

(2004) 02 MAD CK 0168

In the Madras High Court

Case No : Writ Petition No. 2403 of 1997

Management of Coimbatore District Consumers Co-operative
Wholesale Stores Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 18-02-2004

Acts Referred:

Citation : (2004) 3 LLJ 595

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Ravindran, for T.S. Gopalan and Co, for the Appellant;

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the petitioner/the management of the Coimbatore District Consumers Co-operative Wholesale Stores Ltd., seeks to quash the award of the first respondent/Labour Court in I.D. No. 403 of 1994. By the said award, the second respondent was directed to be reinstated in service without back-wages.

2. The second respondent was working in the Coffee Grinding Section and he was suspended for various irregularities of misappropriation of the society's funds to the tune of Rs. 1,05,846.75.

3. The following charges were framed against the second respondent:

"(1) that, he Sri R. Jaganathan, clerk has joined together with G.V. Rangarajan and V.M. Natarajan and misappropriated a total sum of Rs. 1,06,104.33 being the value of Rs. 15,66,576 numbers of 100 gram BGP printed paper covers showing that as purchased without having actually made any purchase at all.

(2) that, he has not maintained any stock register for BGP paper bags and this had enabled him (R. Jaganathan), the clerk (V.M. Natarajan) and Superintendent (G.V. Rangarajan) to misappropriate huge funds of the society.

(3) that, he had inserted 7,00,000 numbers of ordinary blue colour 100 gram BGP paper bags after the approval of the purchase Order No. 13, dated July 17, 1981.

(4) that, he had issued acknowledgments for alleged incoming of covers without actual receipt of the covers for the purpose of misappropriation of the Society's funds in connivance with the clerk (V.M. Natarajan) and G.V. Rangarajan (Superintendent).

(5) that, for the purpose of misappropriation he had, with the connivance of V.M. Natarajan, and G.V. Rangarajan altered the figure in the indent of 100 gram Special red colour BGP paper bag from 1,50,000 to 7,50,000 numbers.

Sri R. Jaganathan, clerk has proved himself to be dishonest and he is directed to submit his explanation to the above charges within (sic) 7 days from the date of receipt of this charge memorandum. Failure if any will be viewed very seriously and action will be taken against him."

4. After giving a show-cause notice, an enquiry was conducted and the enquiry officer found that the charges were proved. Accepting the findings of the enquiry officer, the second show-cause notice was issued and ultimately finding that the explanation of the second respondent was not satisfactory, he was dismissed from service by order, dated December 18, 1984. It is as against the said order of termination, the petitioner raised an industrial dispute on December 7, 1994. The Labour Court allowed the said I.D. No. 403 of 1994. Hence the above writ petition.

5. Learned counsel for the petitioner/ management contends that the dispute raised by the petitioner is badly time-barred considering that though the order of dismissal is dated December 18, 1984, the respondent raised the dispute only after 10 years, i.e. on December 7, 1994. He submitted that the conduct of the employee in having raised a belated dispute was fatal to the proceedings and also considered in the back ground of the fact that the two of the three employees who were simultaneously chargesheeted had also raised disputes, and only because the award against one of them went in favour of the employee, the petitioner has approached this Court belatedly. Therefore, there was no bona fides on the part of the second respondent in having raised the dispute belatedly.

6. Learned counsel further contends that the nature of the charges are very serious. Along with the second respondent, simultaneous proceedings were initiated against V.M. Natarajan, who was a clerk and G.V. Rangarajan who was Superintendent Though all of the three were dismissed from service, G.V. Rangarajan raised an industrial dispute in I.D. No. 284 of 1995. The Labour Court by award, dated November 18, 1989, directed that the petitioner be reinstated with 25 per cent back-wages. Thereafter, V.M. Natarajan raised dispute only on June 19, 1990 in I.D. No. 34 of 1992. The dispute raised by him was dismissed on May 19, 1995 on merits. The said individual did not take any further proceedings. Therefore, the said award of dismissal had become final. Learned

counsel also took me through the award in I.D. No. 34 of 1992, dated May 19, 1995. It is pertinent to note that the very same Presiding Officer had dismissed the said award after referring to the fact that V.M. Natarajan was a clerk and that his case cannot be compared with the case of G.V. Rangarajan and that V.M. Natarajan can be compared only with that of Jaganathan (the second respondent therein). Ultimately, the I.D. was dismissed finding that V.M. Natarajan was guilty of the charges. However, in this case, instead of comparing the case of the second respondent with V.M. Natarajan, the Tribunal has the second respondent's case with that of G.V. Rangarajan and had found that inasmuch as the management had reinstated G.V. Rangarajan in service with 25 per cent back-wages, the second respondent in this case also was entitled to be reinstated. Learned counsel contends that the case of G. V. Rangarajan cannot be compared since he was only working in the supervisory capacity. The Labour Court ought to have compared only with the case of V.M. Natarajan and should have confirmed the order of dismissal. Learned counsel further contends that the nature of the charges were grave and the Labour Court itself having found that the second respondent was also involved in the misappropriation, ought not to have directed reinstatement.

7. Though the second respondent has been served with notice in the writ petition, there is no appearance either in person or through counsel.

8. I have considered the submissions from the learned counsel for the petitioner.

9. On the question of delay, it is true that there is no limitation and the Supreme Court has held that the Labour Court should adopt a lenient and liberal attitude in entertaining the petitions, though belated. However, it is also equally settled that it is not open to the employees to raise a dispute with glaring negligence and delay and if the conduct discloses that there are no bona fides. In this case, apart from the fact that the very dispute was raised after 10 years, the second respondent had raised the dispute only because of the fact that the other two individuals had raised the dispute earlier and one of them had succeeded in I.D. No. 284 of 1985, dated November 18, 1989. In fact, even from the said date, the second respondent had raised the dispute only after 5 years. Therefore, the conduct of the employee in not having raised the dispute within a reasonable period is not bona fide. Therefore, on the ground of delay alone the dispute raised by the second respondent is liable to be rejected.

10. Even otherwise, I am inclined to consider the merits of the proceedings and I find that there is no justification for the Labour Court to have taken sympathetic attitude towards the second respondent who has been charged with very serious misconduct of misappropriation of an amount of Rs. 1,06,104.33. The only reason, which is given by the Labour Court, to have directed reinstatement of the second respondent is that G.V. Rangarajan was directed to be reinstated by the Labour Court and that therefore, there was no justification for the termination of the service of the second respondent. I am unable to agree with the conclusion of the Labour Court, for the reason that the case of G.V. Rangarajan was treated

as different from the case of Natarajan and Jaganathan. As against the award in G.V. Rangarajan case, the management had filed a writ petition and the said writ petition was dismissed by this Court on June 14, 1999. A perusal of the said judgment reported in Management of Coimbatore District Consumers Co-operative Wholesale Stores Ltd. Vs. Presiding Officer, Labour Court and Another, disclosed that the learned Judge has confirmed the finding of the Labour Court that the case of G. V. Rangarajan stood on a different footing from the other two delinquents who have committed mis- appropriation Therefore, the Labour Court was in error in comparing the case of the second respondent with that of G.V. Rangarajan, The Labour Court ought to have compared with the case of V.M. Natarajan whose dismissal from service has been confirmed in I.D. No. 34 of 1992 by the very same Presiding Officer.

11. Therefore, for all the aforesaid reasons, the order of the Labour Court cannot be sustained. The writ petition is allowed. The award is quashed and the order of dismissal of the second respondent from service is confirmed. No costs.