

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.02.2017
DELIVERED ON: 02.03.2017

CORAM:

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

W.P. No.19443 of 2003

The Management of Eravancheri

Primary Agricultural
Cooperative Bank Ltd.
706 Alangudi Cheri Post
Thittacheri
represented by its Secretary
Nannilam Taluk 609 703
Nagapattinam District

Petitioner

Vs.

1 Kunju Pillai
Podhu Cheyalalar
Madhya Thozhilalar Perumandram
Vasambadi Street
Thiruvarur North
Thiruvarur

2 The Labour Court
Cuddalore Respondents

Writ Petition filed under Article 226 of the Constitution of India to call for the records of the second respondent - the Labour Court, Cuddalore, relating to the award passed in I.D. No.394 of 1992 dated 24.12.2002 (directing the first respondent to be reinstated in service with backwages) and quash that award by a writ of certiorari.

For petitioner Mr. M. Kalyana Sundaram
Senior Advocate
for Mr. G. Sethuraman

For R1 Mr T.S.N. Prabhakaran

ORDER

This writ petition has been filed seeking to challenge the award dated 24.12.2002 passed by the second respondent-Labour Court, Cuddalore, in I.D. No.394 of 1992.

2 The incontrovertible facts leading to the filing of this writ petition are as under:

Eravanchery Primary Agricultural Cooperative Bank Ltd., the petitioner herein (for brevity "the Management"). On 02.04.1986, he was issued with a charge memo, in which, four accusations were levelled against him, for which, he gave an undated and verbose reply running to twelve pages. Not satisfied with his reply, the Management appointed one R. Dakshinamoorthy as Enquiry Officer. The following charges were framed against Kunju Pillai:

"1 Misappropriation of Society's fund by not paying salaries of the other employees drawn on 01.02.86 and released the paddy bags to the members without bringing into account of their payment.

2 Allowed the loans in 48 cases to become time barred by not taking action in time not adjusted the payment of dues to the interest at the first instance, conversion of loans without receiving the interest, not having taken action for the collection of stock deficit of Rs.3406.24 from the employees, allowed the empty gunnies to go to decay, occasioned loss of Rs.471.50, allowed the disinfectants to become expiry stocks occasioned loss Rs.2842.15;

3 Issued loans without obtaining loan applications, paid the society's fund to the loanees instead of from the funds of the Cooperative Central Bank, not collected the loan obtained by the employees in the security of their salary like cycle advance, festival advance, etc., issued fresh loans without the collection of the entire balance of the previous loans.

4 Not followed the instructions of the higher authorities in 9 cases.''

2.2 The enquiry was fixed on 09.05.1987 at 11.00 a.m. At the appointed time, Kunju Pillai did not appear before the Enquiry Officer, though the Management Witness was ready. But, at 12.45 p.m., Kunju Pillai appeared before the Enquiry Officer and sought adjournment. The Enquiry Officer commenced the enquiry proceedings.

2.3 On behalf of the Management, Mohamed Badrudeen, Special Officer of the Society, was examined and he gave evidence in support of the charges framed against Kunju Pillai and marked documents. After his examination-in-chief, Kunju Pillai cross-examined Mohamed Badrudeen for about three hours. Thereafter, the Management closed their evidence and Kunju Pillai examined Thillai Nayagam (RW 1), Kalimuthu (RW 2) and Rajendran (RW 3) as witnesses.

Pillai offered himself to be examined as a witness and in the course of the chief-examination, he suddenly stopped giving evidence and demanded that the Special Officer should be tendered for examination. The Enquiry Officer explained to him that he cannot compel the Management to examine a particular person as their witness, which was not acceptable to Kunju Pillai and therefore, he walked out of the enquiry without even signing the part deposition.

2.5 After walking out of the enquiry, Kunju Pillai wrote letters to the Enquiry Officer asking him to examine three more witnesses, viz., Rangarajan (former Special Officer), Pitchai (former Supervisor) and Venkatachalam (Stock Verification Officer). The Enquiry Officer posted the enquiry to 16.05.1987 so as to enable Kunju Pillai to bring those witnesses and examine. But, Kunju Pillai did not participate in the enquiry. The Enquiry Officer proceeded to consider the evidence adduced by the Management and Kunju Pillai and by his report dated 05.08.1997, held the charges as proved.

2.6 The Management issued a second notice dated 04.02.1988, enclosing a copy of the enquiry report and calling upon Kunju Pillai to show cause as to why he should not be dismissed from service. Kunju Pillai sent a reply dated 10.05.1988.

2.7 Not satisfied with that, the Management dismissed Kunju Pillai from service by order dated 30.04.1990. Kunju Pillai raised an industrial dispute challenging his dismissal and on the failure of conciliation proceedings, the matter was referred to the Labour Court, Cuddalore, in I.D. No.394 of 1992 for adjudication.

2.8 It may be relevant to state here that for the acts of misappropriation committed by Kunju Pillai, a case in Cr. No.234 of 1987 was registered against him by the Sub Inspector of Police, Thittacheri Police Station and after investigation, a charge sheet in C.C. No.513 of 1989 was filed against him before the Judicial Magistrate No.II, Nagapattinam.

2.9 Before the Labour Court, the Management took the following pleas:

i Kunju Pillai, being the Special Officer, is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for brevity "the ID Act");

ii Kunju Pillai had filed a revision petition against his order of dismissal dated 30.04.1990 and having elected to file a revision under the Tamil Nadu Cooperative Societies Act, 1983 (for brevity "the Cooperative Societies Act") he cannot maintain the present industrial dispute;

and

iii Kunju Pillai was dismissed from service after due enquiry, where, charges against him were held as proved.

2.10 Based on the rival contentions, the Labour Court framed the following issues:

i Whether Kunju Pillai, being the Special Officer, would be a workman within the meaning of Section 2(s) of the ID Act?

ii Is this industrial dispute barred by principle of res judicata?

iii Whether the charges against Kunju Pillai have been established in the domestic enquiry?

iv What relief is Kunju Pillai entitled to?

2.11 Before the Labour Court, Kunju Pillai examined himself as a witness and marked 3 documents. On behalf of the Management, one witness was examined and 17 documents were marked, including the Enquiry Officer's report and the deposition of witnesses who were examined on behalf of the Management and by Kunju Pillai before the Enquiry Officer.

2.12 The Labour Court, after considering the evidence adduced by both the parties, passed the award dated 24.12.2002 holding that the dismissal of Kunju Pillai was illegal and directed that he be reinstated in service with full backwages, challenging which, the Management has filed the present writ petition.

3 Heard Mr. M. Kalyanasundaram, learned Senior Counsel appearing for the Management and Mr. T.S.N. Prabhakaran, learned counsel for Kunju Pillai.

4 Mr. T.S.N.Prabhakaran, learned counsel for Kunju Pillai submitted that Kunju Pillai was acquitted by the Criminal Court in C.C. No.513 of 1989 on 25.10.1993, i.e., during the pendency of the industrial dispute and therefore, the award of the Labour Court does not warrant interference.

5 Per contra, Mr. M. Kalyanasundaram, learned Senior Counsel appearing for the Management submitted that the Special Officer of a cooperative society cannot be a workman in terms of Section 2(s) of the ID Act, as he has to shoulder onerous responsibilities in the administration of the Society. Therefore, he contended that the Labour Court ought not to have held that Kunju Pillai was a workman within the definition of Section 2(s) of the ID Act.

rival submissions.

7 The answer to issue no.(i) that was framed by the Labour Court is available in the judgment of this Court in K. Pazhani vs. The Presiding Officer, Labour Court, Cuddalore and another [2012 SCC Online Mad 77], wherein, this Court has held that the Secretary of a cooperative society is not a workman under Section 2(s) of the ID Act. It may be profitable to extract paragraph nos.7 and 8 of the said judgment:

"7. The question whether a secretary of a Cooperative Society is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and also Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 came up for consideration in several judgments of this Court, where it was held that the definition of 'employee' is similar to that of a workman under Section 2(s) of the Industrial Disputes Act.

8. In this context, it is necessary to refer to the judgment of this Court in the case of The Management, T.P. Spl.67 Goundanpalayam, Primary Agricultural Cooperative Society Limited v. The Assistant Commissioner of Labour reported in 2003 Writ Law Reporter 371, wherein a similar claim was negatived by this Court. Under the said circumstances, there is no infirmity in the award passed by the first respondent Labour Court."

On this short ground alone, the Labour Court should have dismissed the claim petition, whereas, the Labour Court has rendered a finding that Kunju Pillai was a workman within the meaning of Section 2(s) of the ID Act, which is opposed to law.

8 As regards issue no.(ii), the Management has not adduced any evidence to show that Kunju Pillai had submitted a revision petition under the Cooperative Societies Act before raising the industrial dispute. Therefore, this Court does not find any infirmity in the finding on this aspect that was rendered by the Labour Court.

9 However, coming to issue no.(iii), the Labour Court has held that the charges against Kunju Pillai have not been proved satisfactorily before the Enquiry Officer. The Labour Court has held that the Management Witness, who was examined in the domestic enquiry, had merely reiterated the charges against Kunju Pillai and had not adduced any evidence to prove the charges. This necessitated this Court to look into the report of the Enquiry Officer in order to find out if the findings arrived at by the Enquiry Officer were perverse.

the Management Witness, Mohamed Badrudeen, the Special Officer of the Society, had spoken about the allegations against Kunju Pillai and has marked Acquisition Register (Ex. M.3), Cash Book (Ex.M.4), Paddy Stock Register (Ex.M.5), Receipt Books (Ex.M.6), Loan Ledgers (Exs.M.7 & 8), Sale Receipt for gunny bags (Ex.M.9), Loan issued to 64 persons without bonds (Ex.M.10), Day Books (Exs. M.11 to M.15), Attendance Register for the month of March 1986 (Ex.M.16), Time-barred debts to the extent of Rs.2,68,780/- (Ex.M.17), Loan Extract (Ex.M.18) and Auditors' report (Ex.M.19). The Enquiry Officer has gone into all these materials before giving his finding that the charges have been proved. For example, coming to Charge Nos.3 (i) to 3 (iv), the Enquiry Officer's analysis is as under:

"Charge number 3(i) is to the effect that the delinquent had issued loan to 64 persons without obtaining bonds. It is evidenced by Ex.M.10. The explanation by the delinquent is that he would get the bonds executed within a week taking personal responsibility would prove that there was no bonds. Charge number 3(ii) is that the delinquent had allowed the over due loans 535, 973, 976 and 982 and he had not filed any arbitration proceedings. The delinquent would state that there was dearth of trained staff and hence he would not taken action is unacceptable. The charge number 3(iii) is that the delinquent had not collected the loans advanced to the employees then and there and it is evidenced by Ex.M.18. It is proved that he had not deducted the cycle advance, festival advance, etc., from the salary. The charge number 3(iv) is that the delinquent had paid out of the funds of the society to the members for their loan application pertaining to Pakkirisamy and others. Loan disbursement should be made from the funds obtained from the Central Cooperative Bank. The delinquent in his explanation in a way admits such payments out of the society's fund. His story trotted out in the explanation is baseless and irrelevant."

11 From the above, it is crystal clear that the Management has proved that Kunju Pillai has granted loans to 64 persons without obtaining bonds and the explanation that he has offered is that, he would get the bonds executed within a week. When once the loan is disbursed without bonds, recovery of the loan sanctioned would become next to impossibility when there is a default. This Court has extracted only a small portion of the Enquiry Officer's report to show as to how the Enquiry Officer has appreciated the evidence adduced before him.

12 It is trite that, in domestic enquiry proceedings, it is not necessary for the Management to adduce proof beyond reasonable doubt and it would suffice, if the evidence adduced leads to a reasonable inference that misconduct has been committed.

strangely held that the finding of the Enquiry Officer is not in consonance with the evidence on record. While perusing the Enquiry Officer's report, this Court was indeed shocked on reading the following note found therein:

"It is not out of place to mention here that the delinquent placed portrait of the Hindu Goddess on the table of the Enquiry Officer, he was placing kunkumam and ashes and began chant manthram. Though the Management was represented by the Special Officer (a Muslim), the Enquiry Officer did not mind all these matters and he was particular to hold and complete the enquiry tolerating the employees strange behaviour in such circumstances."

Thus, it is obvious that Kunju Pillai has been adopting all foul tricks to flummox the Management Witness, which, this Court deprecates.

14 Mr. T.S.N. Prabhakaran submitted that Kunju Pillai was acquitted in the criminal Court and therefore, the finding of the criminal Court would be binding on the Management.

15 I am unable to persuade myself to agree with the aforesaid submission, because, the Management did not wait for the criminal prosecution against Kunju Pillai to get over. Though there are overlapping facts, yet, the charges against Kunju Pillai before the domestic enquiry were very specific and pointed, as stated above. That apart, the Management did not choose to wait for the criminal prosecution, but, proceeded to take departmental action against Kunju Pillai by issuing the show cause notice dated 02.04.1986. In fact, only after the issuance of the show cause notice dated 02.04.1986, the First Information Report in Cr. No.234 of 1987 was registered by the police.

16 In view of the foregoing discussion, this Court is of the considered view that the findings of the Labour Court, qua issue no.(iii), are indeed very perverse, warranting interference by this Court.

In the result, this writ petition filed by the Management is allowed, the impugned award passed by the Labour Court is set aside and the order of dismissal passed by the Management against Kunju Pillai stands restored. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Labour Court
Cuddalore

+ 1 cc to Mr.T.S.N.Prabhakaran, Advocate SR.13447
+ 1 cc to Mr.G. Sethuraman, Advocate Sr.13471

W.P.No.19443 of 2003

SKS (CO)
EU 10.03.17



WEB COPY