

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.02.2017

DELIVERED ON: 02.03.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.16743 of 2003

The Special Officer
D.K. 79, Paiyur Primary Agricultural
Cooperative Bank Ltd.
Paiyur Post
Kavereipattinam (Via)
Krishnagiri Taluk
Dharmapuri District ...Petitioner

vs.

1 The Presiding Officer
Labour Court
Salem

2 V. Munusamy ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records in I.D. No.421 of 1998 on the file of the Labour Court, Salem, the first respondent and quash the award dated 31.12.2002.

For petitioner Mr. M.R. Raghavan
For R2 Mr. S. Ayyathurai

ORDER

This writ petition has been filed challenging the award dated 31.12.2002 passed by the first respondent, i.e., Labour Court, Salem, in I.D. No.421 of 1998.

2 The factual matrix of the case is as under:

2.1 V. Munusamy (second respondent) was working as Watchman in Paiyur Cooperative Bank (petitioner herein) (for short "the bank"). On 26.10.1995, he reported to duty at 6.00 p.m and collected the keys of the bank from one Annadurai, an employee of the bank. However, he was not available in the work spot during night hours and had left the premises without intimation to the authorities. In his absence, burglars attempted to break

into the bank which was noticed on the next day i.e., on 27.10.1995, when the Secretary came to the bank at 9.00 a.m. The Secretary was shocked to find that the burglars had broken open the front door and other doors and had attempted to break open the safe, but, fortunately, they did not succeed and nothing was lost. However, the Secretary gave a complaint to the local police suspecting the involvement of Munusamy in the offence. On the said complaint, the Sub Inspector of Police, Kaveripattinam Police Station, registered a case in Cr. No.832 of 1995 under Sections 457 and 511, IPC on 27.10.1995 in which Munusamy, Watchman was shown as one of the suspected accused.

2.2 On 27.10.1995, the bank placed Munusamy under suspension. On 13.11.1995, the bank issued a charge memo to him which was sent by Registered Post with Acknowledgement Due, but, the same was not received by him on 21.11.1995. Therefore, the bank affixed the charge memo in the notice board, besides issuing a public advertisement about the proposed enquiry in a local daily on 06.12.1995. In response to the paper publication, Munusamy submitted an explanation dated 09.12.1995 in which he refuted the bank's contention that he had refused to receive the charge memo. He further threatened the bank that he would take action against the bank under the Consumer Protection Act. The bank proceeded with the domestic enquiry on 05.01.1996 and intimated the same to Munusamy. The bank appointed one Sivaguruvel as the Enquiry Officer.

2.3 In the domestic enquiry, the following charges were framed against Munusamy:

a That on the night of 26.10.1995, Munusamy was not on duty as Watchman, on account of which, he paved the way for the burglary attempt;

b that on 27.10.1995, Munusamy did not inform his superiors about the attempted burglary;

c that on 27.10.1995, Munusamy did not hand over the keys of the bank to Annadurai (bank employee) and had absconded; and

d that his act of not handing over the keys of the bank and not following the rules of the bank reflects his gross negligence of duty and continuous disobedience.

2.4 The enquiry date was fixed as 22.01.1996 and it was adjourned to 10.02.1996. For the hearing on 10.02.1996, Munusamy was sent advance notice by Registered Post and the same

was received by him on 29.01.1996. On 10.02.1996, at 10 a.m., when the enquiry began, Munusamy came 25 minutes late and gave a statement and produced necessary documents. On behalf of the bank, three witnesses, viz., Annadurai, Thangavel and Chinnasamy were examined and some documents were marked. On the side of Munusamy, he examined himself as a witness and marked some documents.

2.5 After considering the evidence on record, the Enquiry Officer, by his report dated 11.02.1996, held the charges to be proved. Thereafter, he was issued with a second notice dated 29.03.1996 enclosing the Enquiry Officer's report and calling upon him to show cause as to why he should not be dismissed from service, for which, he sent a letter dated 26.04.1996. Instead of giving explanation to the second show cause notice, Munusamy asked for some more documents. Ultimately, the bank, by order dated 06.06.1996, dismissed him from service.

2.6 Munusamy raised an Industrial Dispute and on the failure of the conciliation proceedings, the matter was referred to the Labour Court, Salem, in I.D. No.421 of 1998. Before the Labour Court, Munusamy was represented by Mr. Pon Ramani, advocate and the bank was represented by Mr. R. Kumar, advocate.

2.7 Before the Labour Court, Munusamy contended that he had no serious objections with regard to the domestic enquiry proceedings and also did not want to adduce any further evidence. However, the bank marked 13 exhibits, including the charge memo, returned cover, paper advertisement, enquiry report and dismissal order.

2.8 The Labour Court, recording the fact that Munusamy is not challenging the domestic enquiry proceedings and hence, it is not necessary to go into that aspect and give a preliminary finding, framed a single issue, viz., whether the punishment imposed on Munusamy was justified.

2.9 The Labour Court, by award dated 31.12.2002 in I.D.No.421 of 1998, held that the punishment of dismissal from service imposed on Munusamy was disproportionate to the proved misconduct and therefore, set aside the dismissal order and substituted it with an order of reinstatement with 50% backwages, continuity of service and other benefits, challenging which, the bank has filed the present writ petition.

3 Heard Mr. M.R. Raghavan, learned counsel for the bank and Mr. S. Ayyathurai, learned counsel for Munusamy.

4 The learned counsel for the bank submitted that the

Labour Court has given a clear finding that Munusamy's act was undoubtedly a serious misconduct and after having held so, the Labour Court ought not to have interfered with the order of dismissal passed by the bank and substituted it with a lesser penalty, especially when the allegation against Munusamy was indeed serious. He further submitted that the award of the Labour Court is beyond the scope of Section 11-A of the Industrial Disputes Act, 1947 (for brevity "the ID Act") and therefore, warrants interference by this Court.

5 Per contra, Mr. Ayyathurai, learned counsel for Munusamy submitted that Munusamy has not made any endorsement in the case bundle before the Labour Court waiving his right to question the domestic enquiry proceedings and therefore, this Court should reject the recording of the Labour Court that Munusamy is not challenging the domestic enquiry proceedings. He further submitted that the Labour Court is not powerless to interfere with the punishment of dismissal from service imposed by the bank. In support of this judgment, he placed reliance upon a Division Bench judgment of the Andhra Pradesh High Court in *The District Manager, A.P.S.R.T.C. Jagglahpet vs. Labour Court, Guntur* and another [1978 LAB I.C. 359].

6 This Court is unable to persuade itself to agree with this submission of Mr. Ayyathurai for the following reasons:

a. Munusamy was represented by a counsel viz., Mr. Pon Ramani, before the Labour Court.

b. Had Munusamy wanted to challenge the findings of the domestic enquiry, he would have proceeded to examine himself as a witness and marked documents, whereas, in this case, he proceeded to argue the case based on the records submitted by the bank.

c. When a Court records a certain fact that is said to have transpired during the proceedings, the same cannot be challenged as not reflecting the truth. This issue has been settled by the Supreme Court in *Bhagvati Prasad vs. Delhi State Municipal Development Corporation* [(1990) 1 SCC 361]. In the said judgment, the Supreme Court has clearly held that, statement of facts recorded by a Court or quasi judicial tribunal in its proceedings as regards the matters which transpired during the hearing before it, cannot be permitted to be assailed as incorrect, unless steps are taken before the same forum. Admittedly, in this case, Munusamy did not take any steps before the Labour Court immediately after the award was passed to assail the statement of fact and therefore, he cannot now take a plea before this Court that it does not reflect the truth.

7 Mr. Ayyathurai contended that Munusamy had sent a communication to the Special Officer by Registered Post, but, the same was not received by the Special Officer and it returned unserved on 01.11.1995. He submitted that the said unserved envelope has been filed before the Enquiry Officer which only shows that the Special Officer was not willing to listen to Munusamy's version.

8 The question here is not with regard to the act of the Special Officer, but, whether there was a proper domestic enquiry against Munusamy. Though Munusamy had waived his right to challenge the domestic enquiry proceedings before the Labour Court, yet, this Court perused the records and found that Munusamy has given a statement in the enquiry which has been recorded by the Enquiry Officer. In that statement, he had stated that on 26.10.1995, some burglars attempted to enter the bank and he had a scuffle with them, on account of which, he suffered injuries; with the injuries sustained by him, he took a cycle to go to the house of the Special Officer to inform him about the attempted burglary; but, en route, he suffered accident and swooned and later, he was admitted to hospital, from where, he obtained even a wound certificate. A copy of the wound certificate was also submitted by him to the Enquiry Officer. In the said statement, Munusamy has also made fun of the authorities by making snide remarks about them.

9 The Enquiry Officer rejected the documents submitted by Munusamy on the ground that they have all been concocted subsequently for the sake of the case. Munusamy had marked a statement which he is said to have given to the police, while he was in the hospital. In that statement, Munusamy had taken a stand that there was an attempt by two persons to break open the bank and when he resisted, he was assaulted by them; thereafter, he took a cycle to go to the police station and en route, he suddenly developed pain all over his body and therefore, he decided to go to the Government Hospital at Krishnagiri for treatment; en route to the hospital, he was knocked down by a lorry, on account of which, he was admitted to hospital.

10 It must be remembered that an FIR has been registered in Cr.No.832 of 1995 on the file of Kaveripattinam Police Station, against Munusamy himself by the police and they were on the look out for him in connection with the burglary attempt in the bank. That apart, in the statement that is said to have been given by him to the police, he has stated that after the burglary attempt, he wanted to go to the police station and report, whereas, before the Enquiry Officer, he has stated that after the burglary attempt, he went by a cycle to the house of

the Special Officer to inform him and en route, he met with an accident.

11 Be that as it may, the fact remains that after the burglary attempt, Munusamy was nowhere to be seen and he had not even handed over the bank keys to anyone. He surfaced only during enquiry after the notices were sent to him. The primordial duty of a Watchman is to be present at the work spot and be vigilant and watchful. If Munusamy had really sustained injuries in the burglary attempt, he would have brought it to the notice of the police or the bank, either immediately or at least on the next day, unless there was special reason for him to abscond after the incident and surface much later.

12 The learned counsel for Munusamy contended that the punishment of dismissal from service inflicted on Munusamy by the bank is indeed very disproportionate and the denial of 50% backwages by the Labour Court would itself meet the ends of justice.

13 In this case, the Management is a bank which is the custodian of its customers' hard earned money, jewels and documents of title, in trust. Munusamy was appointed as Watchman and it is his primary duty to have been present in the work spot on the night of 26.10.1995. He was not present at that time and in the next few days, his whereabouts were not known. Had he seen the burglars, as contended by him, it was his duty to assist the police in the investigation.

14 Taking into consideration the nature of his duty and the gross negligence in the performance of such an important duty, this Court is of the view that the Labour Court fell in error in interfering with the punishment imposed on Munusamy by the bank. If Munusamy is put back in service in the bank as Watchman, the customers of the bank will lose faith on the ability of the bank to protect their pawned assets, which will only result in a run on the bank.

15 At this juncture, it is felicitous to point out that, while dealing with the power of the Labour Court under Section 11-A of the ID Act, the Supreme Court, in L.I.C. vs. R. Dhandapani [(2006) 13 SCC 613], has poignantly observed as under:

"8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the

jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See Kerala Solvent Extractions Ltd.v.A.Unnikrishnan [(2006) 13 SCC 619 : (1994) 1 Scale 631 : (1994) 2 LLJ 888 (SC)])

9. Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

10. The High Court found that the Industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned counsel for the respondent tried to justify the award of the Tribunal and submitted that the Tribunal and the learned Single Judge have considered the case in its proper perspective, we do not find any substance in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by the Labour Court/Tribunal to be guilty of misconduct. The Tribunal and the High Court, in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by the learned Single Judge was fully misplaced." (emphasis supplied)

16 In view of the above categorical position of law laid down by the Supreme Court, this Court is of the considered view that the impugned award passed by the Labour Court is liable to be interfered with and it is accordingly set aside. As a sequel, the order of dismissal dated 06.06.1996 passed by the bank is upheld.

In the result, this writ petition is allowed. Costs made easy.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

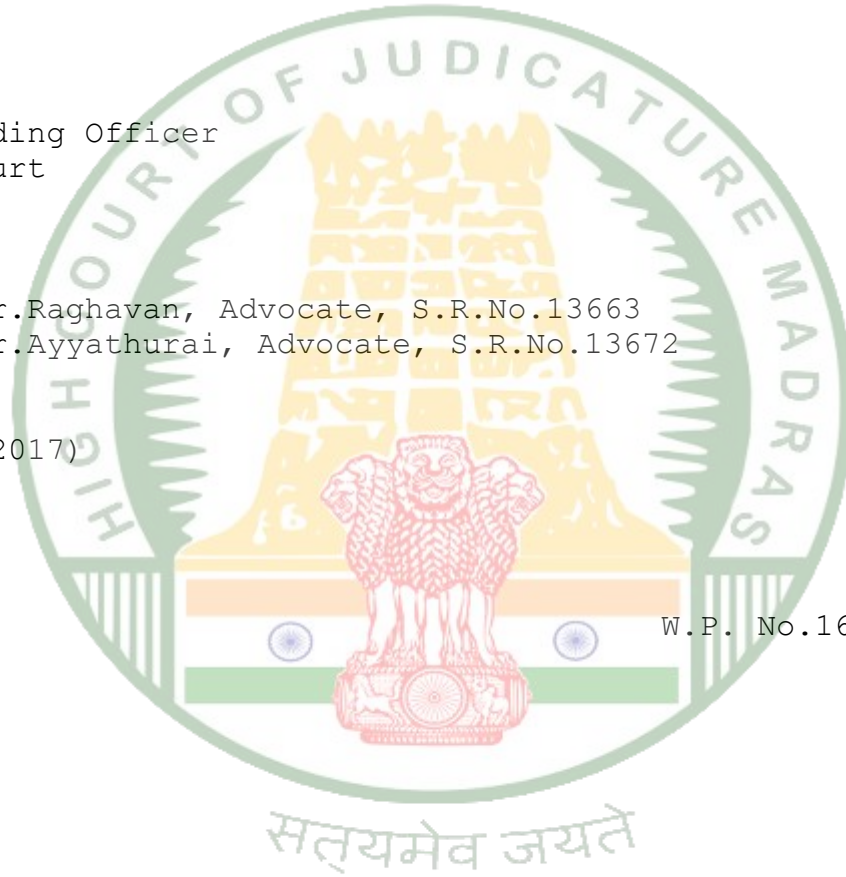
To

The Presiding Officer
Labour Court
Salem

+1cc to Mr.Raghavan, Advocate, S.R.No.13663
+1cc to Mr.Ayyathurai, Advocate, S.R.No.13672

SKS (CO)
RS (13/03/2017)

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