

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM

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

W.P. No.18233 of 2003

The Management of K-1212
Samanayanakkanyanpalayam
Primary Agricultural Cooperative Bank
Samanayakkanpalayam
No.4, Veerapandi Post
Coimbatore 641 019
represented by its Special Officer

Petitioner

vs.

1 The Presiding Officer
Labour Court
Coimbatore

2 V. Muralidharan

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the first respondent pertaining to his proceedings in I.D. No.236/1999 and quash the award dated 25.11.2002.

For petitioner ... Mr. R. Sivakumar

R1 ... Labour Court

For R2 .. Mr.V. Ajay Khose

ORDER

This writ petition has been filed challenging the award dated 25.11.2002 passed by the first respondent-Labour Court, Coimbatore, in I.D. No.236 of 1999.

2 The factual matrix leading to the filing of this writ petition, is as under:

2.1 Muralidharan (the second respondent herein) was working as Clerk in Primary Agricultural Cooperative Bank, the petitioner herein (for brevity "the Management"). He was issued with a charge memo dated 19.06.1997, in which, charges were framed against him on the allegation that on 19.12.1995,

12.12.1995, 13.12.1995 and 14.12.1995, he was marked absent and that he had put his initials on the said dates without the permission of the Special Officer. He denied those charges and one K.M.Ramu was appointed as Enquiry Officer by the Management.

2.2 Before the Enquiry Officer, on behalf of the Management, 5 witnesses were examined and 21 documents were marked. On his side, Muralidharan examined himself as a witness and marked 7 documents. The Enquiry Officer, by his report dated 13.10.1997, held the charges as proved.

2.3 The Management issued a second notice dated 23.10.1997 to Muralidharan enclosing a copy of the enquiry report and calling upon him to show cause as to why he should not be dismissed from service. In response to the second show cause notice, Muralidharan submitted his explanation dated 12.11.1997. Not satisfied with his explanation, the Management dismissed him from service by order dated 01.12.1997.

2.4 Aggrieved by the dismissal order, Muralidharan raised an industrial dispute and on the failure of the conciliation proceedings, the matter was referred in I.D. No.236 of 1999 before the Labour Court, Coimbatore.

2.5 In the proceedings before the Labour Court, Muralidharan was represented by Mr. Gopalakrishnan, advocate and the Management was represented by Mr. Ramachandran, advocate.

2.6 Before the Labour Court, Muralidharan submitted that he is not challenging the validity of the enquiry, but, confined his arguments to Section 11-A of the Industrial Disputes Act, 1947 (for brevity "the ID Act"). Therefore, both sides did not examine any witness. However, the Management marked 26 exhibits, including the Enquiry Officer's report and all the documents that were marked during the domestic enquiry.

2.7 The Labour Court, by award dated 25.11.2002, held that the punishment of dismissal from service was grossly disproportionate to the charges framed against Muralidharan and therefore, set aside the punishment and substituted it with reinstatement with continuity of service, but, without backwages, challenging which, the Management is before this Court.

3 On 02.07.2003, at the time of admission of this writ petition, this Court passed the following order:

"Interim stay on the following conditions:

(i) the petitioner shall pay the arrears under Section 17B of the Industrial Disputes Act from the date of award till date to the second respondent directly within four weeks from today; and

(ii) the petitioner shall continue to pay the last drawn wage under Section 17B of the said Act on or before 5th of every month to the second respondent provided the second respondent files an affidavit of non-employment before this Court;

In default of either of the above conditions, the interim stay granted shall stand vacated automatically. Notice."

4 Subsequently, on 09.09.2003, this Court passed the following order:

"Order dated 02.07.2003 is comprehensive in nature. Hence, interim stay granted on 02.07.2003 is made absolute. Opportunity is also given to the 2nd respondent/workman to move this Court for appropriate relief."

5 From the records, it is seen that the Management had not taken any steps to have the notice in this writ petition served on Muralidharan. Therefore, on 17.04.2007, this Court passed the following order:

"Despite the fact that the matter is of the year 2003, the petitioners have not taken serious attempts to serve the second respondent. As a last chance, four weeks time is granted to serve the unserved respondent, both Court and privately. Proof of service, if any, to be filed within eight weeks in the Registry.

Post the matter before Court on 09.06.2007 for reporting compliance."

6 On 05.08.2011, this Court passed the following order:

"The above matter is listed today, i.e., 05.08.2011, under the caption "default cases" for non-compliance of the requirements of the Registry, including the payment of batta.

2 The concerned counsels are directed to pay the batta and to comply with the other requirements of the Registry, on or before 19.08.2011, as a last chance and to file proof of compliance, immediately, thereafter.

3. On non-compliance of the requirements of the Registry, on or before the specified date, as directed by this Court, the W.P.M.P./W.P. shall stand dismissed, automatically, insofar as the concerned respondent(s) is/are concerned, without further reference to this Court."

7 Pursuant to the aforesaid order dated 05.08.2011, since notice could not be served on Muralidharan, the writ petition itself stood dismissed as against Muralidharan, thereby, the award passed by the Labour Court stood confirmed.

8 In compliance with the interim order dated 02.07.2003, the Management has sent a cheque dated 30.07.2003 bearing no.009257 drawn on the Coimbatore District Central Cooperative Bank Ltd., for a sum of Rs.9,288/- in favour of Muralidharan, but, the cover returned unserved on the ground that he had left.

9 The fact remains that Muralidharan succeeded partly before the Labour Court. In the ordinary course, he would have taken steps to have the award implemented either by entering appearance in this writ petition or by filing a petition under Section 33(2) of the ID Act before the Labour Court. He had done neither. Till date, it is not known whether he is alive or dead. Bearing this in mind, this Court perused the award.

10 However, this Court did not want the case of Muralidharan to go un-represented. Therefore, this Court appointed Mr. Ajoy Khose, an advocate of reasonable standing on the Labour Side to take the case of Muralidharan pro bono.

11 Mr. Sivakumar, learned counsel for the Management contended that the Labour Court had exceeded its jurisdiction by interfering with the quantum of punishment by relying upon the evidence adduced in the domestic enquiry and that the Labour Court ought not to have adopted this procedure in the light of Muralidharan waiving his right to challenge the fairness of the enquiry.

12 Mr. Ajoy Khose, learned counsel for Muralidharan, submitted that even if the workman had agreed not to challenge the fairness of the domestic enquiry, yet, the findings of the Enquiry Officer can be challenged under Section 11-A of the ID Act, if the Enquiry Officer had arrived at the conclusion based on irrelevant materials.

13 This Court gave its anxious consideration to the rival submissions.

14 The allegations against Muralidharan show that he was frequently absenting to duty and whenever he was questioned by his colleagues, he used to say that he was suffering from physical ailment and would get very easily annoyed with them. It is not a case of defalcation of funds or any other grave accusation.

15 Therefore, in the peculiar facts and circumstances of this case, this Court is of the considered view that the award passed by the Labour Court cannot be said to be totally illegal. However, the fact remains that Muralidharan had not taken steps either to receive the 17-B wages or to have the award implemented by reporting to duty. In such view of the matter, this Court directs that, as and when Muralidharan reports to duty, the Management shall take him back to duty.

With the above direction, this writ petition stands disposed of. No costs.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gms

To

1 The Management of K-1212
Samanayanakkanyanpalayam
Primary Agricultural Cooperative Bank
Samanayakkanpalayam
No.4, Veerapandi Post
Coimbatore 641 019

2 The Presiding Officer
Labour Court
Coimbatore

+ 1 cc to Mr.V.Ajoy Khose, SR.NO.10052

W.P. No.18233 of 2003

PVS [CO]
RRI 06/03/2017