

**(2002) 04 MAD CK 0208**

**In the Madras High Court**

**Case No :** Writ Petition No's. 17548 of 1995 and 1896, 1897 and 4608 of 1996

Damodharan V. and Others and Coimbatore District  
Consumers Co-operative Wholesale Stores Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

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**Date of Decision :** 29-04-2002

**Acts Referred:**

**Citation :** (2003) 1 LLJ 718

**Hon'ble Judges :** K. Gnanaprakasam, J

**Bench :** Single Bench

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**Judgement**

K. Gnanaprakasam, J.—Out of four writ petitions, one was filed by the management and the three writ petitions were filed by the workers against the common award, dated February 10, 1995; passed by the Labour Court, Coimbatore, in I.D. Nos. 513, 562 and 578 of 1991.

2. The petitioner in W.P. No. 17548 of 1995 is the Coimbatore District Consumers Co-operative Wholesale Stores, Ltd. The respondents Nos. 2 to 4 were working in the Confiscated Goods Sales Section in Chinthamani Main Super Market, Coimbatore. A surprise inspection was made on August 3, 1989 by the inspection team in the Confiscated Goods Sale Section and it was found from the records that the value of battery cells meant for watches, calculators had been inflated by the respondents 2, 3 and 4. The second respondent was working as section incharge between July 1, 1985 and December 31, 1988 and the third and fourth respondents were working as helpers. Respondents Nos. 2 to 4, signed the stock statement, dated December 26, 1988, and handed over the charge to the new team that took charge from January 1, 1989. Investigation also revealed that the stock statement, dated December 26, 1988, signed by the respondents No. 2 to 4. The value of the balance cells of 10,213 was shown as Rs. 1,18,981.45 whereas the actual value of 15,348 cells purchased amounted to only Rs. 42,951.80. The abnormal value of stock was possible only if the value of cells was inflated which works out to at Rs. 11.65 per cell, whereas the actual value of

a cell was only Rs. 2.35. An enquiry was initiated against the respondents 2 to 4 for their misconduct of causing loss and the domestic enquiry was held in respect of the charges levelled against them. The respondents were called upon to give a reply, as their reply was not satisfactory the respondents 2 to 4 were dismissed from the services on May 20, 1991 and the same was questioned by them by raising industrial dispute which was numbered as I.D. No. 513 of 1991.

3. The Labour Court after taking into consideration all the aspects of the case came to the conclusion that the order of dismissal of the respondents 2 to 4 was not proper and passed an award thereby directing the reinstatement of the respondents with 50 per cent back-wages. Dissatisfied by the award, Damodharan filed W.P. No. 1896 of 1996, V.M. Jayabalan filed W.P. No. 4608 of 1996 and R. Balakrishnan filed W.P. No. 1897 of 1996.

4. The management also questioned the validity of the award by filing W.P. No. 17548 of 1995. As all these matters arise out of common award, dated February 10, 1995, by consent of parties, all the petitions were heard together and disposed of by this common order.

5. The learned advocate for the petitioner in W.P. No. 1896 of 1996 would submit that he was not at all responsible for the inflated stock statement. He was employed only as a cashier and he was discharging his duties properly. Chellappan was incharge of sales and accounts and he was responsible for the entire dealings in respect of the stock and sale of all Confiscated Goods Sales Section. Damodharan was in no way responsible for the alleged inflation of stocks position for the period July 1, 1987. But, however, he had agreed to pay his share of the amount demanded and also made payments. It is, therefore, submitted that Damodharan is not at all liable for any of the charges as levelled by the management. The learned advocate for Jayabalan and Balakrishnan who are the workers would contend that they are only assistants in the sales section and they are illiterates and they are in no way responsible for inflated stock position. It is pointed out that the Labour Court came to the conclusion that the charges levelled against them were not properly proved and they have not committed any act except that they have signed the stock register. In those circumstances, the award of the Labour Court denying 50 per cent of the wages is not commensurate with the charges levelled against them.

6. On the contrary the learned counsel for the management would submit that the second respondent Damodharan was employed as assistant cashier and Chellappan was employed as a clerk in the Confiscated Goods Sales Section and they were solely responsible for the maintenance of the stocks in the said section, the other two persons Jayabalan and Balakrishnan were also employed in the very same section and they are equally responsible for the stock position. The domestic enquiry conducted by the management is not challenged on the ground that it was not conducted in a free and fair manner and therefore, the findings of the enquiry should have been accepted by the Labour Court and should have confirmed the said findings. There is absolutely no ground for the

Labour Court to arrive at a conclusion that the findings of the enquiry officer was not proper.

7. The rival submissions of the learned advocate for the worker and management were carefully considered by this Court. Damodharan was employed as assistant cashier and one Chellappan was employed as a clerk in the Confiscated Goods Sales Section and they were in the responsible post. They are duty-bound to maintain the stock position truly and properly. They are also responsible for any irregularity or illegality in the stocks position. They are also answerable to the management, if any thing goes wrong. In fact, Damodharan had attempted to assail the charges levelled against him to the extent that he was responsible for the loss caused to the management and to his part, he has also paid Rs. 10,000 on January 22, 1990 under Exhibit W4 and also paid Rs. 9,007.50, under Exhibit W5. This fact is not in dispute. The Labour Court was of the view that just because Damodharan has paid these amounts, the enquiry officer came to the conclusion that Damodharan had committed an offence and given a finding for his dismissal and the said order is not in accordance with the principles of natural justice.

8. With regard to the charges levelled against Jayabalan and Balakrishnan, it is the admitted case of the management as well as the workers that they were illiterates and they were employed only as workers in the section. They were in no way responsible for the stock position or for maintenance of the stocks also. When they were not entrusted with such onerous duty, it cannot be said that they were also responsible for the inflated stock position as found by the inspection team.

9. That apart, they are all helpers and they have to simply sign the stock registers and they were not in a position to verify the correctness or otherwise of the stocks register and then sign.

10. In the said circumstances, I am constrained to come to the conclusion that the charges levelled against them are not proper and they are not responsible for the inflated stocks. The Labour Court has also given a finding that the findings of the enquiry officer as against these persons were not legal and proper.

11. That apart as these workers did not play any role in the maintenance of the stocks and stock register, I am of the view that the punishment inflicted upon them, is not at all warranted and the award passed by the Labour Court that they are not entitled to 50 per cent of the wages though they were given reinstatement with 50 per cent of the wages, is not proper and I hold that these workers are entitled to the entire back-wages apart from the award of reinstatement, and their WPs are allowed.

12. As far as Damodharan is concerned, he was employed as an assistant cashier in the Confiscated Goods Sales Section and in the explanation given by him to the management on April 3, 1990, he has admitted that he was incharge of the supervision of the sales in the said section. As such he is responsible and liable

for the stocks and stock register and he signed in the stock register only as a responsible officer and not otherwise. But however, the learned counsel appearing for the petitioner would submit that though Chellappa, clerk in that section admitted the guilt and paid the fine and Damodharan also admitted the charges levelled against him and paid some amount that would not make Damodharan liable, for the reason, that, he did so as he was occupying the responsible position but that would not amount to culpability. The mere fact that Damodharan paid some amount with regard to the loss caused to the management, it cannot be said that he had committed the Act and admitted the guilt and it would amount to culpable negligence and the management has to prove that there is culpable negligence on the part of the workers in having committed an offence and the same was not proved. In fact, the Labour Court also did not accept the finding of the enquiry officer in the said aspect and also came to the conclusion that the findings of the enquiry officer were not proper and correct. The Labour Court also took note of the fact that Damodharan had paid the amounts only with a view to extricate himself from the charges and came to the conclusion that the punishment of dismissal is disproportionate to the charges levelled against him and passed an order for reinstatement and for 50 per cent of the back-wages. Taking into consideration the overall aspects of the case and the charges and also the explanation tendered by Damodharan and also the admission made by him to pay the said amount, I am of the view that the award passed by the Lower Court is proper and it does not warrant any interference by this Court.

In the result -

- (i) W.P. No. 4608 of 1997 filed by Jayabalan is allowed and the order of the Labour Court is set aside and Jayabalan is entitled for reinstatement with continuity of service with full back- wages.
- (ii) W.P: No. 1897 of 1996 filed by R. Balakrishnan is allowed and the order passed by the Lower Court is set aside and Balakrishnan is entitled for reinstatement with continuity of service with full back-wages.
- (iii) W.P. No. 1896 of 1996 filed by Damodharan is dismissed.
- (iv) W.P. No. 17548 of 1995 filed by the management is also dismissed.
- (v) No costs.