

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.2988 of 2011

The Management,
A.A.535, Ammapalayam,
Pasuvathipatty Primary Agricultural
Co-operative Bank Ltd.,
Represented by its Special Officer,
Chennimalai, Erode District.

.. Petitioner

Vs.

1. N.Duraisamy
2. The Presiding Officer,
Labour Court,
Salem.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari calling for the records relating to the Award dated 09.02.2009 made in I.D.No.896 of 1998 on the file of the second respondent.

For Petitioner : Mr.N.Manokaran

For R1 : Mr.C.Prakasam

For R2 : Court

सत्यमेव जयते
O R D E R

Writ Petition is filed for issuance of writ of Certiorari to call for the records of the second respondent in I.D.No.896 of 1998 and quash the same.

2. The first respondent was appointed as clerk on 01.09.1977 in the petitioner Bank and he was promoted to the post of Secretary in the year 1982. He was placed under suspension with effect from 23.07.1996 on the ground of serious irregularities and fraudulent misappropriation of the funds of the Bank and due to the same, two charge memos dated 05.08.1996 and 01.07.1997 were issued by the petitioner management. The first respondent gave explanations dated 11.07.1997 and

06.08.1997. Not being satisfied with the explanations submitted by the first respondent, domestic enquiry was conducted by the petitioner. The Enquiry Officer gave a finding that the charges leveled against the first respondent were proved. Second show cause notice was issued to the first respondent. Considering all the materials on record including the explanations submitted, the petitioner dismissed the first respondent from service by the order dated 31.12.1997.

2(a). The first respondent raised Industrial Dispute in I.D.No.896 of 1998 before the second respondent. The first respondent in the claim statement has stated that the petitioner issued first charge memo dated 05.08.1996 and without conducting any enquiry and without withdrawing the said charge memo, issued second charge memo dated 01.07.1997. Even after explanations submitted by the first respondent, the petitioner did not allow the first respondent to do work. The petitioner did not pay subsistence allowance in full. The Enquiry Officer did not conduct the domestic enquiry properly and after sending the first respondent out of premises, the Enquiry Officer recorded the evidences and examined the witnesses produced by the petitioner. The first respondent has not committed any malpractice or irregularity. The finding of the Enquiry Officer is perverse. Disciplinary proceedings were initiated against all the workers and out of which five workers were allowed to work and the first respondent alone was dismissed from service. The petitioner did not consider the past record of the first respondent and the order of dismissal is against law and principles of violation of natural justice.

3. The petitioner in the counter statement has stated that the Industrial Dispute raised by the first respondent is not maintainable as the first respondent is not a worker as defined under Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 and Sub-Section 2(s) (iii) and (iv) of the Industrial Dispute Act, 1947. The first respondent is working as a Secretary and he is the Chief Executive of the petitioner Bank and he was discharging managerial function. In the enquiry conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, it was found that the first respondent has committed irregularity and misappropriated the amounts of the petitioner Bank. The first respondent was suspended from service and charge memos were issued to the first respondent. The domestic enquiry was conducted following all the formalities and procedures. The petitioner proved the charges leveled against the first respondent and order of dismissal is valid and legal and prayed for dismissal of I.D.No.896 of 1998 raised by the first respondent.

4. Before the second respondent, the first respondent examined himself as W.W.1 and did not file any documents. The

petitioner examined two witnesses as M.W.1 and M.W.2 and marked 66 documents as Exs.R1 to R66. The second respondent considering the pleadings and the documents filed by the petitioner and materials available on record, held that some of the charges leveled against the first respondent were proved. The second respondent considering the fact that other employees of the petitioner Bank were depromoted and the first respondent was aged 58 years and attained age of superannuation, held that order of dismissal is not proportionate and set aside the order of dismissal and treated the date of order of dismissal as order of date of retirement, ordering retirement of the first respondent from service with effect from 31.12.1997.

5. Against the said award dated 09.02.2009 made in I.D.No.896 of 1998 on the file of the second respondent, the petitioner has come out with the present writ petition.

6. The learned counsel appearing for the petitioner contended that the first respondent is not a workmen. He is the Chief Executive of petitioner Bank, discharging managerial function and Industrial Dispute raised by the first respondent is not maintainable. The second respondent failed to consider the objections raised by the petitioner and did not give any finding. The second respondent having held that the first respondent forged the signature of the members of the petitioner Bank and misappropriated the funds of the members, erred in setting aside the order of dismissal. The proven misconduct against the first respondent is grave in nature and order of dismissal is proportionate and it is not disproportionate. The reason given by the second respondent for setting aside the order of dismissal is erroneous. In support of his contention, he relied upon the following Judgments:

(i)2003 Writ L.R.371, [The Management, Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President Goundanpalayam Kanzeyam Via Erode District Vs The Assistant Commissioner of Labour and others], wherein at paragraph nos.7, 10 and 11 it has been held as follows:

"7.The points for consideration as per the first respondent is (i) whether the second respondent is an employee or not as per the definition Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and (ii) what shall be the amount that the second respondent is entitled to?

10. The Second respondent, admittedly the Secretary of the petitioner Bank, squarely falls under the

definition of "Officer" as defined under the definition Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983 and he is bound by the Tamil Nadu Co-operative Societies Act and Rules and would not fall under any other Act, much less the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as an "employee". The one and the same authority cannot be an "Officer" and an "employee", nor could he be taken both as an "Officer" for the purpose of Co-operative Societies Act and could be taken as an "employee" for the purpose of Tamil Nadu Payment of Subsistence Allowance Act, and therefore, since the second respondent having been the secretary of the petitioner Bank and falling under the definition Section 2 (19) of the Tamil Nadu Co-operative Societies Act, 1983 as an "Officer", he cannot be classified otherwise than this for any purpose much less for the purpose of Payment of Subsistence Allowance.

11. Moreover, whether the assignment of the petitioner would fall under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act having such powers as expressed by the learned single Judge of this Court in his Judgment reported in 1989-1-L.L.N.689 (supra) has been established which is wanting in this case, especially in view of the fact that the Secretary being an "Officer" of the particular Co-operative Wing or Bank is the Chief Executive having all the powers not only appointing, determining the salary and having the powers to dismiss its employees, but also doing all such executive acts which are necessary in the functioning of the Co-operative Society or Bank. Therefore, he cannot, under any circumstance, be brought under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as a mere "employee", particularly when no good reasons are assigned as to how he ceases to be an "Officer" as defined under the definition

Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, which is a special legislation having overriding powers on other general Acts."

(ii)(2007) 4 SCC 627, [U.P.SRTC Vs Ram Kishan Arora], wherein at paragraph no.9, it has been held as follows:

"9. Learned counsel for the appellant invited out attention to a decision of this Court in Regional Manager, U.P.SRTC Vs Hoti Lal wherein, this Court has very categorically held that a mere statement that it disproportionate would not suffice to substitute a lighter punishment. This Court held as under: (SCC p.606)

'The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands.

Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court are not proper'.

In view of the above observation made by this Court there remains nothing more to be added."

(iii) (2005) 3 SCC 401, [M.P. Electricity Board Vs. Jagdish Chandra Sharma], wherein at paragraph no.9, it has been held as follows:

"9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the workplace in an organization like the employer herein, is the sine qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan,

'discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large.'

Obviously this idea is more relevant in considering the working of an organization like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery.

It is not violative of one's natural rights. It is essential for the prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion."

The learned counsel appearing for the petitioner relied upon the above judgments and submitted that when a person is holding a post to discharge the duties as a trust and when such person has committed misappropriation, the management loses its confidence and dismissal is the proper punishment.

7. Per contra, the learned counsel appearing for the first respondent contended that the first respondent is only a worker and it is not correct to state that he is the Chief Executive of the petitioner Bank. The affairs of the petitioner Bank are conducted by the Board of Directors and the Special Officer appointed, as the case may be. The duties assigned to the first respondent are clerical in nature and the Industrial Dispute raised by the first respondent is maintainable. As far as charges are concerned, the petitioner has not proved the charges leveled against the first respondent. The Enquiry Officer has not conducted the enquiry in a fair and proper manner. The petitioner has initiated disciplinary proceedings against all the employees, but the major punishment of dismissal was imposed only on the first respondent and all other workers were allowed to work with minor punishment. The second respondent has considered the above facts and considering the fact that the first respondent has attained the age of superannuation, set aside the order of dismissal and ordered retirement of the petitioner from service on 31.12.1997 i.e., on the date of dismissal. The reasoning of the second respondent is valid and legal and prayed for dismissal of the Writ Petition.

8. Heard the learned counsel appearing for the petitioner as well as the first respondent and perused the entire materials on record.

9. From the materials available on record it is seen that the first respondent has admitted that while he was working as Secretary of the Petitioner Bank, he was suspended from service. Charge memos were issued and after conducting domestic enquiry, he was dismissed from service. The first respondent raised Industrial Dispute in I.D.No.896 of 1998 before the second respondent. The contention of the petitioner that the first respondent was not a worker as defined in the Industrial Dispute Act, 1947 was not even considered by the first respondent and he has not given any finding in this regard.

10. As per Section 2 (19) of the Tamil Nadu Cooperative Societies Act, Secretary of the society is an Officer. He is incharge of the day-to-day affairs of the Society and he is discharging managerial function. In view of the well settled proposition and Section 2 (19) of the Tamil Nadu Cooperative Societies Act, the contention of the learned counsel for the first respondent that the first respondent is a worker and the Industrial Dispute raised by him is maintainable is without merits. The Industrial Dispute raised by the first respondent is not maintainable and the second respondent did not have any jurisdiction to entertain the said Industrial Dispute.

11. Further the second respondent has elaborately considered the oral and documentary evidence let in by the petitioner and held that the first respondent has independently committed misconduct of forgery and misappropriation and some misconduct in collusion with other workers. Before the second respondent, the first respondent failed to file any particulars with regard to designation and nature of work done by other workers and the part played by them in misconduct. In such circumstances, the finding of the second respondent setting aside the order of dismissal and ordering retirement of the first respondent is erroneous. The judgment relied on by the learned counsel appearing for the petitioner is squarely applicable to the facts of the present case.

12. For the above reasons, the Writ Petition is allowed and the impugned order of the second respondent is set aside and order of dismissal dated 31.12.1997 is restored. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb/krk

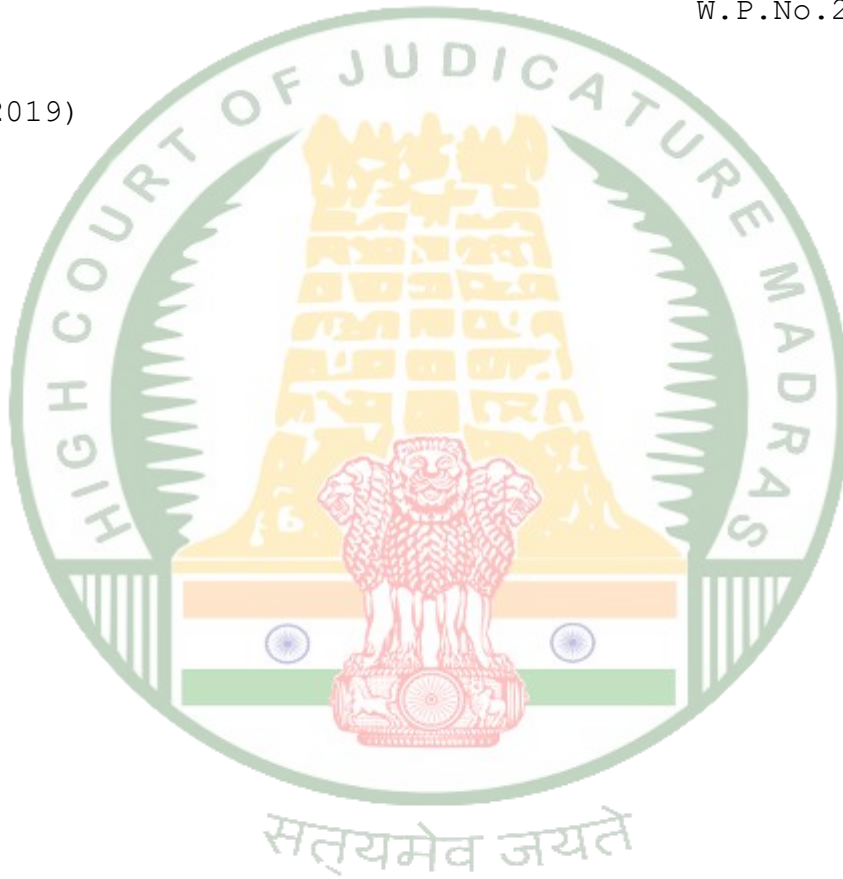
To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.N.Manokaran, Advocate SR.70007
+1cc to Mr.C.Prakasam, Advocate SR.69916

W.P.No.2988 of 2011

VBA (CO)
CB (07/11/2019)



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