

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 23/12/2014

DATED : 18/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.19804 of 2013

G.Boovaraghavan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Deputy Commissioner of Labour,
DMS Complex, Teynampet,
Chennai-600 018.
2. The Assistant Commissioner of Labour-II,
DMS Complex, Teynampet,
Chennai-600 018.
3. The Managing Director,
The Villupuram Co-operative Urban Bank Ltd., E-34,
No.149, Thiru.Vi.Ka.Street,
Villupuram-605 602.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the order dated 21.05.2013 passed in D1/5165/2012, PSA(Appeal) No.01/2012, confirming the order passed by the second respondent dated 16.07.2012 passed in PSA No.09 of 2012 and to quash the same and consequently direct the third respondent to pay the amount to the petitioner.

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 & R2

Mr.T.Dhanyakumar for R3

O R D E R

The petitioner submits that he was working as a Junior Assistant in third respondent / Bank at Valavanur Branch and one Rajendiran was the Manager in Valavanur Branch. One J.Gopal, the Manager took charge on 01.06.1995. As per the statement of Mr.J.Gopal, he asked the petitioner to reconcile the accounts. On 28.08.1995, the Manager, J.Gopal wrote a letter to the third respondent that there was a deficit in savings bank account. He further stated that on 07.09.1995, he wrote a specific complaint about A/c No.3348 of one Loganathan. On 08.09.1995, the Secretary came to the Bank and wrote a specific complaint against the petitioner and he was placed under suspension on 08.09.1995. The Manager, Rajendiran was suspended on 14.10.1995. A charge memo dated 03.12.1995 was given to the petitioner and the then Manager Rajendiran stating that during the period 21.10.1993 to 27.12.1994, the petitioner made false entries and boosted the figures in S.B.A/c.No.3348 of one Loganathan, without actual credit and misappropriated a sum of Rs.2,69,470/- and the Manager Rajendiran, admitted the cheques and approved the false entries. To give explanation, the petitioner requested the third respondent to give the copies of the documents. The then Special Officer by letter dated 19.04.1996, not only refused to give the copies but concluded that the charges were proved and the petitioner had misappropriated the amount. Without taking the report dated 12.03.1996, the enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, stating that the petitioner enabled the account holder to withdraw money into consideration. By order dated 25.10.1996, both the petitioner and said Rajendiran were removed from service. Both filed revision before the Joint Registrar of Co-operative Societies, Villupuram against the order of dismissal. The revision filed by the Manager Rajendiran was taken up separately and the same was allowed on 30.03.1999. The Manager was reinstated on 21.04.1999. The revision petition filed by the petitioner was dismissed by the Joint Registrar, Co-operative Societies. Against the said order, the petitioner filed W.P.No.14678 of 1999 before this Court. By order dated 29.03.2004, this Court allowed the writ petition No.14678 of 1999 filed by the petitioner and quashed the order dated 25.10.1996 passed by the third respondent dismissing the petitioner from service. The third respondent filed W.A.No.3416 of 2004 and this Court passed the order on 05.03.2008 directing the third respondent to give the documents and to proceed in accordance with statutory provisions. From the orders, it is clear that the order passed by the third respondent dismissing the petitioner from service was quashed by this Court.

2. The petitioner further submits that as the third respondent did not pass any order, the petitioner issued a legal notice dated 17.03.2008 enclosing the copy of the order dated 05.03.2008, passed by this Court in W.A.No.3416 of 2004 and requested the third respondent to reinstate the petitioner. After a gap of seven weeks, the third respondent issued a reply dated 09.05.2008, stating that there was no specific direction in the order passed by this Court to reinstate the petitioner. The petitioner sent a Rejoinder dated

14.05.2008 stating that no specific direction is necessary, because the fundamental and basic principle of law is that once the dismissal order was quashed, the Management had to pass orders and the Management cannot initiate or conduct Departmental Proceedings against a person, who was not in service. After the receipt of the documents, the petitioner gave an explanation to the charge memo. The petitioner's explanation to the charge memo was neither considered nor any reply was sent to the specific question about the illegality of the enquiry without revoking the order of dismissal dated 25.10.1996 as per the order of this Court dated 29.03.2004 passed in W.P.No.14678 of 1999 and confirmed by the Division Bench of this Court dated 05.03.2008 passed in W.A.No.3416 of 2004. The third respondent sent a letter dated 05.07.2008 and informed him that an Enquiry Officer was appointed. In the aforesaid circumstances, the petitioner filed W.P.No.18062 of 2008 on the file of this Court, forbearing the third respondent from conducting the enquiry, without revoking the order of dismissal. This Court by order dated 07.12.2009 allowed the writ petition in W.P.No.18062 of 2008 and issued the following directions to the third respondent / Management:-

"Therefore, the Court is of the constrained view that the writ petition deserved to be allowed by forbearing the first respondent to conduct the domestic enquiry against the petitioner without reinstating the petitioner into service. Accordingly, the first respondent is directed to reinstate the petitioner into service within four weeks from the date of receipt of a copy of this order. Thereupon, the first respondent is entitled to proceed in accordance with law on the basis of the order No.1 of 2008, dated 05.07.2008."

3. The petitioner further submits that the third respondent passed an order dated 08.03.2010 received by the petitioner on 09.03.2010 stating that the petitioner was reinstated into service with effect from the forenoon on 08.03.2010. The petitioner was neither allowed to join duty nor a joining report was received by the third respondent. The Management sent another letter bearing Na.Ka.No.2/2010 on 08.03.2010, along with the letter bearing No.Na.Ka.No.1/2010.

"gzp ePf;fk; bra;ag;gLtjw;F Kd;gpUe;j epiyahd,tuJ
jw;fhypf gzpePf;fk; bghJ eyd; fUjp 08/03/2010 Kw;gfy; Kjy;
kW cj;jut[tiu bjhlUk; vd Miz gpwg;gpf;fg;gLfpwJ/"

After the receipt of the said orders on 09.03.2010, the petitioner sent a letter to the respondent requesting the respondent to pay the subsistence allowance as per the bye-laws from 25.10.1996 to 08.03.2010. The respondent / Management did not pass any orders but called upon the petitioner to appear for an enquiry to be held on 20.03.2010. The petitioner sent a representation dated 17.03.2010 to the Deputy Registrar of Co-operative Societies, Tindivanam enclosing the letter dated 09.03.2010 sent to the third respondent requesting

to direct the third respondent to pay the subsistence allowance. Without passing any order on the above letters, the enquiry was conducted and concluded by the respondent.

4. The petitioner further submits that on the failure of the third respondent / Management to pay the subsistence allowance for the period from 25.10.1996 to 08.03.2010, the petitioner filed the petition to pay subsistence allowance on the file of the second respondent. After receipt of the notice in the petition, the third respondent filed writ petition in W.P.No.12665 of 2010 against the second respondent for proceeding with the enquiry as the petition was not filed within one year as per Section 4 of the Payment Subsistence Allowance Act. The petitioner filed a counter and this Court by order dated 27.08.2010 dismissed the said writ petition with costs of Rs.10,000/- payable by the third respondent to the Tamil Nadu State Legal Services Authority. The third respondent filed a counter before the second respondent contending that the petitioner did not request the Joint Registrar, while filing his revision regarding payment of Subsistence Allowance and the petitioner failed to make the request when he filed a writ petition against the order of the Joint Registrar. The further statement that the petitioner was dismissed from service on 25.10.1996 and the petitioner is very particular for his reinstatement goes to prove the falsity of the allegation.

5. The petitioner filed the proof affidavit and filed 21 documents. The third respondent did not file any document. The second respondent by order dated 16.07.2012 dismissed his petition for subsistence allowance on the ground that the petition was not filed within one year from 25.10.1996 and hence, barred by limitation. The second respondent did not even refer to the said order. The finding was against the judgment of this Court passed in W.P.No.12665 of 2010 filed by the third respondent challenging the very same proceedings. Hence, the petitioner filed appeal PWSA No.1 of 2012 before the first respondent taking a specific ground that in the order passed in W.P.No.12665 of 2010, it was held that the petition filed by him was in time as the claim for subsistence allowance was solely based on the order dated 08.03.2010, passed by the third respondent. But, the first respondent without applying its mind, to the facts of the case, misconstrued and have wrongly interpreted the order dated 08.03.2010 and held that the petitioner was placed under suspension only on 08.03.2010 and hence, he was not entitled to any subsistence allowance. Hence, the petitioner entreats the Court to allow the above writ petition.

6. The highly competent counsel Mr.S.Baskaran appearing for the petitioner submits that the petitioner was working with the third respondent's Co-operative Bank, wherein, one Mr.Gopal took charge as Manager on 01.06.1995 and he asked him to reconcile the accounts. The said Gopal, Manager, had sent a letter to the third respondent and informed him that there was deficit in savings bank account. Besides, he also sent a complaint about one Loganathan. On the basis of complaint, the petitioner was placed under suspension and the

previous Manager also was suspended subsequently. Thereafter, a domestic enquiry was conducted and the previous manager stated in his reply that he made false entries and as such, a sum of Rs.2,69,470/-, had been misappropriated. The previous manager openly admitted his mistake. As such, the petitioner is an innocent person. Thereafter, both were removed from service. Aggrieved by the said order of removal from service, revision has been filed. The Revision filed by the previous manager, Rajendran was allowed and the revision of the petitioner was dismissed. The highly competent counsel further submits that on the same allegation, the co-employee has been reinstated and as such on par, the petitioner also is entitled to reinstatement. Thereafter, the petitioner had challenged the order of removal from service before this Court by way of writ petition. Against the learned Single Judge Order, the third respondent had filed Writ Appeal before this Court and the same was disposed of with a direction to the third respondent to provide necessary documents to the petitioner and proceed with the enquiry in accordance with law. Subsequently, the third respondent has sent a communication to the petitioner stating that there is no specific direction to the third respondent to reinstate the petitioner.

7. The highly competent counsel appearing for the petitioner further submits that the third respondent had refused to conduct fresh enquiry as per this Court's direction. This Court specifically directed the first respondent to reinstate the petitioner in service within four weeks from the date of receipt of a copy of this order. Accordingly, the petitioner was reinstated on 08.03.2010 but he was not allowed to join duty. Subsequently, the Management also sent another communication to the petitioner that in the interest of public, he has to maintain the prior status. The petitioner was not paid subsistence allowance which he is entitled to receive till disposal of the case. The first respondent, without considering all aspects had passed the impugned order and dismissed the petitioner's appeal, without assigning any reasons.

8. The highly competent counsel Mr.T.Dhanyakumar appearing for the third respondent submits that the petitioner was working as Junior Assistant with Valavanur Co-operative Bank from 21.10.1993 to 27.12.1994. During that period, he made false entries with one Loganathan's savings bank account No.3348 and misappropriated a sum of Rs.2,69,470/-. Hence, the third respondent had issued memo and conducted comprehensive domestic enquiry and removed him from service. The same was challenged by the petitioner by way of revision before the Joint Registrar, Co-operative Bank and the same was dismissed. Aggrieved by the said order, the petitioner had filed a writ petition before this Court and the same was allowed. Subsequently, the respondent had filed writ appeal before the Hon'ble Division Bench, wherein the Hon'ble Judges had directed the respondents to furnish the necessary documents. Except this observation, no other order has been passed. Thereafter, the

petitioner has been reinstated on 08.03.2010 and on the same day, he was suspended from service for public interest. Therefore, the impugned order has been passed by the second respondent on the basis of documentary and factual evidence.

9. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, it is seen from the impugned order passed by the second respondent that the second respondent had assigned the reason stating that the petitioner had not submitted any suspension order to show that he has been suspended from 25.10.1996 to 08.03.2010. The findings given by the second respondent is an appropriate one. Hence, the above writ petition is dismissed. There is no order as to costs.

rns

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Deputy Commissioner of Labour,
Government of Tamil Nadu,
DMS Complex, Teynampet,
Chennai-600 018.
2. The Assistant Commissioner of Labour-II,
DMS Complex, Teynampet,
Chennai-600 018.
3. The Managing Director,
The Villupuram Co-operative Urban Bank Ltd., E-34,
No.149, Thiru.Vi.Ka.Street,
Villupuram-605 602.

+1 CC to MR.S.Baskaran, Advocate Sr.No.51266

+1 CC to MR.T.Dhanyakumar, Advocate Sr.No.51308

+1 CC to MR.R.Bala Ramesh, Advocate Sr.No.51071

+1 CC to Government Pleader, Sr.No.51396

W.P.No.19804 of 2013

SRG (CO)

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SD : 05/10/2015