

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.1.2005

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE D.MURUGESAN

W.A. Nos. 1910 of 2001 and 1425 of 2002

K.S.Varadarajan ...Appellant in both Writ Appeals/ Petitioner

Vs.

1. Deputy Commissioner of Labour (Appeal),
Madras (Appellate Authority under
Section 41(2) of the Tamil Nadu Shops
and Establishments Act, 1947),
Labour Welfare Building,
D.M.S.Compound, Madras-6.

2. The Management,
Mandavelipakkam Women's Consumer
Co-operative Stores Ltd.,
67, R.K.Mutt Road,
Madras-28.

Respondents in both writ appeals

Prayer: Appeals under clause 15 of the Letters Patent against
the order of this Court in WMP No.3845 of 2001 in W.P. No.7129 of
1994 dated 5.3.2001 and the order dated 25.1.2001 in W.P. No.7129 of
1994.

For appellant :: Mr.K.M.Ramesh

For respondents :: Mr.P.S.Sivashanmugasundaram,
(R1) Addl. Govt. Pleader.

JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice.)

These two writ appeals have been filed against the
impugned judgment of the learned single Judge dated 25.1.2001 and
also the order of the learned single Judge dated 5.3.2001 rejecting
the restoration application.

2. We have carefully perused the impugned judgment dated 25.1.2001 and find no infirmity in the same.

3. The appellant (writ petitioner) was working as a salesman in a ration shop run by the second respondent. He was chargesheeted for various misconducts including misappropriation of money, in respect of which a domestic enquiry was conducted in which he was given an opportunity of hearing. Thereafter he was found guilty of the charges and his service was terminated. He filed an appeal before the appellate authority under the Tamil Nadu Shops and Establishments Act, but his appeal was dismissed by order dated 30.6.1993. Aggrieved by this order he filed a writ petition before the learned single Judge, who dismissed it by order dated 25.1.2001 and the restoration application was also rejected by order dated 5.3.2001.

4. Learned counsel for the appellant has submitted that the appellate authority in its order dated 30.6.1993 has not considered the charges against the appellant on merit. We do not agree with this submission. In the said order dated 30.6.1993 there is a detailed discussion about the charges from internal page 14 of the said order to page 22. Thus the charges have been discussed and the evidence considered and the findings recorded by the appellate authority in as many as eight pages.

5. It must be understood that the appellate authority is the Deputy Labour Commissioner and he is not expected to write an elaborate and as good a judgment as a regular civil court would do. He is only an executive authority and we cannot expect the executive authority to write as good a judgment as a trained judicial officer. Moreover, this Court under Article 226 of the Constitution of India cannot re-appreciate the evidence nor can it go into the question of adequacy of evidence. As long as there is some evidence in support of the charges this Court cannot interfere.

6. The finding of guilt is a finding of fact and we cannot interfere with the same in writ jurisdiction.

7. Learned counsel for the appellant submitted that the appellate authority passed the order dated 30.6.1993 after he had retired on 30.6.1993. This is a factual controversy and we cannot go into it in writ jurisdiction as it is not the appropriate forum. Moreover, there is no strong evidence that the appellate authority passed his order after superannuation. Learned counsel submitted that as many as 13 orders were passed by the appellate authority on 30.6.1993 and this was not physically possible for him to do. We do not agree because it is quite possible that the said authority might have prepared his orders earlier and might have signed it on the day when he retired.

8. Moreover, the appellate authority has not been impleaded as a party in the writ petition nor in this appeal in person. If the petitioner/appellant wanted to make this allegation, he should have in all fairness impleaded the said authority as a respondent in the writ petition as well as in this appeal which he did not do. Hence he cannot be allowed to raise this submission.

9. For the reasons given above, both the writ appeals are dismissed. No costs.

ns.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Deputy Commissioner of Labour (Appeal),
Madras (Appellate Authority under
Section 41(2) of the Tamil Nadu Shops
and Establishments Act, 1947),
Labour Welfare Building,
D.M.S.Compound, Madras-6.

+ 1 cc to Mr.K.M.Ramesh, Advocate SR No.3866

+ 1 cc to the Government Pleader SR No.3747

W.A. No.1425 of 2002
and

W.A. No.1910 of 2001

SMV(CO)
SR/7.2.2005

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