



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.1249 of 2012

and

M.P (MD) .Nos.1 and 2 of 2012

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The Special Officer
D.D.576, Kalanjipatti Primary
Agricultural Co-operative Bank
Kalanjipatti Post
Oddanchatram Via & Taluk
Dindigul District

... Petitioner

vs.

1.The Presiding Officer
Labour Court
Madurai

2.M.Rajagopal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari, calling for the records of the impugned order passed by the first respondent, dated 29.03.2011 in I.D.No.419 of 1989 and quash the same.

For Petitioner : Mr.G.Muruggan

For R2 : Ms.Al.Ganthimathi

R1 : Court

O R D E R

The Writ petition has been filed challenging the order of the Labour Court, Madurai in I.D.No.419 of 1989 where the Court has ordered to reinstate the second respondent with continuity of service without back wages and other benefits.

2. The second respondent was appointed as Salesman in the petitioner Society from 01.12.1979 and thereafter, from 12.01.1981, he was working as an Attender Cum Salesman with wages of Rs.462/- per month. During the year 1988, due to certain serious lapses on the part of the second respondent, he was



suspended from service by the petitioner Society vide order dated 30.08.1988. Subsequently, a charge memo, dated 18.10.1988 was issued against him and called for explanation. Accordingly, the second respondent submitted his explanation, dated 31.10.1988. Not satisfied with the explanation, disciplinary proceedings has been initiated against the second respondent and based on the report of the enquiry officer, he was dismissed from service by the petitioner Society vide order dated 03.04.1989. Aggrieved with the same, the second respondent had preferred an Industrial Dispute before the Labour Court in I.D.No.419 of 1989 and stated that the petitioner Society has not conducted proper enquiry and they refused to defend his case and finally dismissed from service without any basis.

3.The petitioner Society had filed a counter affidavit and stated that ample opportunities were given to the second respondent herein and after hearing the case only, he was dismissed from service by an order dated 03.04.1989 and hence, there is no violation of principles of natural justice. The learned Judge after hearing the case, confirmed the order passed by the petitioner Society. Against which, the second respondent preferred a petition in W.P.No.3983 of 1993 before this Court where the learned Single Judge has dismissed the Writ petition. However, permitted the second respondent herein to make appropriate representation to the petitioner Society to consider his case as a fresh entrant. Aggrieved against the said order, the second respondent filed an appeal before this Court in W.A.No.1794 of 2005. After hearing the appeal, the Hon'ble Division Bench of this Court by an order dated 31.03.2009, set aside the order passed by the learned Single Judge and allowed the appeal and the matter was remitted back to the Tribunal for fresh disposal in accordance with law after affording sufficient opportunity to the petitioner Society as well as the second respondent. After remanding the matter, the learned Tribunal directed the petitioner Society to reinstate the petitioner with continuity of service but without back wages and other benefits. Against which, the petitioner Society is before this Court.

4.Heard the learned counsel appearing for the petitioner as well as the second respondent.

5.Perusal of record shows that the above issue has been elaborately discussed by the learned Judge by an order dated 29.03.2011 in I.D.No.419 of 1989, in which, paragraph No.11 reads as follows:



" 11.The petitioner's representative relying upon the evidence of R.W.1 would submit that Ex.W.6 was admitted by R.W.1 in his evidence, but in cross examination of R.W.1, he has stated as follows:

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" இருப்பு குறைவு என்று நிர்வாகம் சொல்லக்கூடிய ரூ.12870/- ஐ அப்போதைய செயலாளரிடம் மனுதாரர் செலுத்திவிட்டார் என்று சொன்னால் அது எனக்குத் தெரியாது"

R.W.1 has not admitted the Ex.W.6. It is stated by the petitioner that it is a usual practice that the salesman should pay the amount collected by him to the secretary and he would not issue any receipt. It is also stated that the Special Officer has issued instruction to the Secretary to issue receipt whenever the secretary received the amount from the salesman. It is further stated by the petitioner that the petitioner is out of employment for about 22 years and is is very difficult for him to run the family and he may be given chance to work in the respondent. It is true that sympathy cannot be ground for invalidity to order of dismissal when the sympathy is toally misplaced. The petitioner firmly submits that he has paid the amount to the secretary and the secretary also could not be secured since he was retired. Under these circumstances, the Court finds that the punishment of dismissal is excessive. He has also argued that the deficit is different from misappropriation and in case of misappropriation, the offences committed with intention to misappropriate the amount for his own purpose and in case of deficit it may occur in day to day business of the society and he was in charge of two shops and it depends upon the various facts and circumstances. If any deficit occurs in day to day administration, it is for the petitioner to pay the amount first and receive the same from the secretary. Under these circumstances after hearing the submissions of the petitioner and the respondent, this Court is of the view that the petitioner can be reinstated into service provided he should remit the deficit amount of Rs.12870/- to the respondent society within a period of two weeks from the date of this order. After deposit, the petitioner can be reinstated into service with continuity of service. If the petitioner desires to recover the amount from the secretary, he can recover the same on the basis of Ex.W.6 from the secretary who issued Ex.W.6. This Court opines that Ex.W.6 was not proved in the manner known to law. If the petitioner



establishes that Ex.W.6 is true in a appropriate forum, he can recover the amount. The petitioner's representative submitted that since there is no fault on the part of the petitioner back wages can be awarded. It if true that granting of back wages is not mandatory one. Normally when the Court orders for reinstatement holding that punishment is not justified, the back wages can be ordered. Granting of back wages is not an automatic one. Back wages can be denied considering the facts and circumstances of the case. It is well settled that back wages is not a natural consequences in every cases of reinstatement. The entitlement of a workman to get reinstatement does not necessarily the result in the payment of back wages. The Court has power to mould the relief according to facts and circumstances. Since the petitioner in involved in the case of deficit amount and due to passage of time this Court is not inclined to granting back wages to the petitioner and the petitioner is also not entitled to any other benefits. The petitioner must be careful while discharging duty. He holds a position of trust where honesty and integrity is inbuilt requirement. Hence, the petitioner is entitled to reinstatement with continuity of service but without back wages and other benefits. The petitioner should not such a type of misconduct in future. The points are answered accordingly".

6.From the above, it is clear that it is a case of deficit amount and not misappropriation. The learned Judge therein has found Ex.W.6 has not been proved in the manner known to law. As Ex.W.6 was said to be given by the earlier Secretary, he was not enquired but had given liberty to the petitioner for recover the same from the Ex-Secretary. It is seen that the Ex-Secretary was not cited as witness by the Management, as he is the Ex-Secretary of the society.

7.Considering all the facts and circumstances of the case, the learned Judge finding that there is no misappropriation of funds but could be construed only as deficit of amount. Therefore, the learned Judge has directed the second respondent to deposit the deficit amount of Rs.12,870/- and directed the petitioner Society to reinstate the second respondent with continuity of service within a reasonable time but without back wages and other benefits where this Court is not inclined to interfere with the order passed by the Labour Court in I.D.No.419 of 1989, dated 29.03.2011. Accordingly, this Writ petition is dismissed. The petitioner is directed to reinstate the second respondent with continuity of service as ordered by the Labour Court and pay



salary from the date of the reinstatement order passed by the Labour Court, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

msa

To

The Presiding Officer
Labour Court
Madurai

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-1253[F] dated
10/01/2020)

W.P. (MD) No.1249 of 2012

and

M.P (MD) .Nos.1 and 2 of 2012

09.01.2020

VR (CO)

TR (12.02.2020) 5P 3C