

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1553 and 1554 of 2014

M.Venkatesan ... Appellant in both the Appeals

versus

1.The Management of
Kalavai Primary Agricultural
Co-operative Bank, Kalavai
Vellore District.

2.The Presiding Officer,
Labour Court, Vellore. Respondents in both the Appeals

PRAYER IN W.A.Nos.1553 and 1554 of 2014: Appeals filed
against the order passed by this Court dated 13.08.2013 made in
W.P.Nos.8626 of 2002 and 16667 of 2003 respectively.

PRAYER IN W.P.No.8626 of 2002:

Writ Petition filed under Article 226 of the Constitution
of India, to issue a Writ of Certiorari, to call for the
records of the first respondent, dated 23.07.2001 in
I.D.No.76/97 and quash the same.

PRAYER IN W.P.No.16667 of 2003:

Writ Petition filed under Article 226 of the Constitution
of India, to issue a Writ of Certiorari and Mandamus, to call
for the records relating to the award, dated 23.07.2001 in
I.D.No.76/97 passed by the first respondent and quash the award
insofar as his findings holding guilty of a part of charge No.1
and the direction given by the first respondent permitting the
second respondent to deduct Rs.2792.92 from the wages and other
benefits payable to the petitioner pursuant to the award and
consequently direct the second respondent to reinstate the
petitioner with continuity of service, backwages and other
attendant benefits without any deduction, award costs.

For Appellant : Mr.V.Ajoy Khose in both the appeals
For Respondents : Mr.P.S.Sivashanmugasundaram for R1
in both the appeals
R2-Court.

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in these intra-Court appeals is to the common order dated 13.08.2013 of the learned Single Judge made in W.P.Nos.8626 of 2002 and 16667 of 2003, in and by which, while dismissing the Writ Petition filed by the Management challenging the order of the Labour Court directing re-instatement of the appellant along with back wages, the learned Single Judge has directed payment of a consolidated sum of Rs.1,80,000/- towards arrears of back wages. The learned Single Judge also dismissed the Writ Petition filed by the workman challenging the direction of the Labour Court directing him to pay a sum of Rs.2792.92/- representing the value of the deficit stock.

The facts that led to the filing of the Writ Petitions are as follows:-

2. The appellant had joined the services of the respondent Co-operative Society as Salesman on 05.01.1981. While he was working so, there was a inspection by the flying squad on 27.08.1993 and after inspection a charge memo containing three charges was served on the appellant on 23.06.1994. Pursuant to a domestic enquiry conducted on 13.05.1995, the petitioner was dismissed from service on 20.01.1996. Challenging the said dismissal, the petitioner moved the Labour Court, Vellore in I.D.No.76 of 1997.

3. Before the Labour Court, it was contended by the Management that the petitioner has caused a loss to the Society due to shortage of goods to the tune of Rs.2,671.52/- and therefore he is not entitled to re-instatement. It was also claimed that the past conduct of the appellant was also taken into account.

4. The Labour Court upon a consideration of the evidence that was let in before it, concluded that the conclusion of the enquiry officer regarding the first charge viz., the appellant had introduced the concept of wastage while writing the accounts and by showing certain quantity of goods as wastage had caused a loss of Rs.2671.52/- to the Society. The appellant had accepted that he had shown certain amounts of goods as wastage and according to him, that was permitted by the Society and the said practice was stopped by issue of a circular in Na.Ka.No.34935/91

dated 11.05.1992. Therefore, in view of the said circular the learned Labour court concluded that the first charge stood established.

5. As regards the second charge the learned Labour Court found that the charge itself is wrongly framed and therefore, the same cannot be said to have been proved. The third charge leveled against the appellant was that he had not maintained the registers properly and he had sold the goods that were meant to be supplied on the basis of the ration cards.

6. The Labour Court concluded that the non-maintenance of registers was due to shortage of staff and it is the Management that is responsible for the same. The Labour Court also found that the very inspection by the flying squad has been conducted only with a view to somehow charge the appellant with certain delinquencies. The Labour Court also came to the conclusion that the punishment of dismissal from service was too harsh inasmuch as the intention to defraud the Society has not been established. The Labour Court also took into account the fact that it was not shown that the appellant had mis-appropriated the monies belonging to the Society. Therefore, the Labour Court found that the appellant is liable to make good the loss i.e., a sum of Rs.2,792.92/-. On the aforesaid findings, the Labour Court set aside the order dismissing the petitioner from service and directed re-instatement along with back wages. However, the Labour Court directed the appellant to pay a sum of Rs.2,792.92/- to the Society. The Management was also authorized to deduct a sum of Rs.2,792.92/- from the back wages directed to be paid.

7. Aggrieved by the said award, the Management had filed the Writ Petition in W.P.No.8626 of 2002. Aggrieved by the direction to pay a sum of Rs.2,792.92/- the workman viz., the appellant had filed a Writ Petition in W.P.No.16667 of 2003. Both the Writ Petitions were disposed of by a common order dated 13.08.2013, the learned Single Judge disposed of the Writ Petition filed by the Management, setting aside the removal from service and directing the Management to pay a consolidated sum of Rs.1,80,000/- after deducting any amounts that has already been paid/ deposited/ withdrawn. The Writ Petition filed by the workman in W.P.No.16667 of 2003 was dismissed.

8. It is not in dispute that the said sum of Rs.1,80,000/- has been paid and the workman has also rejoined duty. The workman had now come forward with the above Writ Appeals mainly aggrieved by the non-payment of full back wages.

9. We have heard Mr.V.Ajoy Khose, learned counsel appearing for the appellant and Mr.P.S.Sivashanmugasundaram, learned counsel appearing for the 1st respondent in both the Writ Appeals.

10. The controversy in these Writ Appeals is limited only to the payment of back wages. The Writ Petition was dismissed solely on the ground that the approval required under Section 33 (2)(b) of the Industrial Disputes Act was not taken by the Management inasmuch as I.D.No.18 of 1996 was pending before the Labour Court, Vellore, at the time when the impugned order of dismissal came to be passed. As far as the back wages is concerned the learned Single Judge had taken into account the fact that the payment of back wages is not automatic and the learned Single Judge had come to the conclusion that the Management had already paid a sum of Rs.90,000/- towards back wages pursuant to the interim order of the Court and concluded that the Management shall pay a sum of Rs.1,80,000/-.

11. Mr.V.Ajoy Khose, learned counsel appearing for the appellant would submit that the Management had received subsidy from the Government which would cover his wages, therefore, according to the learned counsel, the Management should be directed to pay the entire back wages that are due to him. The learned Single Judge had taken into account the last drawn salary of the appellant to conclude that the appellant would be entitled to Rs.1,80,000/- towards back wages. Mr.V.Ajoy Khose, learned counsel appearing for the appellant would submit that the payment of back wages as directed by the learned Single Judge is really impropportionate and does not amount to a fair consideration of the facts and circumstances of the case.

12. Taking note of the fact that the respondent Society had received subsidy for the salary payable to the salesman as per the circular of the Deputy Registrar of Co-operative Societies dated 17.02.1984, we deem it fit that a direction to pay 50% of the back wages will be just and proper. We therefore allow the W.A.No.1553 of 2014 partly. The direction of the learned Single Judge in respect of payment of back wages will stand modified as follows:

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The respondent Management shall pay 50% of the back wages after deducting a sum of Rs.1,80,000/- which is already been paid to the appellant workman. The said payment shall be made within a period of eight (8) weeks from the date of receipt of a copy of the order. In all other aspects the order of the learned Single Judge will stand confirmed. W.A.No.1554 of 2014 filed challenging the order dismissing the W.P.No.16667 of 2003 is dismissed. In the circumstances of the case we make no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

dsa
To

1.The Management of
Kalavai Primary Agricultural
Co-operative Bank, Kalavai
Vellore District.

2.The Presiding Officer,
Labour Court, Vellore.

+1cc to Mr.P.SIVASHANMUGASUNDARAM, Advocate, S.R.No.37373

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.37836(20/07/2018)

W.A.Nos.1553 and 1554 of 2014

VG II (CO)
TR(03/07/2018)

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