

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 4827 of 2014 (C)

PETITIONERS:

1. THE ARPOOKARA SERVICE CO-OPERATIVE BANK LTD
1931, REPRESENTED BY ITS SECRETARY, VILLOONNI P.O.
ARPOOKARA, KOTTAYAM.

2. THE PRESIDENT
ARPOOKARA SERVICE CO-OPERATIVE BANK LTD.NO.1931
VILLOONNI P.O., ARPOOKARA, KOTTAYAM.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.M.A.ASIF
SRI.MANUEL VIVERA
SRI.P.R.BANERJI
SMT.NAMITHA JYOTHISH

RESPONDENTS:

1. T.M.GEORGE
THOTTUCHALIL HOUSE, VILLOONNI P.O., ARPOOKARA
NOW RESIDING AT THOTTUCHALIL HOUSE
ANIKADU P.O.KAYOORI JN., PALLIKATHODU
KOTTAYAM DISTRICT.686503

2. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
CO-OPERATION DEPARTMENT, THIRUVANANTHAPURAM.

SRI.NOUSHAD THOTTATHIL, GOVERNMENT PLEADER
R1 BY ADV. SRI.GEORGE POONTHOTTAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 4827 of 2014 (C)

APPENDIX

PETITIONERS' EXHIBITS

EXT.P-1: TRUE COPY OF THE JUDGEMENT DATED 30.5.2006 IN WPC
NO.30842/2004

EXT.P-2: TRUE COPY OF THE JUDGEMENT DATED 11.12.2006 IN
W.A.NO.1121/2006 DATED 11.12.2006

EXT.P-3: TRUE COPY OF THE ORDER DATED 15.5.2007 PASSED BY THE
BOARD OF DIRECTORS

EXT.P-4: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
PETITIONERS IN ARC 101/2007

EXT.P-5: TRUE COPY OF THE AWARD DATED 23.7.2010 OF THE CO-
OPERATIVE ARBITRATION COURT.

EXT.P-6: TRUE COPY OF THE ORDER DATED 26.9.2013 BY THE CO-
OPERATIVE ARBITRATION TRIBUNAL IN R.P NO.86/2012

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) No.4827 of 2014
.....

Dated this the 30th day of July, 2015

JUDGMENT

The petitioners are challenging the award of the Co-operative Arbitration Court in ARC No.101 of 2007 and the order of the Co-operative Tribunal in Revision Petition No.86 of 2012 confirming the award, in respect of the back wages to be payable to the first respondent for the period during which he was placed under suspension.

2. The first respondent was working as Secretary of the first petitioner Co-operative Bank. He was placed under suspension on 30.10.1998. Thereafter, after conducting an enquiry into 9 charges, he was dismissed from service on 8.12.2000. He filed an appeal before the Board of Directors of the bank, which was dismissed. Against the order passed in the appeal, he filed a petition before the Joint Registrar for rescinding the order. While so, the managing committee of the bank was superseded and an Administrator took charge on 19.3.2003. On 4.4.2003 the Joint Registrar remanded the appeal to the Board of

W.P.(C) No.4827 of 2014

:2:

Directors. The Administrator heard and allowed the appeal on 8.4.2003 directing reinstatement of the first respondent and he rejoined duty on the next day. The board of directors had challenged the supersession proceedings in O.P.No.9723 of 2003 before this Court and by judgment dated 27.8.2003 the order of supersession was set aside.

3.The board of directors returned to office on the strength of the judgment in O.P.No.9723 of 2003. The order passed by the Administrator was challenged before the Joint Registrar and thereafter before the Government. Government dismissed the appeal on the ground that the challenge was by a third party. When the board of directors took charge from the Administrator, the first respondent was again proceeded against under disciplinary proceedings. The said proceedings were challenged by the first respondent before the Joint Registrar and thereafter before the Government in appeal. The Government by order dated 27.9.2004 dismissed the appeal. Against the dismissal of his appeal, the first respondent filed W.P.(C) No.30842 of 2004. The writ petition filed by the bank and the writ petition filed by

the first respondent were heard together. This Court found that the action of the Administrator in having decided the appeal was beyond his authority. It was found that the Administrator has only to be concerned with the day today administration of the society; when the supersession of the board itself was set aside by this Court in O.P.No.9723 of 2003, the decision of the Administrator, setting aside the order passed in appeal and ordering reinstatement of the first respondent cannot stand. As a result of that it was found that status quo obtained as on 4.4.2003, the date of order of the Joint Registrar pressing the decision of the board of directors has to be restored. It was held that the board in office on the basis of the judgment in O.P.No.9723 of 2003 or the subsequent board equally will have to hear the appeal of the first respondent and decide in accordance with law. As against the challenge on the Government order according to which disciplinary proceedings could be proceeded against the first respondent, this Court found that interference with the said disciplinary proceedings was not called for at the stage when an enquiry officer was already appointed.

The date of his retirement was 30.11.2004. It was further held that any decision of the Administrator regarding regularisation of the period during which the first respondent was kept under suspension will also stand set aside. This Court set aside all the proceedings by the Administrator, Joint Registrar and Government after the Joint Registrar's order dated 4.4.2003 in relation to disciplinary proceedings prior to suspension of the Board which lead to O.P.No.9723 of 2003. Ext.P1 judgment was taken in appeal by filing W.A.Nos.1121 of 2006, 1123 of 2006 and 1126 of 2006. A Division Bench of this Court considered the issue as to whether reinstatement ordered by the Administrator setting aside the order of dismissal passed was correct or not. Taking note of the judgment in O.P.No.9723 of 2003, the Division Bench opined that the order of reinstatement was not interfered with in the judgment in O.P.No.9723 of 2003, in which the supersession of managing board was challenged. Taking note of the operative portion of the judgment, the Division Bench found that there was a tacit approval of the reinstatement and therefore the learned Single Judge was not right in remitting the

appeal again to the managing board. Therefore that direction of the learned Single Judge was set aside. The Division Bench did not interfere with the second set of disciplinary proceedings. Regarding the emoluments payable to the first respondent, the Division Bench directed as follows:

"The next aspect is emoluments payable to the appellant during the period he was out of service either due to suspension or due to dismissal. It is revealed from Ext.P24 that no order has been passed by any authority regularising the period of suspension or the period during which the appellant had been out of duty. This aspect has to be considered by one or the other authority. The primary authority to consider regularisation of the period of suspension or the period between the date of dismissal and reinstatement is the appointing authority which placed him under suspension or passed the dismissal order. Necessarily the appointing authority is liable to consider these aspects. In this regard the appellant shall make a representation to the appointing authority within a period of two weeks and the appointing authority shall consider the matter after rendering an opportunity of being heard to the appellant at any rate within six weeks from the date of submitting of the representation".

4. Thus it can be seen that the Division Bench of this Court directed the appointing authority, that is the bank, to consider the question of regularisation of the period of suspension and the date of reinstatement. The first respondent was directed to make a representation before the appointing authority and the appointing authority was directed to consider the matter after hearing the appellant therein. Pursuant to Ext.P2 judgment, the first respondent submitted a representation before the board of directors. The board of directors after considering the request of the first respondent and after hearing him, passed Ext.P3 order, in which it was found that the suspension, enquiry conducted against him and dismissal from service cannot be termed as one without any legal justification. Further it was found that the first respondent was gainfully employed during the interregnum. Therefore the board of directors dismissed the petition seeking back wages. The said order passed by the board of directors was challenged before the Arbitration Court in ARC No.101 of 2007. Petitioner filed written statement, explaining the circumstances under which he was placed under suspension and proceeded

against, which culminated in his dismissal. Thereafter Ext.P5 award was passed allowing the complaint of the first respondent relying on the judgment of this Court in ***Susamma Vs. State of Kerala*** [2002 (1) KLT SN 45]. The Arbitrator found that suspension and dismissal of the plaintiff was illegal being wholly unjustified and therefore the employee shall be paid full pay and allowances for the period from 30.10.1998 to 8.4.2003.

5. This award was challenged in R.P.No.86 of 2012 before the Kerala Co-operative Tribunal, Thiruvananthapuram and the Tribunal by passing Ext.P6 order affirmed the award of the Arbitration Court. According to the Tribunal, the reinstatement order of the first respondent was approved by this Court, disapproving the contentions raised by the bank. The Tribunal repelled the contentions of the revision petitioners that the plaintiff was guilty of misconduct by dereliction of duty etc. Holding that there was no evidence to connect the first respondent with the allegations levelled against him, the Tribunal did not interfere with the order of the Arbitration Court. The Tribunal found that the order passed by the Administrator was

held valid by a Division Bench of this Court. The allegations levelled against the first respondent were incorrect. It was also held that in view of the findings in the order of re-instatement, the award passed in ARC No.101 of 2007 in its discretion granting back wages cannot be held incorrect.

6. The petitioners have filed this writ petition, in the above circumstances. According to the Bank the Division Bench of this Court had directed to pass orders on the question of regularisation of the 1st respondent, even when it directed that the order of re-instatement was approved in the judgment in O.P.No.9723 of 2003. This Court had not gone into the validity of the order of suspension or the circumstances under which he was kept away from service. The re-instatement of the 1st respondent was not interfered with in O.P.No.9723 of 2003, taking note of the impending retirement of the 1st respondent. Moreover, back wages is not a rule in every case in which dismissal is set aside.

7. The first respondent has filed a counter affidavit refuting the contentions and supporting the award as well as the order of the Tribunal. According to the first respondent, he had

filed petition before the Joint Registrar against the order passed by the board of directors in his appeal against punishment and the Joint Registrar has passed orders rescinding the resolution of the board of directors upholding his dismissal. On the basis of the orders of the Joint Registrar, the Administrator heard the appeal and passed orders reinstating him. Referring to the observations made by the Division Bench "while passing the impugned judgment the learned single Judge did not take note of the impact of the judgment Ext.P8 whereby Ext.P7 reinstatement ordered by the Administrator had been tacitly approved", the first respondent stated that the Administrator had found that suspension and dismissal was illegal and when the suspension was found to be wholly unjustified, he was entitled to full salary and allowances to which he would have been entitled, but for his suspension.

8. I heard the learned counsel appearing on either side.

9. The question to be considered is whether the first respondent who was placed under suspension from 1998 till his reinstatement in 2003 was entitled to back wages. When the first

petitioner bank was superseded, an Administrator was appointed for the conduct of the day to day affairs of the bank. The order of reinstatement was passed in exercise of the powers of the board of directors, while passing orders on the appeal of the first respondent. Even though the contentions regarding the power of the Administrator was not disputed, the order of reinstatement passed by him was upheld by a Division Bench of this Court in the common judgment in W.A.Nos.1121, 1123 and 1126 of 2006-Ext.P2. The Division Bench however, did not choose to direct payment of back wages for the period under suspension. It is evident from the directions in paragraph 9 of the common judgment in W.A.Nos.1121, 1123 and 1126 of 2006-Ext.P2 that it was in the circumstances the Division Bench left the matter to be decided by the appointing authority. The observations in the judgment in O.P.No.9723 of 2003 as available in paragraph 4 of the common judgment in W.A.Nos.1121, 1123 and 1126 of 2006-Ext.P2, will show that the question relating to justification of suspension or that of dismissal were not gone into either in O.P.No.9723 of 2003 or in writ appeals or in any other cases

between the parties. Even the Division Bench only found that the reinstatement was approved in the judgment in O.P.No.9723 of 2003. The observations in the earlier judgment in O.P. 9723 of 2003 will also show that the impending retirement of the reinstated Secretary was taken note of by this Court and observed that retaliatory action shall not be taken against him. At any rate neither the judgment in the writ appeals nor the judgment in the writ petitions considered the validity of the suspension order or his retention under suspension till it culminated in dismissal and upto re-instatement. There is no provision of law which provides for full back wages in a case where the dismissal is set aside. In view of the above facts, there was no circumstance to arrive at any conclusion that the suspension was wholly unjustified or that the first respondent was entitled to full back wages for the period from 1998 to 2003. Neither the Arbitration Court nor the Tribunal has considered the matter in that perspective.

10. Now the question to be considered is whether the order passed by the bank denying him back wages and limiting the

emoluments to the subsistence allowance received can be upheld. These points will be considered by the Arbitration Court afresh. Even assuming that the dismissal order was set aside that will not imply that the order of suspension was wholly unjustified there can not be any hard and fast rule that the delinquent shall be entitled to full back wages in all cases where re-instatement is ordered. The circumstances under which suspension was ordered and those which lead to dismissal as well as re-instatement are to be taken into account in the light of the materials available.

In the above above circumstances, Ext.P4 award in ARC No. 101 of 2007 and Ext.P5 order in R.P. 86 of 2012 are set aside and the matter is remitted to the Co-operative Arbitration Court for consideration afresh after hearing the parties.

Sd/-
P.V.ASHA,
JUDGE.

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