

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.800 of 2016
and CMP No.10512 of 2016

The Management
VI. Spl. 112, Nagavedu Primary
Agricultural Co-operative Bank Ltd.,
Nagavedu, Arakkonam Taluk,
Vellore District. Appellant

versus

1. The Presiding Officer,
Labour Court,
Vellore, Vellore District.
2. N.Kirubanandam Respondents

Appeal filed against the order passed by this Court dated
25.04.2016 passed in WP No.20314 of 2002.

WP.NO.20317/2002:

Petition filed Under Article 226 of the Constitution of
India praying to issue a Writ of Certiorari to call for the
records of the 1st respondent in I.D.No.252/97, dated 1412/2002
on its file and quash the same.

For Appellant : Mr.L.P.Shanmugasundaram
Special Government Pleader

For 2nd Respondent: Mr. V.Ajoy Khose
for Mr.R.Krishnaswamy

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)
Challenge in this intra Court Appeal is to the order of the
learned Single Judge dated 25.04.2016 made in WP No.20314 of

2002, in and by which, the learned Single Judge dismissed the Writ Petition filed by the appellant Society questioning the award of the Labour Court, Vellore dated 14.02.2002 made in ID No.252 of 1997. The 2nd respondent herein was entered the services of the appellant Society as a salesman on 19.12.1978. He was promoted as a clerk from 01.03.1983. He was suspended for alleged misappropriation on 23.12.1992, an enquiry was conducted in which the Enquiry Officer found the 2nd respondent guilty of the charges. Accepting the report of the enquiry officer, the appellant Society imposed a punishment of dismissal from service on the 2nd respondent on 30.04.1996.

2. Aggrieved by the said order of dismissal, the 2nd respondent raised an Industrial Dispute and the same was numbered as ID No.252 of 1997. The Labour Court framed an issue regarding the fairness of the domestic enquiry and the Labour Court concluded that the domestic enquiry was not fair and proper. Even after the said finding, the Management did not choose to examine any witness on its side. It was contend with marking certain documents. The Labour Court went into the question of misappropriation and found that the charge of misappropriation has not been proved.

3. On the above findings, the Labour Court directed reinstatement of the workman with 75% back wages and all attendant benefits. This award of the Labour Court was challenged by the Management in WP No.20314 of 2002. The learned Single Judge who heard the Writ Petition found that once the Labour Court has come to the conclusion that the domestic enquiry was not conducted in a fair and proper manner and the Management had failed to lead a evidence before the Labour Court, this Court sitting under Article 226 cannot disturb the factual findings of the Labour Court. On such conclusion, the learned Single Judge dismissed the Writ Petition. The learned Single Judge also found that there was failure to comply with the principles of natural justice and there was denial of opportunity to the delinquent employee during the disciplinary enquiry.

4. Aggrieved by the dismissal of the Writ Petition, the Management has come up with this intra Court Appeal.

5. We have heard Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the appellant Society and Mr.Ajay Kosh, learned counsel appearing for Mr.R.Krishnaswamy, for the 2nd respondent.

6. Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the appellant Society would contend that once the Disciplinary Authority had found that the charge of misappropriation has been proved, the labour Court was not right in interfering with the conclusions of the Disciplinary Authority. He would further plead that the financial position of the appellant Society is very weak, inasmuch as it has accumulated loss of 77.84 lakhs, during the audit period 2016 - 2017.

7. Per contra, Mr.Ajay Kosh, learned counsel appearing for the 2nd respondent would contend that once the Labour Court comes to the conclusion that the enquiry was fair and proper, it was open to the Management to let in evidence to prove the charge of misappropriation before the Labour Court. Having failed to do so the Management cannot be heard to contend that the Labour Court cannot reassess the evidence and test the veracity of the findings of the Enquiry Officer.

8. We have considered the rival submission. As rightly pointed out by the learned Single Judge, the Labour Court has found that the disciplinary enquiry was not fair and proper, once such a finding is recorded then the Labour Court is entitled to go into the merits of the matter and reassess the evidence under Section 11A of the Industrial Dispute Act. It was open to the Management to let in evidence to prove the case of misappropriation as alleged. But the Management has failed to do so. It has produced certain documents relating to the disciplinary enquiry. The Labour Court on assessment of the evidence on record found that the charge of misappropriation has not been made out. We do not see any illegality or irregularity in the procedure adopted by the Labour Court. It is settled law that this Court exercising jurisdiction under Article 226 cannot reassess the evidence and come to a different conclusion, if the procedure adopted by the Labour Court is fair and legal and the award cannot be interfered by reassessing the evidence even if a different conclusion is possible. The learned Single Judge has rightly concluded that such reassessment cannot be done and the award of the Labour Court is justified.

9. It is now brought to our notice that the 2nd respondent has attained the age of superannuation even in the year 2015. Therefore, the question of reinstatement does not survive. We will have to only see as to how the equities could be adjusted between the parties inasmuch as the appellant Society is in weak financial status. We are of the considered view that in the

present circumstances the award of the Labour Court requires to be modified in order to work out the equities between the parties. Of course the 2nd respondent has been favoured with the order of the reinstatement by the Labour Court. But at the same time, we should also taken into account plight of the appellant Cooperative Society which has sustained huge losses.

10. We are therefore of the opinion that while sustaining the findings of the Labour Court as well as the learned Single Judge, the award would be modified by directing the appellant Management to pay 25% of back wages from the date of suspension till date of superannuation i.e. on 31.05.2015 less the amount of subsistence allowance of Rs.73,884/- which is already paid. The appellant Society will also pay the other retirement benefits like Provident Fund, Gratuity, Encashment of Medical Leave and Earned Leave Surrender which had payable to the employee as per the Regulations of the Society.

11. The Writ Appeal is disposed of with the above directions. However, in the circumstances, without costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Vellore, Vellore District.

+lcc to Government Pleader in sr.no.54068
+lcc to Mr.L.P.Shanmugasundaram, Advocate sr.no.53946
+lcc to Mr.V.Ajoy Khose, Advocate sr.no.53362

W.A.No.800 of 2016
and CMP No.10512 of 2016

nr 17/09/2018