

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on : 15.03.2018****Pronounced on : 05.06.2018**

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CORAM:**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Writ Petition(MD)No.16898 of 2014****and****M.P. (MD) .No.1 of 2014**

The Management,
Tiruchirapalli District Central Co-operative
Bank Limited,
represented by its Managing Director /
Joint Registrar,
No.1, Fort Station Road,
Tiruchirapalli.

... Petitioner

Vs.

1. B.Hariharan

2. The Presiding Officer,
Labour Court,
Tiruchirapalli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the impugned award passed by the second respondent in I.D.No.30 of 2009, dated 28.08.2014 and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R1 : Mr.P.Pethu Rajesh

R2 : Labour Court

O R D E R

The writ petitioner is a Registered Co-operative Bank. The first respondent herein was working as Assistant in the writ petitioner Bank at Kattuputhur Branch during the relevant period. He was on medical leave from 09.11.1998 to 14.11.1998. He rejoined duty on 16.11.1998 and again applied for medical leave from 25.11.1998 to 19.12.1998. In the mean while, he submitted his resignation letter dated 15.12.1998, stating that he wants to quit due to personal issues. Thereafter, the first respondent did not report for duty.



2. The whereabouts of the first respondent were not known. He was also not available in the address where he was lastly residing. The Management issued a letter dated 08.04.1999 to the first respondent directing him to appear before the Managing Director. The said letter was however returned un-delivered. One more letter was sent on 22.04.1999. Thereafter, a letter dated 15.05.1999 was received from the wife of the first respondent requesting reinstatement. In these circumstances, the Management informed the first respondent by a communication dated 13.01.2007, that his resignation letter was deemed to have been accepted with effect from the date when it was submitted.

3. Thereafter, the first respondent raised an industrial dispute. It was taken on file as I.D.No.30 of 2009 on the file of Labour Court, Tiruchirapalli. The first respondent examined himself as W.W.1 and also marked as many as 57 documents. On the side of the Management also a witness was examined and a documents were marked. The Labour Court, by award dated 28.08.2014, held that since the first respondent herein reached the age of superannuation on 31.01.2011, he would be deemed to have retired on the said date. The Management was directed to pay back wages for the period from 12.03.2000 to 31.01.2011 and also confer other benefits. Aggrieved by the said award, the Management has filed the present writ petition.

4. Heard the learned counsel on either side.

5. The learned counsel appearing for the Management pointed out that the employee was unauthorisedly absent and his whereabouts were also not known. It is not in dispute that he had submitted a letter of resignation on 15.12.1998. In fact, the letter of revocation was given on not by the employee but by his wife. There is nothing on record to show that the resignation was submitted under coercive circumstances. The industrial dispute itself was raised only in the year 2009. For almost 10 years, the petitioner had virtually abandoned his post. Therefore, the Labour Court clearly erred in rendering findings in favour of the employee in question. Therefore, he wants this Court to set aside the impugned award.

6. Per contra, the learned counsel appearing for the first respondent submitted that the award of the Labour Court does not call for any interference.

7. This Court considered the rival contentions and also carefully perused the materials on record.

8. The first respondent had joined service as early as on 04.08.1972. He was working as a cashier since 13.09.1982. It is also not in dispute that on 15.11.1998, the first respondent went



on medical leave. He also sought further extension of his medical leave. The first respondent also does not deny that he submitted his resignation letter dated 15.12.1998. The first respondent pleaded before the Labour Court that he had incurred certain expenses and to liquidate his personal liabilities under immense pressure from his relatives, he had submitted such a resignation letter through post.

9. This Court can take judicial note of the fact that whenever an employee, who has served in an institution for a long time, seeks to resign his job, it is not right away accepted. A counselling is conducted. The Management would have a personal one to one meeting with the employee concerned. It would want to know as to why the employee wants to resign his job. Often the employee is persuaded to see if there is any other course of action that can be adopted. Therefore, it is not surprising that in the present case also the writ petitioner Management wrote a letter to the last known address of the first respondent herein calling upon him to meet the Managing Director. But then the first respondent was not available. Therefore, the letters sent by the Management were returned undelivered.

10. The wife of the first respondent had sent a letter dated 15.05.1999. This letter was marked on the side of the Management as Ex.M.9. It has been conclusively established by the first respondent that the first respondent sent communications recalling his resignation letter and asking for reinstatement. In fact, the first respondent had also given his advocate's address as address for correspondence. There was absolutely no response from the Management. The correspondence emanating from the employee / first respondent herein has been marked on both sides. Only vide letter dated 13.01.2007, the Management informed the first respondent that his resignation letter dated 15.12.1998 was deemed to have been accepted. In these circumstances, the Labour Court rightly came to the conclusion that the resignation letter given by the first respondent was not immediately accepted and no order relieving the first respondent was issued. If the resignation of the first respondent was accepted immediately, then definitely his terminal benefits would also had been settled by the Management. This did not happen. Therefore, the only conclusion this Court can come to is that the Management did not initially accept the first respondent's resignation letter. Before the letter of resignation could be accepted, the first respondent had already recalled his resignation letter. It was already withdrawn. It was open to the first respondent to withdraw his resignation letter before its acceptance.

11. As the labour Court rightly observed, the Management <https://hccs.ecourts.gov.in/tcservices> initiate any disciplinary action against the first respondent. No enquiry was conducted. No charge memo was issued. If according to the Management, the employee had abandoned his



employment and had been unauthorisedly absent, then this was a misconduct for which action could have been taken. But no such action was taken. In such circumstances, the Management was not justified in accepting the resignation letter given by the first respondent. The said acceptance is vitiated on two counts. The acceptance letter was issued after a lapse of more than eight years. In the mean while, the letter of resignation had also been recalled by the employee in question. Therefore, the Labour Court rightly came to the conclusion that the employee in question was deemed to have been in service. That is why, the Labour Court rightly rejected Ex.M.14. The first respondent also reached the age of superannuation on 31.01.2011. Therefore, even though his I.D. was allowed, he could not be given the benefit of reinstatement. But then the question is whether the Labour Court was justified in awarding back wages for the entire period. This Court is of the view that back wages could not have been awarded for the entire period from 12.03.2000 till 31.01.2011. This is because the principle of 'No work No pay' can very well be applied. The petitioner had consciously given a letter of resignation on 15.12.1998. It was withdrawn only on 15.05.1999. The first respondent was virtually playing hide and seek with the Management. Merely sending a letter of withdrawal through post is not sufficient. The first respondent was obviously under some severe domestic pressure. This Court does believe that he was under pressure from his relatives to resign his job and settle the liabilities with the terminal benefits. In order to avoid the tormentors, the first respondent had run away from the scene. Therefore, the Management has clearly shown that it did attempt to reach out to the first respondent. But its efforts were futile. In these circumstances, the Management cannot be blamed. The first respondent not having approached the Management in person and asked for posting or reinstatement, is not justified in making a demand for payment of back wages. But then the first respondent was available from the date when he raised the industrial dispute.

12. This Court therefore is of the view that the interest of justice will be served by directing the payment of back wages for the period from 23.02.2009 till 31.01.2011. The first respondent shall be deemed to have retired from service on 31.01.2011. This Court interferes with the impugned award only to the extent of denying back wages to the first respondent for the period from 12.03.2000 till 23.02.2009. In all respects, the impugned award is confirmed. This writ petition is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl side)



To

The Presiding Officer,
Labour Court,
Tiruchirapalli.

+ 1 cc TO Mr.D.Shanmugaraja Sethupathi, Advocate in SR No. 66893
+ 1 cc TO Mr.P.Pethu Rajesh , Advocate in SR No. 66747

akv

AE/SB/SAR2/19.06.2018/5P/4C

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