

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

Writ Appeal No.2870 of 2012

The Deputy General Manager
State Bank of India
84, Rajaji Salai
Chennai 600 001.

.. Appellant

Vs.

1. A.Madanabalan

2. The Presiding Officer
Central Government Industrial Tribunal -
cum - Labour Court
First Floor
26, Haddows Road
Shastri Bhavan
Chennai 6.

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 05.6.2012 made in W.P.No.11042 of 2007.

Writ Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to to call for the records on the file of 2nd respondent namely the Presiding officer Central Govt. Industrial Tribunal the Labour Court in award dt 6.12.2006 in I.d.no.32/2005 and setaside the same as illegal arbitrary and opposed to law.

For Appellant : Mr.S.Sethuraman
For Respondent-1 : Mr.Balan Haridas

J U D G M E N T
(Delivered by Huluvadi G.Ramesh, J)

This writ appeal is directed against the order dated 05.6.2012 made in W.P.No.11042 of 2007.

2. It appears that on the complaint that the first respondent/workman though received money from the customers,

failed to credit the same into the account, enquiry was initiated and finally, he was found guilty and consequently, he was dismissed from service. The first respondent raised an industrial dispute before the Central Government Industrial Tribunal cum Labour Court. The Tribunal having found that the charges were not proved, directed to reinstate the first respondent/workman with continuity of service and all other attendant benefits, with 50% backwages.

3. The appellant Bank filed a writ petition challenging the order of the Tribunal. The learned single Judge dismissed the writ petition, confirming the order of the Tribunal. Hence, the above appeal.

4. According to the learned counsel appearing for the Bank, the evidence of PW4 has not been taken into consideration either by the Tribunal or by the learned single Judge and thus, an error has been committed in appreciating the material evidence, which has led to the wrong conclusion that the charges were not proved and therefore, the order directing to reinstate the first respondent with continuity of service and 50% of backwages has to be interfered with.

5. Per contra, the learned counsel for the first respondent/workman contended that none of the customers have identified the alleged misdeed committed by the first respondent/workman and absolutely there is nothing on record to hold the first respondent guilty and therefore, seeks to confirm the order of the learned single Judge. He also submitted that the first respondent/workman has attained the age of superannuation and therefore, sought to implement the order of the Labour Court, which was confirmed by the learned single Judge.

6. After careful consideration of the arguments, the point that arises for our consideration is whether the matter requires revisit, in the light of the evidence of PW4 and consequently, the order of the learned single Judge needs interference or not.

7. On a careful look at the records, as pointed out by the learned counsel appearing for the Bank, we find some evidence stated to be the deposition of PW4. However, such evidence of PW4, who is a public, cannot be a conclusive proof to come to a conclusion that the first respondent/workman committed misappropriation, as a public will not be aware of internal correspondence of the Bank and whether the person in the counter has credited the amount in the account of the customer in the ledger book or not. Therefore, mere identification of the person who stated to be in the counter on the day when the amount was deposited is not sufficient to conclude any person guilty of misappropriation. Thus, the Bank ought to have enquired the staff of the Bank who would have the knowledge of bank

transaction. Failure on the part of the Bank to enquire their staff in this regard would not substantiate the contention raised by the Bank. Thus, the point that arises for our consideration is answered in negative.

8. Furthermore, the first respondent/workman has attained the age of superannuation and therefore, at this belated point of time, reconsideration of the evidence regarding identification of the first respondent/workman would not serve any purpose, as the question of reinstatement does not arise now. Hence, taking note of the fact that the amount said to have been misappropriated has already been remitted, we are of the considered opinion that backwages of 50% may be reduced to 20%. Accordingly, we direct the appellant Bank to pay the first respondent/workman 20% of backwages, instead of 50%, after deducting the amount already paid to him by way of subsistence allowance, within a period of three months from the date of receipt of a copy of this order.

9. The writ appeal is disposed of in the above terms. There shall be no order as to costs. Consequently, M.P.No.1 of 2012 is closed.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

kpl

To

The Presiding Officer
Central Government Industrial Tribunal -
cum - Labour Court
First Floor
26, Haddows Road
Shastri Bhavan
Chennai 6.

+1cc to Mr.S.Sethuraman, Advocate SR.No.24568
+1cc to Mr.Balan Haridas, Advocate SR.No.24276

W.A.No.2870 of 2012

SS(CO)
GN(09/05/2018)