

(2003) 08 MAD CK 0143

In the Madras High Court

Case No : Writ Petition No. 7468 of 1996

The Nilgiris District Consumers' Co-operative Wholesale
Stores Ltd.

APPELLANT

Vs

Appellate Authority, Deputy Commissioner of Labour

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 41

Citation : (2003) 4 CTC 166 : (2004) 1 LLJ 419

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

Bench : Single Bench

Advocate : A.U. Iango, for the Appellant; V. Velumani, Additional Government Pleader for first Respondent and S.S. Kumar, for second Respondent, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for the issue of a writ of certiorari, to call for the records of the first respondent connected with Tha.Ka. Thi.Sa.No. 10 of 1994 dated 15.4.1996 and to quash the same.

2. The second respondent/employee herein was proceeded with a departmental enquiry on the basis of two charges. The first charge relates to the alleged misappropriation of the amount, stock belonging to the Management causing a loss of Rs. 9,826.77 deficiency of stock and cash deposit of Rs. 1,636.69. Therefore, according to the Management the employee caused a total loss of Rs. 11,463.46. The second charge relates to the petitioner having approached the Labour Court for payment of Subsistence Allowance during the period of suspension. The petitioner was found guilty of the first charge and dismissed from service. Aggrieved by the same, the employee filed an appeal before the Appellate Authority u/s 41(1) of the Tamil Nadu Shops and Establishments Act, 1947.

3. The Appellate Authority found that the petitioner was not guilty of both and hence set aside the order of dismissal directing reinstatement of the second respondent. Hence the above writ petition by the Management.

4. Learned Counsel for the petitioner refers to the findings of the Appellate Authority and contends that the Appellate Authority's findings are totally perverse. The fact of shortage of both the stock as well as the cash was admitted by the delinquent himself and in fact on 22.8.1988, he has paid a sum of Rs. 3,000 towards the part of payment. The Appellate Authority has proceeded on two erroneous findings namely as though the non-mentioning of the fact of payment of Rs. 3,000 would be fatal to the charge and that the management itself had admitted that the charge was not sufficient to dismiss the delinquent from the service.

5. I have also heard the learned counsel for the second respondent. He submits that in charge itself, there is no proper mentioning of the fact of the delinquent himself having repaid a sum of Rs. 3,000 on 22.8.1988. Therefore, there was no warrant to interfere with the order of the Appellate Authority.

6. I have considered the submissions of both sides.

7. As regards Charge No. 2, it is true that no such charge can be formulated against an employee for having approached the appropriate authority for payment of Subsistence Allowance, Therefore, the finding of the Appellate Authority setting aside and the said charge is confirmed.

8. However, with reference to Charge No. 1 namely, the delinquent having caused shortage of total sum of Rs. 11,463.46, I am inclined to hold that the order of the Appellate Authority is liable to be held as vitiated by error apparent on the face of the records and by perverted appreciation of the evidence. There is no dispute over the fact that the delinquent himself did not challenge the position of shortage of stock as well as cash. There is also no dispute over the fact that on 22.8.1988, the delinquent had paid a sum of Rs. 3,000. It is true that in the charge memo dated 9.10.1991, there is no mention of the said payment, and in fact there is an observation that as on date the amount has not been paid. But the said observation cannot result in setting aside the entire charge. The charge is serious in nature. The statement that the delinquent had not repaid the amount cannot be wrong considering that a balance of more than Rs. 8,000 remained to be refunded by the delinquent. Therefore, the mere fact of non-mentioning of the repayment of Rs. 3,000 being only a part of the total amount cannot result in setting aside the charge against the delinquent. The fact of repayment will not help the petitioner in any manner. It is in fact a circumstance in favour of the management.

9. While dealing with Charge No. 1, the Appellate Authority has also recorded an erroneous finding to the effect that the Management himself had agreed that the said charge was not sufficient for dismissal of the employer from the service. The learned counsel for the second respondent is unable to point out any such

concession on the part of the management. Therefore, the said observation is an error apparent on the face of the record as well as a perverted finding.

10. I have also independently considered the proportionate punishment. The first charge is a serious one amounting to misappropriation. The charge is not only admitted but also the delinquent had paid part of the amount and still a further sum of Rs. 8,000 remain to be unpaid.

11. Therefore, there is no material to interfere with the order passed by the management dismissing the delinquent from service. The interference by the Appellate Authority having regard to the nature of the misconduct is uncalled for and this writ petition is allowed. Such a delinquent cannot be thrust against an employer. No costs.

12. The learned counsel for the second respondent contends that the entire Subsistence Allowance has not been paid to the second respondent. It is made clear that any arrears remaining unpaid to the second respondent towards Subsistence Allowance, the same shall be paid within a period of four weeks from the date of receipt of a copy of this order.