

(2013) 11 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No. 38447 of 2003

M/s. Kallakurichi Co-operative Sugar Mills

APPELLANT

Vs

Manickam and The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0164

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : K. Rajasekaran, for the Appellant; Rita Chandrasekaran for Aiyar and Dolia for 1st respondent, for the Respondent

Final Decision : Disposed Off

Judgement

A. Arumughaswamy, J.—The Writ Petition is filed challenging the impugned order of the 2nd respondent made in I.D. No. 22 of 1992 dated 10.6.2003 and to quash the same. The 1st respondent joined the petitioner Sugar Mill on 12.12.1967. Thereafter, he was promoted as Assistant Accountant. The 1st respondent was suspended on 3.8.1981 and subsequently, charge memos have been served on 10.2.1981 and 13.3.1981 respectively and finally, he was dismissed from service on 29.12.1981. In the enquiry, the Enquiry Officer held that the charges were proved and after getting the explanation, since the same was not satisfied, the 1st respondent was dismissed from service. Thereafter, the 1st respondent has raised an industrial dispute in I.D. No. 22/92 before the 2nd respondent. But, the 2nd respondent, without considering facts and circumstances, has passed the impugned award dated 10.6.2003 in I.D. 22/1992 directing the petitioner to reinstate the 1st respondent with back wages and continuity in service observing that the 1st respondent deserves to be punished with a cut in increment for one year without any attendant benefits. Hence, the present Writ Petition.

2. According to the learned Counsel for the petitioner, the 1st respondent has committed certain irregularities for which, initially, he was suspended on

3.8.1981. Thereafter, after issuing charge memos and after conducting enquiry by giving sufficient opportunity to the petitioner and after getting his explanation only, the impugned order of dismissal came to be passed by the petitioner. Further, according to the learned Counsel for the petitioner, thereafter, the 1st respondent has raised an industrial dispute in I.D. No. 22/92 before the 2nd respondent and even though the Management has produced relevant documents to substantiate his case, the 2nd respondent has passed the award setting aside the findings given by the Enquiry Officer which is not in accordance with the provisions of the I.D. Act. Hence, according to the learned Counsel for the petitioner, the present Writ Petition has to be allowed.

3. According to the learned Counsel for the 1st respondent even though, witnesses have been examined on the part of the petitioner Management, no witnesses would speak about the documents relating to the charges. Therefore, according to him, the 2nd respondent has passed such orders setting aside the dismissal of the 1st respondent. Hence, he would pray to dismiss the present Writ Petition.

4. Heard both sides and I have also perused the materials available on record carefully.

5. At the outset, it is not in dispute that the 1st respondent joined the services of the petitioner on 12.12.1967 and subsequently, he was promoted as Assistant Accountant. Thereafter, it appears that by order dated 3.8.1981, he was suspended followed by two charge memos dated 10.2.1981 and 13.3.1981.

6. Now coming to the Charge Memo dated 10.2.1981 in which 6 charges have been framed against the 1st respondent. According to the 1st charge, the petitioner, being the Manager of the petitioner Sugar Mills in collusion with one J. Nagarajan, Secretary of the said Sugar Mills, has shown the accounts as though he has purchased Casuarina Poles from one Sabapathy, who is an imaginary person for a sum of Rs. 4570/-. Further, in the records maintained in the Stores, the purchase of Wax was mentioned as Rs. 4,750/- instead of Rs. 1050/- by fabricating false vouchers and thus misappropriated the funds of the Sugar Mill. The second charge is that without purchasing any Stationery items, the 1st respondent has accounted for the same by preparing fabricated vouchers and thus, caused a loss of Rs. 940/- to the petitioner. According to the 3rd charge, the 1st respondent along with the then Secretary misused the name of the Kallkurichi Co-operative Sugar Mills Employees Co-operative Stores by helping the outsiders to do business for their personal gain in the name of stores and accordingly, 267 pencils have been purchased from M/s. Anurah Traders for a sum of Rs. 11,700/- which was supplied to the Joint Collector and Chairman, Purchase Committee, Chittoor, Andhra Pradesh on 14.12.79 and allowed the said Traders to supply slates to the District Social Welfare Board which have been supplied in the name of the petitioner for a sum of Rs. 25,063/-. According to the 4th charge, without printing any cash and credit bills, it was shown as though the same has been printed for a sum of Rs. 565/-. According to the 5th charge,

without purchasing any rice, vouchers have been prepared and amounts have been settled to the outsiders. According to the 6th charge, the 1st respondent has misappropriated the stores funds in the purchase of rice by manipulating the records for a sum of Rs. 1739.70.

7. Now coming to the explanation given by the 1st respondent for the charges framed against him, as far as the 1st charge is concerned, the 1st respondent has stated that he is ready to prove his innocence by means of oral and documentary evidence in the enquiry, if any conducted. As far as the 2nd and 4th charges are concerned, according to the 1st respondent, he is nothing to do with the said charges. As far as the 3rd charge is concerned, the 1st respondent has given explanation stating that M/s. Anuragh Traders have themselves contacted the Joint Collector and Chairman of Purchase Committee for the supply of Pencils and Slates in the name of petitioner stores and also approached the Board of Directors and they only, they have allowed the said Anuragh Traders since Rs. 810/- will accrue as commission to the stores and there is no fault on his part. As far as the 5th and 6th charges are concerned, according to the 1st respondent, the rice was purchased at the rate of Rs. 205/- per quintal from Kuppuswamy Reddiar and later on, by the objection raised by the seller, the same was raised to Rs. 210/- per quintal and the seller has failed to produce the original bills. Further, according to the 1st respondent, he has put 13 years of unblemished service, and he has not committed any fraud or misappropriation on the petitioner Stores. But, the Enquiry Officer has held that the charges have been proved. Based on the same, he was dismissed from service.

8. Aggrieved over the dismissal order of the petitioner, the 1st respondent raised I.D. No. 22/92 before the 2nd respondent Labour Court and by award dt. 10.6.2003 directed petitioner to reinstate the 1st respondent with back wages and continuity in service observing that the 1st respondent deserves to be punished with a cut in increment for one year without any attendant benefits against which the petitioner is before this Court.

9. Now, a perusal of the evidence on the side of the Petitioner Management before the Labour Court would disclose that two witnesses have been examined on the side of the Management as M.W. 1 and M.W. 2 and documents, namely, Ex. M.1 to Ex. M.115 have been marked and on the side of the 1st respondent/petitioner, the delinquent himself was examined and Ex. W.1 to Ex. W.27 have been marked. But none of the Management Witnesses would speak about the specific charges against the 1st respondent or the explanation given by him.

10. Further, it is seen that regarding the documents marked on the side of the management, the Workmen Witness was cross-examined. Though the witness has denied some aspects, he admits the signatures found place in the Register. Even, as per the award of the learned Labour Court, on two occasions, it concludes that Anuragh Traders who is the Slate Company has participated before the Andhra Pradesh Society. He also conceded that without the knowledge of the management, the delinquent has given a letter and he participated in the

Andhra Pradesh Society and order has been obtained and goods have been supplied to them. Therefore, the Labour Court has concluded that this charge has been proved.

11. It is also pertinent to note that there is fluctuation in between quoted rice price as well as the bill creating price regarding quintal of rice. Considering the length of time, some of the documents are not accepted in the eye of law.

12. In view of all the above, I am of the view that the punishment of dismissal from service passed by the disciplinary authority is not sustainable in law. At the same time, after concluding that the findings of the Enquiry Officer is correct, the award passed by the learned Labour Court for reinstatement of the delinquent is also perverse, I am of the view that it is just and proper to impose the punishment of compulsory retirement from service instead of dismissal from service. The delinquent/1st respondent is entitled for monetary benefits for the entire period of service rendered by him till 1981 the date of the impugned order passed by the authorities. With the above observation, the Writ Petition is disposed of. No costs.