the petitioner and hence the order of dismissal by the petitioner is not justifiable and that the Award passed by the first respondent Court is in the interest of natural justice and hence he would pray for dismissal of the above Writ Petition.

9. In consideration of the facts pleaded, having regard to the materials placed on record particularly the order of dismissal passed by the petitioner and the impugned Award passed by the first respondent and upon hearing the learned counsel for both, this Court is able to assess that though the second respondent has made certain allegations against the Area Supervisor, no proper enquiry was conducted by the petitioner before passing the order of dismissal from service of the second respondent. The first respondent after considering the oral and documentary evidence placed before him as well has rightly passed the Award and hence this Court does not find any illegality or inconsistency or perversity in approach in the Award passed by the first respondent Labour Court. Further, the decisions cited on the part of the petitioner are not relevant to the facts of the present case since the first respondent has arrived at the conclusion that no proper enquiry was conducted by the petitioner before passing of the order of dismissal of the second respondent. Considering the above fact situation of the case, this Court is of the view that this Writ Petition does not merit acceptance and it becomes only liable to be dismissed and hence the following order:

In result,

- (i) for the foregoing reasons assigned, the above Writ Petition does not merit acceptance and the same is dismissed as such;
- (ii) however, in the circumstances of the case, there will be no order as to costs.

Index:Yes

Internet:Yes

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To

1. The Presiding Officer,
Labour Court,
Cuddalore.

