

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 10577 of 2006 (H)

AGAINST THE AWARD IN ID(C).NO.4/2001 of LABOUR COURT, KOZHIKODE
DATED 2.11.2005

PETITIONER:

T.E.AUGUSTY, S/O. IGNATIOUS,
THEKKEKAITHAKKAL HOUSE, AMBUKUTHI MAIDANAM
MANANTHAVADI, WYNAD - 670 645.

BY SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE
ADV.SRI.P.S.MURALI

RESPONDENTS:

1. THE REGIONAL MANAGER, REGIONAL OFFICER,
CANARA BANK, CALICUT - 4.
2. THE LABOUR COURT, KOZHIKODE.

R2 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER OF LABOUR COURT, KOZHIKODE IN I.D.(C).
NO.4/01 DTD. 2.11.2005

RESPONDENTS' EXHIBITS:

NIL

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 10th day of April, 2015.

J U D G M E N T

The proceedings under challenge in this Writ Petition is Ext.P-1 award rendered on 2.11.2005 in industrial dispute, I.D.No.4/2001 by the Labour Court, Kozhikode.

2. The industrial dispute was raised by the petitioner against the 1st respondent-Canara Bank before the Labour Court, Kozhikode as I.D(C).No.4/2001 challenging the action of the management of the Canara Bank in terminating the service of the petitioner as New Nithya Nidhi Deposit Agent as per order dated 16.8.1997. It was the case of the petitioner that no charge memo was given to him and that no domestic enquiry was conducted and that the termination notice is also silent about any alleged misconduct on the part of the petitioner.

3. The respondent-management in the statement filed by them before the Labour Court, levelled certain allegations against the petitioner. The Labour Court permitted the management to adduce evidence on the aspects of the alleged misconduct and the management

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thereupon examined three witnesses to prove their case of misconduct. It was alleged that the petitioner had violated clause 10(v) of the agency agreement (produced as Ext.M-1 before the Labour Court) on the allegation that the worker had misappropriated or misplaced amounts collected from the depositors. This is projected on the basis of two written complaints and oral complaints of certain customers, after conducting investigation and but without conducting any domestic enquiry or framing charges. So, the management was given opportunity to adduce evidence on those aspects as stated above. MW-1 (Manager of Mananthavady Branch of the respondent-bank where the worker was as an agent), stated in evidence that several complaints or commission of malpractice and misappropriation of funds by making fictitious entries in the bank books were received and that on finding some irregularities he forwarded Ext.M-4 report to the Deputy General Manager of the bank and thereafter he recommended for investigation. Accordingly, an internal investigation was conducted by MW-3 and on the basis of the report the service of the petitioner was terminated. Ext.M-2 series produced before the Labour Court are the duplicates and Ext.M-3 series are the originals allegedly issued by the parties

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suspecting commission of fraud on the part of the petitioner. The witness deposed about the procedure of deposits or previous day's collections in the bank by the NNND (New Nithya Nidhi Deposit) agents. Another officer, viz, MW-2, of the same branch had also deposed on the same lines. MW-3, who conducted the internal investigation, stated about the details of the investigation conducted and that in the materials he found some irregularities and discrepancies in the work and conduct of the worker and lapses on the part of the Bank Supervisors. Based on the materials before the Labour Court, it was concluded by the court below that the complaints were made only pointing to some suspicious conduct of the petitioner and that even according to MW-1, management had not verified the total amount remitted by the complainants. The worker was not the custodian of Ext.M-7 collection issue book, verified and initialled in due course by the superior officers. The said witness could not identify the person responsible for making the so called corrections in the receipts and further admitted that he is not in a position to speak full details of all the allegations levelled against the petitioner. MW-2 also admitted that he has no direct knowledge about the person who made the entire

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entries in Ext.M-7 and that he had no occasion to note any irregularities in the conduct of the petitioner during his tenure. MW-3 also admitted in evidence that the fact finding enquiry was made without any reasonable opportunity to the petitioner. The impugned action was thus taken without issuing any show cause notice to the worker, framing any charge or even conducting any domestic enquiry after hearing the delinquent. On this basis, the Labour Court concluded that the management has not succeeded in proving the charge of misconduct against the worker by adducing cogent and satisfactory evidence.

4. It is not in dispute that the petitioner was working purely on contractual basis and the conditions of his contractual nature of employment were governed by the stipulations in the agreement produced as Ext.M-1 before the court below. Clause 10(b) of Ext.M-1 agreement enable the bank to terminate the agency in its absolute discretion without any prior notice at any time without assigning any reason whatsoever. The Labour Court held that in view of the rulings of the Apex Court, such a clause empowering termination of the service of the worker is unreasonable. On this basis, the Labour Court found in

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Ext.P-1 award that the impugned termination of service of the petitioner was bad. However, the court below found that going by the nature of the contractual employment of the petitioner it cannot be equated with the regular employees doing similar works and that he was not selected after undergoing any prescribed procedure for regular selection and he has not held any substantive post. Moreover, the petitioner, who was terminated in 1997 and out of service of the respondent-bank for a long period of 18 years, had not let in any satisfactory evidence regarding the quantum of commission received by him and he has not let in any evidence regarding the alleged misconduct. Accordingly, the Labour Court held that payment of compensation would meet the ends of justice and fairness in order to redress the grievances of the petitioner. In this view of the matter, by the impugned Ext.P-1 award, the Labour Court ordered to set aside the impugned action of the management in terminating the service of the petitioner and instead of reinstatement directed the respondent-bank to pay a compensation amount of Rs.50,000/- to the worker within 30 days of the pronouncement of the award lest the amount will carry interest @ 6% per annum from the date of pronouncement of the

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award. It is this award, rendered on 2.11.2005 (Ext.P-1), that is challenged in this writ proceedings. The prayers in this Writ Petition instituted by the petitioner on 4.4.2006 are as follows:

“i) To call for the records relating to Exhibit P1 order, and quash the same, in so far as it relates to the granting of the limited relief of compensation to the tune of Rs.50,000/- in lieu of reinstatement, and hold that the worker Sri.T.E.Augusty is entitled to be reinstated with full back wages, continuity in service, and all attendant benefits from the date of retrenchment.

ii) To direct the Respondent No.1 to reinstate the worker with full back wages, continuity in service and attendant benefits.

iii) In case, this Honourable Court is of the view that reinstatement can not be granted, then direct the Management/Respondent No.1 to pat the worker the amount equivalent to the amount he would have earned had he been in service till the age of superannuation apart from full back wages and attendant benefits.

iv) To grant such other order or direction, this Honourable Court may deem fit and proper to grant in the facts and circumstances of the case.”

5. Though notice was ordered in this Writ Petition as early as on 4.4.2006, the petitioner had not taken any steps to serve notice on the 1st respondent-bank and after intimation from the Registry on 21.2.2012, the petitioner's counsel had taken steps and thereafter notice was sent to respondents 1 & 2 on 24.2.2012 and it is reported by the Registry that service on respondents 1 & 2 are complete. But, it is seen

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that none is appearing for the 1st respondent-Canara Bank. The 2nd respondent Labour Court is only a proforma party in this proceedings.

6. Heard the counsel for the petitioner.

7. The learned counsel for the petitioner submitted that the award is not challenged by the respondent-bank. It is alleged by the learned counsel for the petitioner that the Labour Court ought to have awarded reinstatement in service with full back wages instead of paying compensation of Rs.50,000/-. It is alleged by the counsel for the petitioner that monthly income of the petitioner ought to have taken at a minimum of Rs.4,500/- and on that basis back wages of the petitioner should have been computed and the compensation amount awarded by the Labour Court ought to have been at least about Rs.4.5 Lakhs instead of Rs.50,000/- awarded by the court below. It is true that though the petitioner is not a regular employee of the respondent-bank, persons holding similar responsibilities as the petitioner under the NNND Scheme under contractual employment as agent has held to be workmen in the Industrial Disputes Act as held by the Apex Court in Indian Banks Association v. Workmen of Syndicate Bank and others reported in (2001) 3 SCC 36 = 2001 (1) LLJ 1045 (SC). The petitioner has not let in

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any evidence before the court below as to the average monthly income that he had received while he was working as agent under the respondent-bank. Moreover, to a specific query as to whether the petitioner has received the compensation amount of Rs.50,000/- as per the impugned Ext.P1 award, the learned counsel for the petitioner could not state as to whether the petitioner has received the said amount or not, even under protest. The petitioner was terminated from service as early as on 16.8.1997. The impugned Ext.P-1 award was passed on 2.11.2005. The present Writ Petition was filed as early as on 4.4.2006. The petitioner had not even cared to pay process fee in this Writ Petition till 2012. The petitioner has not even instructed his counsel as to the present stage of the case, whether he has received the compensation amount of Rs.50,000/- already awarded by the Labour Court. Therefore, it is quite evident from the conduct of the petitioner that much water has flown from his termination of service from 1997 and moreover, it is not known whether the Scheme of contractual employment is in force in the Bank. The petitioner has no case in that aspect of the matter. Therefore, this Court is of the considered opinion that it is not expedient and feasible to grant reinstatement as relief. The

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work arrangement cannot be equated with regular employment. Admittedly, he was not selected on any regular mode of selection or holding any substantive post. Considering all these circumstances, it is not proper for this Court to interfere with the considered view taken by the Labour Court in the impugned award that relief of reinstatement is not appropriate in the facts of the case especially in view of the long lapse of time and aforementioned aspects stated herein above. On a consideration of the facts and circumstances of this case, this Court is of the considered opinion that the prayer of the petitioner to set aside the impugned award in its entirety cannot be granted.

8. The next question is as to whether the petitioner deserves any revision of the compensation awarded ordered by the Labour Court. Considering the fact that more than 17 ½ years have lapsed since the termination of the petitioner from the work arrangement and considering the aspects that no factual material is made available as to the average monthly income that was received by the petitioner during his contractual agency work, the plea made by the petitioner's counsel for receiving the compensation amount in the manner suggested by him is not just and fair in the facts and circumstances of the case. However,

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in the interest of justice, it is ordered that the 1st respondent-Canara Bank shall pay additional compensation amount of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioner within three months from the date of production of a certified copy of this judgment by the petitioner. In case the said amount of Rs.25,000/- is not paid by the 1st respondent to the petitioner within the time limit as directed above, then the said amount will carry interest @ 6% per annum from today up to the date of actual payment.

The impugned award is modified to the above extent. The Writ Petition stands finally disposed of with the above observations and directions.

ALEXANDER THOMAS,
Judge.

bkn/-