



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.03.2015

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.1081 of 2011

P.Narayanasamy

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Campus,
Melur Road, Madurai-20.

2.The Special officer,
Virudhunagar District Central
Co-operative Bank,
Madurai Road,
Virudhunagar-626 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent in C.P.69/03, 48/04, 72/04, 93/04, 106/04, 123/04, 24/05, 42/05, 117/05, 165/05 and 63/06 and quash the order dated 31.08.2010 passed in C.P.69/03, 48/04, 72/04, 93/04, 106/04, 123/04, 24/05 and 45/05 and order dated 31.08.2010 passed in C.P.117/05, 165/05 and 63/06.

For petitioner	: Mr.T.Ravichandran
For R1	: Court
For R2	: Mr.D.Shanmugaraja Sethupathi

ORDER

The petitioner has filed the present Writ Petition praying to call for the records of the 1st respondent in C.P.69/03, 48/04, 72/04, 93/04, 106/04, 123/04, 24/05, 42/05, 117/05, 165/05 and 63/06 and quash the order dated 31.08.2010 passed in C.P.69/03, 48/04, 72/04, 93/04, 106/04, 123/04, 24/05 and 45/05 and order dated 31.08.2010 passed in C.P.117/05, 165/05 and 63/06.

2.The petitioner was working as Assistant in the Second Respondent Bank for 28 years. He was the Joint Secretary of the Virudhunagar District Central Co-operative Bank Staff Union. A charge memo was issued to the petitioner. After enquiry, by the order dated 11.09.2003 in Na.Ka.No.2631/2000.01/E1, he was dismissed from service.

3.According to the petitioner, at the time of dismissal I.D.No.125/03 was pending on the file of the first respondent. In view of the pendency of the said I.D.No.125/03, the second respondent ought to have paid one month salary and obtained permission under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the Labour Court for dismissal of the



petitioner. The failure on the part of the second respondent in comply with the said provisions, the order of dismissal is inoperative and non-existent in law. The petitioner is deemed to be in service.

4. The petitioner has filed W.P.No.26497 of 2003 challenging the order of dismissal dated 11.09.2003. This Court by the order, dated 13.03.2008 dismissed the writ petition as not maintainable. The petitioner filed claim petitions in C.P.Nos.69/03, 48/04, 72/04, 93/04, 106/04, 123/04, 24/05, 42/05, 117/05, 165/05 and 63/06 on the file of the first respondent for payment of salary.

5. According to the petitioner, the writ petition in W.P.No.26497 of 2003 was not dismissed on merits and did not approve the order of dismissal. Therefore, he is entitled to amounts claimed in claim petitions in C.P.69/03, 48/04, 72/04, 93/04, 106/04, 123/04, 24/05, 42/05, 117/05, 165/05 and 63/06. The first respondent on erroneous consideration of facts and law dismissed the claim petitions. Therefore, the petitioner has approached this Court by way of present writ petition.

6. The second respondent has filed the counter affidavit stating that the petitioner was dismissed from service in pursuance of the Disciplinary Proceedings for the misconduct. The said order of dismissal not connected with the dispute pending before the Labour Court in I.D.No.125 of 2003. The petitioner has not filed any complaint under Section 33-A of the Act. The petitioner filed the writ petition in W.P.No.26497 of 2003 challenging the order of dismissal dated 11.09.2003. This Court by the order dated 13.03.2008 dismissed the said writ petition upholding the order of dismissal. Therefore, he prayed for dismissal of the writ petition.

7. From the records it is seen that the prayer in the writ petition in W.P.No.26497 of 2003 challenging the order of dismissal is as follows:-

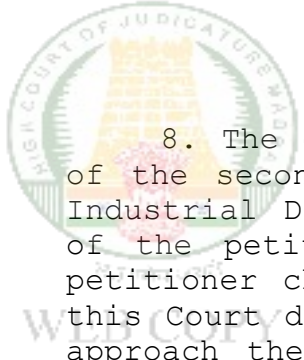
"Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent forming part of his R.C.No.2631/2000-01, E-1, dated 11.09.2003, quash the entire proceeding thereon and direct the respondents to restore the services of the petitioner as Cashier of the first respondent's Bank, duly paying all backwages, seniority and other attendant benefits with retrospective effect from 12.09.2003."

This Court by an order, dated 13.03.2008 in paragraphs 30 and 31 is held as follows:-

"30. In the instant case, the disciplinary authority, in his order, dated 11.09.2003, at Paragraph 2, has recorded a finding that the delinquent-petitioner has appeared before the enquiry officer, perused the documents and also cross-examined the witnesses. Learned counsel for the petitioner disputes the finding of the said fact recorded by the disciplinary authority. If that be the case, the said factual aspect has to be adjudicated only before the appellate authority and this Court sitting under Article 226 of the Constitution of India, cannot delve into the said aspect and give a finding.

<https://hcservices.ecourts.gov.in/hcservices/>

31. As stated supra, the present writ petition is not maintainable in view of the Full Bench decision of this Court. In the result, the Writ Petition is dismissed. No costs."



8. The contentions of the petitioner is that the failure on the part of the second respondent to obtain permission under Section 33(2)(b) of Industrial Disputes Act amounts to inoperative of the order of dismissal of the petitioner and he deems to be in service are untenable. The petitioner challenged the order of dismissal by way of writ petition and this Court dismissed the writ petition holding that the petitioner has to approach the appellate authority for getting a decision on the disputed questions of fact.

9. In view of the fact that the order of dismissal was not set aside by this Court, the petitioner is not entitled to maintain the claim petition. Further, the first respondent has considered all the aspects and passed a detailed order and there is no reason to interfere with the well considered order.

10. In the result, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

- 1.The Presiding Officer,
Labour Court,
District Court Campus,
Melur Road, Madurai-20.
- 2.The Special officer,
Virudhunagar District Central
Co-operative Bank,
Madurai Road,
Virudhunagar-626 001.

COPY TO
THE SECTION OFFICER, VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr. D.SHANMUGARAJA SETHUPATHI, Advocate in Sr.No. 15033

+1cc to Mr. T.RAVICHANDRAN Advocate in Sr.No. 14453

TS/16.04.2015/3p-6c

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