

(2000) 11 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 1250 of 1995 and W.M.P. No's. 1967 and 8199 of 1995

Special Officer, Salem District Consumer Co-operative
Wholesale Stores Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Citation : (2001) 2 LLJ 1673

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : M.R. Raghavan, for the Appellant; K.V. Shanmuganathan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—This writ petition is directed against award of the first respondent made in I.D. No. 269 of 1992 holding that the

non- employment of the second respondent was not justified and therefore he should be reinstated with all back wages, continuity of service and

other attendant benefits.

2. According to the petitioner, when the second respondent was employed as salesman in one of the fair price shops run by the petitioner, on April

20, 1987, 1000 kilograms of rice and on April 26, 1987, 2000 kilograms of rice were received by the second respondent for the purpose of

distribution to cardholders, that as per the list furnished by the second respondent, he distributed 12 kilograms of rice to each of 82 cardholders on

February 24, 1987 and to one cardholder on April 22, 1987, in all 996 kilograms of rice, that when the Inspector Sri Palanichamy, attached to the

office of the petitioner made enquiries with 48 cardholders, he was informed that they did not receive any rice on the respective dates that in the report of the Joint Registrar, dated April 19, 1988, it is stated that the second respondent admitted his guilt before him and therefore based on the above factors which were placed before the enquiry officer, the second respondent was found guilty, that on that basis, the second respondent was dismissed from the service of the petitioner on October 19, 1989, and that the said order of the dismissal which came to be challenged by the second respondent before the first respondent in I.D. No. 269 of 1992. The first respondent on consideration of the entire enquiry proceedings, findings as well as the connected documents came to the conclusion that the misconduct levelled against the second respondent was not conclusively proved and consequently granted the relief of reinstatement and other benefits.

3. Attacking the findings of the first respondent, the learned counsel for the petitioner contended that when the witness examined before the enquiry officer deposed as to the enquiries made by him with various cardholders who confirmed that the second respondent did not really supply any rice on the relevant dates and when the second respondent did not question the veracity of the said statement made by the witness in his chief examination, the conclusion reached by the first respondent without considering the said aspect with reference to the guilt of the second respondent is not valid.

4. The learned counsel further contended that when the responsible officer in the rank of a Joint Registrar gave a statement in writing confirming that the second respondent admitted his guilt before him, the said statement deserved greater weight and acceptance, and the first respondent ought not have rejected the said evidence placed before it while holding that the misconduct was not proved against the second respondent.

5. As against the said submission of the learned counsel for the petitioner the learned counsel appearing for the second respondent would contend that when once the petitioner levelled serious charges of malpractices in the matter of handling essential commodities to be supplied in fair price shop, the burden was heavily upon the petitioner to establish that though not clinching evidence, there should be acceptable material evidence with

regard to the misconduct levelled against the second respondent and that the petitioner cannot attempt to pick holes in the cross-examination of the

management witness by the second respondent in order to hold that the misconduct was found proved against the second respondent.

6. Having heard the counsel for either side, I am of the view that though in the matters of domestic enquiries preponderance of probability is

sufficient and not proof to the hilt, still there should be some basic material evidence available on record to hold that one is guilty of the misconduct

levelled against him. In the case on hand, the allegation is that without distributing the essential commodities namely rice to the cardholders the

second respondent sold it away in the open market and appropriated the same for his personal benefit. The only witness examined before the

enquiry officer was stated to be employed as Inspector in the petitioner-society. Even according to his version, there was a report stating that the

Branch Manager of the concerned shop in which the second respondent was employed as a salesman, though received 100 bags from the main

godown at Thiruvengadam itself he disposed of the same at Thrivengadam while directing his subordinates to prepare bogus bills in the shop as

though the said rice was sold to the cardholders. That report was the basis for holding the proceedings against the second respondent. The said

witness also stated that he made enquiries with about 48 cardholders from whom he ascertained that they were not supplied with rice as claimed

by the second respondent. The said witness has not submitted any report to the petitioner. The only report is stated to be the one made by the

Joint Registrar that too on April 19, 1988, in the said report, it mentioned that as per the advice of the Branch Manager, thousand kilos of rice

were sold in the open market without bringing the same to the shop by preparing bogus bills in the names of various cardholders. It is also

mentioned that the second respondent admitted to the effect that thousand kilos of rice were sold in the open market without bringing it to the fair

price shop and by creating bogus bills it was shown as though they were sold to the cardholders. Even that ipse dixit statement, contained in the

said report of the Joint Registrar, dated April 19, 1998, on other supporting evidence was neither placed (sic) before the enquiry officer nor before

the Labour Court. The said Joint Registrar was also not examined even before the enquiry officer. Therefore by merely relying upon that one

statement contained in the report of the Joint Registrar, it will not be safe to conclude that the second respondent committed the misconduct as alleged by the petitioner apart from the said alleged administration as alleged by the petitioner. Apart from the said alleged admission stated to have been made by the second respondent, the petitioner has also not proved with any acceptable material to show that the second respondent did not distribute the rice to 83 cardholders as claimed by him. When bills were available in the shop and in the names of concerned cardholders and when the cardholders are attached to the shop, no acceptable reason has been given for not examining even one single cardholder in support of the version that no material was supplied to the cardholders as claimed by the second respondent. Not even a statement of any cardholder had been placed before the enquiry officer or before the Labour Court to show that there was some element of truth in what was alleged by the petitioner against the second respondent. I do endorse the findings of the first respondent that the petitioner failed to establish the charges levelled against the second respondent which result in the passing of the order of dismissal against him. As found by the first respondent if really the Branch Manager of the fair price shop was involved in the stealthy removal of 100 bags of rice, it is not known as to why no action was taken against him. There is therefore no acceptable muchless valid reason shown to interfere with the award of the first respondent.

7. In such circumstances, the conclusion reached by the first respondent with regard to the guilt of the second respondent cannot be assailed in this writ petition. The writ petition fails and the same is dismissed. No costs. Consequently, writ miscellaneous petitions are closed.