

(2000) 10 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 20747 of 1993

Kulandaivelu K.

APPELLANT

Vs

Appellate Authority under Tamil Nadu Shops and
Establishments Act, 1947 and Another

RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:

Citation : (2001) 2 LLJ 1686

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : S.M. Loganathan, for the Appellant; R. Parthiban, for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—This writ petition is filed by the petitioner by name K. Kulandaivelu, a resident of Kulithalai, Thiruchirappalli District, invoking Article 226 of the Constitution of India, for the relief sought for setting aside the order passed by the first respondent, i.e., the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947/Deputy Commissioner of Labour, Tiruchy, by an order dated April 6, 1993, in T.N.S.E. Case No. 9 of 1992 and consequently direct the respondents to reinstate the petitioner into service with all back-wages, continuity of service, seniority, etc.

2. In support of the writ petition, the petitioner has filed an affidavit wherein he narrated all the facts and circumstances that forced him to file this writ petition and requested the Court to allow the writ petition.

3. On the other hand, the contesting respondent no doubt did not file any counter, but at the same time, argued the matter. The arguments of learned counsel for the petitioner together with arguments of learned counsel for the second respondent, the management were heard. The point for consideration is as to whether there are any valid grounds to allow the writ petition or not ?

Point : I have gone through the material documents available on record,

particularly with regard to the contents of the affidavit the impugned order passed by the first respondent together with the order passed by the second respondent, the management. I have also gone through the material documents available in the typed set of papers. I have also kept in mind the rule of law in a case of this nature as well as Article 226 of the Constitution.

4. Having seen the entire materials available on record, the salient features of the present case on hand are as follows:

It is the case of the workman by name, K. Kulandaivelu, that he worked before the management in his capacity as clerk from 1971 and then as accountant from 1984. During the course of his service he faced an alleged misconduct with regard to misappropriation of funds for an amount Rs. 15,000. Thereafter, an enquiry was ordered and the enquiry officer framed charges against the workman. The enquiry was conducted and on the basis of the enquiry report, the management issued a show-cause notice to the workman dated August 31, 1991, and after getting reply from the workman, the second respondent-management terminated the services of the workman by an order dated December 24, 1991. Aggrieved by the said order the workman preferred an appeal before the first respondent, the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947/Deputy Commissioner of Labour, Tiruchirappalli. The said officer in T.N.S.E. Case No. 9 of 1992, by an order dated April 6, 1992, confirmed the termination order passed by the management against the workman. That order is the subject-matter of the challenge invoking Article 226 of the Constitution of India.

5. Now, I would like to examine the legality and validity of the order passed by the first respondent from the point of view of the point urged before me by learned counsel for the petitioner- workman. Learned counsel for the petitioner brought to the notice of the Court that the punishment imposed on him is too harsh and disproportionate to the proved charge and the previous service of the workman was very fair and, therefore, the removal is too harsh. It is also brought to the notice of the Court, that at the time of filing the writ petition, the age of the petitioner is 45. The writ petition is filed in 1993. Now, the age of the writ petitioner may be about 52 or 53. Hence, this fact is to be examined in favour of the petitioner. I have carefully gone through finding given by the first respondent from the point of view of the material available on record. It is absolutely clear that the order passed by the first respondent is not an ex parte order and the proved charge against the workman is misappropriation of funds for an amount of Rs. 15,000.

6. Now, I would like to examine the defence taken by the workman with regard to the misappropriation of Rs. 15,000. It is argued on behalf of the petitioner that the petitioner never misappropriated the funds and the amount was passed on to two individuals one by name Mr. Subramaniam and another by name A. Srinivasan and the workman is not a person who misappropriated the funds. That matter has been examined by the management and the enquiry officer also

did not agree with the contention and the defence that is taken by the workman that the amount of Rs. 15,000 is passed on to two other persons referred to above is not based on any documentary evidence. When once the defence taken by the petitioner with regard to the misappropriation of Rs. 15,000 that the said amount was passed on to two others one by name Subramaniam and the other by name Srinivasan, in such a case, in the absence of any documentary proof, the defence taken by the petitioner-workman has rightly been negated by the enquiry officer as well as by the management.

7. I have gone through the order passed by the first respondent. The first respondent although did not record any oral evidence, but marked the documentary evidence. It is significant to note that exhibits A-1 to A-13 have been marked with the consent of the workman.

8. The proved charge is misappropriation of Rs. 15,000 and the rule of law is very clear that as and when the charge is made out with regard to the misappropriation of funds, the workman did not deserve any mercy and the just and proper punishment is nothing short of dismissal from service. With regard to the argument on behalf of the workman that his previous service is very fair, that cannot be regarded as a point in favour of the workman since the proved charge is very grave that misappropriation of funds with an amount of Rs. 15,000.

9. I have carefully gone through the reasoning given by the first respondent. The first respondent clearly recorded that as seen from the domestic enquiry, it is seen that the management fairly conducted the enquiry and full opportunity was given.

10. With regard to the documentary evidence placed before the trial Court exhibits A-1 to A-13 and exhibit R-1 which were marked by consent, while going through the above documents, it is evident that on July 30, 1988, the management had paid Rs. 175 in voucher No. 271 towards the rent of the management-society for the month of July, 1988. The same day without any voucher the management paid Rs. 175 towards rent for the same month and thereby committed misappropriation of funds.

11. With regard to other aspect on September 20, 1988, the workman prepared a voucher for purchase without obtaining the order of the special officer and has written Rs. 9,000 that is highly irregular and is without any basis and it is another material aspect to note that on September 22, 1988, the petitioner has drawn Rs. 6,000 under voucher No. 779 and he misappropriated the same. In the enquiry all the material facts with regard to the misappropriation of funds by the petitioner-workmen have been made out. Invoking the rule of law, I am of the clear view that the workman does not deserve any mercy and rightly the management awarded the capital punishment of termination from service which was rightly confirmed by the first respondent herein.

12. Having seen the entire material available on record from the point view of the fact coupled with the rule of law, I am of the clear view that the order passed

by the second respondent which was confirmed by the first respondent is perfectly valid under law and I see no reason to interfere with the same and the point is accordingly answered against the petitioner.

13. In the result, this writ petition is dismissed. But, in the circumstances, no costs.