

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.37831 of 2003

Karnan

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Cuddalore.

2.The Management
E-2588 Nandhimangalam Primary
Agricultural Co-operative Bank,
N.Poolamedu, Cuddalore District ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Award dated 30.06.2003 made in I.D.No.20 of 1999 on the file of 1st respondent and quash the same and directing the 2nd respondent to reinstate the petitioner in service with continuity of service and backwages and all other attendance benefits.

For Petitioner : Mr.G.Pugazehnthi

For Respondents: R1-Court

R2-No Appearance

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O R D E R

Heard Mr.G.Pugazehnthi, learned counsel for the petitioner. There is no representation for the 2nd respondent.

2. It is the case of the petitioner that he was employed as a Night Watchman under the 2nd respondent from 05.04.1991 onwards on a monthly salary of Rs.200/-. According to the learned counsel for the petitioner, the petitioner was orally terminated from service on

06.12.1995, without any prior notice or enquiry, on the allegation that the petitioner had stolen one bag of paddy. The criminal case registered against the petitioner had also ended in acquittal by a Judgement dated 25.03.1997 in CC.No.22 of 1996 on the file of the Judicial Magistrate No.II, Chidambaram. According to the learned counsel for the petitioner, the said Judgement is an honorary acquittal and the basis on which the petitioner was terminated, will not survive and the petitioner will be entitled for reinstatement with backwages. This aspect has not been properly considered by the labour Court and therefore, he seeks for setting aside the award dismissing his request for reinstatement.

3. It is seen that when the 2nd respondent herein had filed his written statement against the claim statement filed by the petitioner before the Labour Court, Cuddalore, they had taken a specific stand that the petitioner was allotted with the work of Night Watchman and was paid Rs.6.50 per day on daily wages. The petitioner was also paid Pongal Bonus in the year 1992. The only ground raised before the Labour Court is that the petitioner had indulged in a serious misconduct of theft of one bag of paddy on 06.12.1995 at about 9.00 am from the godown with an unlawful intention to gain himself and cause loss to the society. It is also admitted in the written statement that no enquiry was conducted by the Management. According to them, the petitioner himself abstained from duty. With these set of averments in the counter, the award came to be passed by the Labour Court. When the 2nd respondent had come out with a clear set of pleadings stating that the petitioner herein was employed as a Night Watchman and that the non-employment was on the basis of a criminal case registered against the petitioner herein, the fact that the petitioner has now been acquitted gains prominence.

4. On a perusal of the Judgement passed by the Criminal Court in C.C.No.22 of 1996, it is seen that the Judgement has been made on the basis of oral and documentary evidences by the Criminal Court and as such, the acquittal can only be deemed to be an honorary acquittal. While that being so, the observation of the Labour Court in the award dated 30.06.2003 that the charges of misconduct against the petitioner has been proved on the basis of the oral evidence, is not correct.

5. It is further seen that when the petitioner was terminated from the services, admittedly, the respondent herein had neither issued any termination order nor had given any opportunity to the petitioner to put forth his

grievances or his explanations. These aspects have been clearly admitted by the 2nd respondent herein in the written statement filed before the Labour Court, wherein the charge against the petitioner was, for the first time, levelled before the Labour Court. His employment before the 2nd respondent has also been admitted by the 2nd respondent in the counter affidavit filed before this Court in this writ petition. Since the termination itself was done in violation of the principles of natural justice, I am of the view that the petitioner is entitled to succeed in the present writ petition.

6. The petitioner was drawing a sum of Rs.6.50 per day as per the statement of the 2nd respondent herein and as such, the petitioner would be entitled for the entire backwages from the date of his dismissal, which approximately works out to Rs.66,240/-. The petitioner would also be entitled for interest on the said amount, since the 2nd respondent had illegally terminated his services.

7. It is seen that the petitioner herein is now at the verge of retirement, since he claimed to have been 41 years of age, when the writ petition came to be filed. The Hon'ble Apex Court in various decisions has held that, in all cases, where the order of dismissal is set-aside, reinstatement may not be automatic. On the other hand, it has been held that a compensation can be directed to be paid to such employees, whose termination is found to be illegal. One such decision of the Hon'ble Apex Court reported in 2014 (7) SCC 177 is the case of Bharat Sanchar Nigam Limited vs Bhurumal.

8. In the light of the above observations, the award dated 30.06.2003 passed in I.D.No.20 of 1999 on the file of the Labour Court, Cuddalore is set-aside. The petitioner shall not be entitled for reinstatement. Consequently, the 2nd respondent is directed to pay the entire backwages at Rs.6.50 per day from 06.12.1995 till the date of actual payment along with interest at the rate of 6% per annum. Such an exercise shall be completed within a period of 6 weeks from the date of receipt of copy of this order.

9. Accordingly, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS viii)

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Sub Assistant Registrar

jrs/hvk

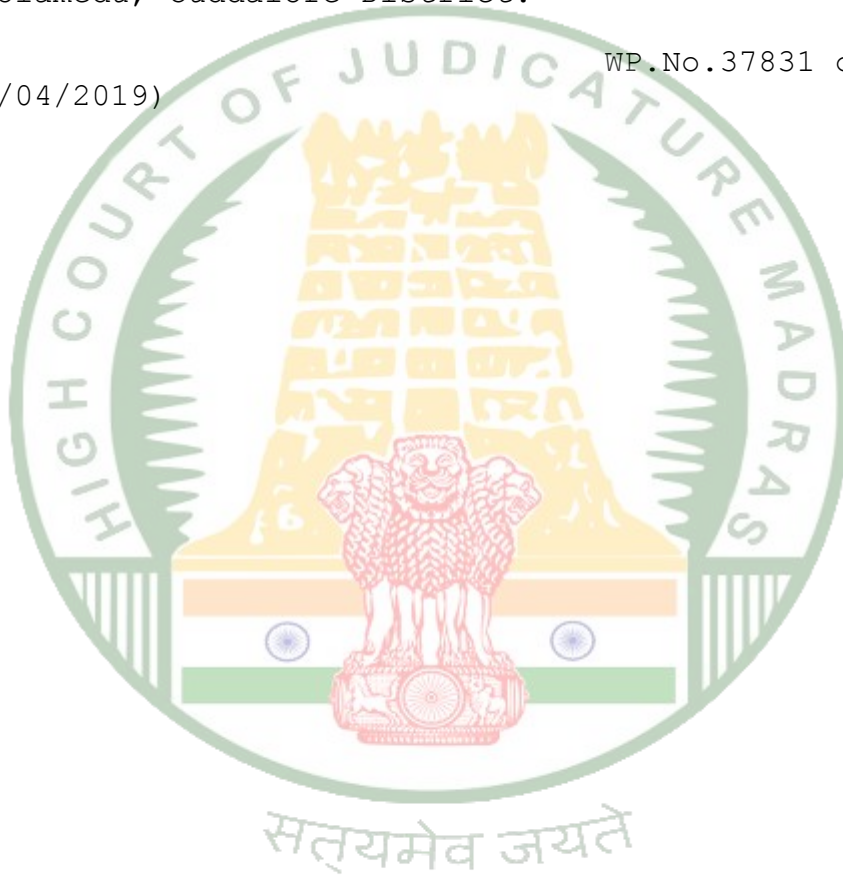
To

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2.The Management
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Agricultural Co-operative Bank,
N.Poolamedu, Cuddalore District.

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A.SK(30/04/2019)



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