

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 32972 of 2016

&

W.M.P. No. 28491 of 2016

The Chairman,
Pallavan Grama Bank,
Head Office, No.6, Yercaud Road,
Hasthampatti, Salem 636 007.

..Petitioner

Vs.

1. K. Duraisamy
2. The Presiding Officer,
The Central Govt. Industrial
Tribunal cum Labour Court,
I Floor 'B' Wing, No.26, Haddows Road,
Chennai - 600 006.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records in I.D. No. 59 of 2011 culminating in the award dated 20.11.2013 on the file of the 2nd respondent and quash the same.

For Petitioner :: Mr.M.R. Raghavan for
Mr.L. Jayakumar &
Associates

O R D E R

The petitioner is a Bank and the 1st respondent was working as a Sweeper-cum-Messenger in Valathi Branch of the petitioner Bank. While in service, the 1st respondent was charge sheeted for certain acts of misconduct viz, misappropriation, securing illegal gratifications and destroying evidence vide charge sheet dated 23.10.2008. A departmental enquiry was conducted against the 1st respondent and the Enquiry Officer, after giving opportunity to the 1st respondent, to putforth his defence, filed a report holding that all the charges against the 1st respondent were proved. The Chairman cum Disciplinary Authority concurred with the findings of the Enquiry Officer and concluded that the charges against the 1st respondent were proved in the Departmental Enquiry and ultimately, an order of termination was passed. The said order was challenged before

the Central Government Industrial Tribunal cum Labour Court in I.D. No. 59 of 2011. The said Court, by order dated 20.11.2013, ordered reinstatement without backwages from the date of dismissal till the date of reinstatement. However, it was made clear that the 1st respondent would be entitled to continuity of service and all other benefits. The said order is being challenged before this Court by the petitioner Bank.

2. Heard Mr.M.R. Raghavan, learned counsel for the petitioner, who would submit that though the Tribunal held that the departmental enquiry was conducted in a fair and proper manner and that the 1st charge against the 1st respondent that he misappropriated Rs.500/-, received from one Elumalai, which was entrusted to him, along with other necessary documents, for opening an SB account, was proved, as he initially denied having received the same and subsequently, paid the amount from his pocket, but held that charge Nos. 2, 3 and 4 against the 1st respondent were not proved in the enquiry. According to the learned counsel, having given a finding that the 1st charge against the 1st respondent was proved, the Tribunal was not justified in ordering reinstatement.

3. A perusal of the records would show that the charges levelled against the 1st respondent are misappropriation, securing illegal gratifications and destroying of evidence. It is not denied that the SB account was opened whereas the submission made by the 1st respondent is that he only paid the money for opening the account and that is deemed to be an admission by the Tribunal. When money was entrusted and account was opened, the money handed over to him was remitted to Cash Department. The submission that he had paid the money should not be deemed to be an admission of having committed misappropriation. The 1st respondent denied having received money from the said Elumalai, but he paid the money for opening the account. However, by no stretch of imagination, it can be construed that the 1st respondent admitted misappropriation and thereafter, he had paid the money. Assuming for a moment that the charge against the 1st respondent that he misappropriated a sum of Rs.500/- is proved, the punishment of dismissal from service imposed is disproportionate to the charge framed. Taking into consideration, all these aspects, the Tribunal rightly set aside the dismissal order. As far as other charges are concerned, the Tribunal went into those charges, in detail, and found that said charges are not proved. Therefore, the finding reached by the Tribunal cannot be disturbed as there is no perversity.

4. This Court cannot sit in appeal over the award passed by the Tribunal as the Tribunal, based on facts adjudicated, categorically came to the factual finding. Moreover, this Court has also found that when the 1st respondent had denied having

received Rs.500/- from M.Elumalai, for opening the account, naturally, the 1st respondent would have paid the money for the purpose of opening the account. It is only a Village Bank where the parties are known to each other and it is not an urban area where total strangers would be approaching the Bank Officials for opening an account. Therefore, it cannot be said that the 1st respondent received Rs. 500/- and misappropriated the same.

5. Assuming for a moment that the finding given by the Tribunal is erroneous in law, nothing prevented the petitioner from filing a writ petition when the Labour Court passed the award as early as on 20.11.2013. For the past 3 years, the petitioner was in deep slumber. The 1st respondent had even filed a writ petition in W.P.No.14431 of 2014 seeking continuity of service and even thereafter, the petitioner Bank waited for 2 years to file this writ petition, according to its convenience. The petitioner cannot take its own sweet time to agitate its claim when the right got accrued to the 1st respondent by virtue of the award and he had also acted upon the said award and filed the writ petition. Therefore, the writ petition is liable to be dismissed on the ground of delay and laches also.

6. For the aforesaid reasons, the writ petition is dismissed. No costs. Connected W.M.P.s are closed.
Nv

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

TO

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The Central Govt. Industrial
Tribunal cum Labour Court,
I Floor 'B' Wing, No.26, Haddows Road,
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2. The Chairman,
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KR/13/11/18

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