



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2020

CORAM

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**W.A. (MD)No.502 of 2019
and
C.M.P. (MD)No.4282 of 2019**

The Management,
A435 Pudur Primary Agricultural Cooperative Bank,
Pudur, Vilathikulam Taluk,
Thoothukudi District.

... Appellant / 2nd Respondent

Vs.

1.A.Deivendran

... 1st Respondent / Petitioner

2.The Deputy Commissioner of Labour,
Under the Shops and Establishment Act,
Appellate Authority,
Tirunelveli.

...2nd Respondent / 1st Respondent

Prayer : Appeal filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.No.9509 of 2007 dated 19.11.2014.

Prayer in WP(MD). 9509/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent made in T.N.s.E.No. 5/2004 dated 28/02/2007 and that of the 2nd respondent dated 30/04/2004 and quash the same and consequently directing the 2nd respondent herein to reinstate the petitioner herein as Watchman in the 2nd respondent bank with all attendant benefits.

For Appellant : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.C.M.Arumugam
for R.2



JUDGMENT

[Order of the Court was made by **M. DURAISWAMY, J.**]

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The petitioner management has filed the above writ appeal challenging the order passed in W.P.(MD)No.9509 of 2007.

2. The first respondent/writ petitioner filed the writ petition to issue a writ of certiorarified mandamus to call for the records of the first respondent dated 28.02.2007 and that of the second respondent dated 30.04.2004 and quash the same and consequently directing the second respondent to reinstate the petitioner as Watchman in the second respondent Bank with all attendant benefits.

3. It is the case of the management that the first respondent, while working as Watchman in the second respondent Bank, applied for leave on health ground. However, the same was not granted to him. In spite of the same, the first respondent failed to attend the duty, which resulted in issuing notice for unauthorised absence from 09.04.2003. Further the management also levelled charge against the first respondent that he misbehaved with the Secretary of the second respondent Bank and therefore, a charge was framed with regard to the insubordination also. An Enquiry Officer was appointed to conduct domestic enquiry against the first respondent and the Enquiry Officer submitted his report giving a finding to the effect that both the charges framed against the first respondent were proved. The Disciplinary Authority imposed a punishment of dismissal from service which was challenged by the first respondent before the appellate authority, who had accepted the finding with regard to the second charge that is insubordination and set aside the punishment with regard to the first charge. Challenging the same, the first respondent filed the writ petition for the reliefs mentioned above.

4. The learned Single Judge, taking into consideration the case of both sides, allowed the writ petition by finding that the punishment imposed on the first respondent is disproportionate.

5. Admittedly, there was no complaint against the first respondent with regard to the insubordination till the framing of the present charge. The past conduct of the first respondent would only establish that he was attending to his duties without being subject to any complaint whatsoever. Taking note of all these aspects, the learned Single Judge has set aside the order of dismissal from service. However the learned Single Judge has not imposed any punishment so far the second charge is concerned, which was also confirmed by the appellate authority.



6. The learned Counsel appearing for the first respondent submitted that the first respondent is out of employment for more than 15 years and that itself is the punishment imposed on him.

7. No doubt, by not giving employment for more than 15 years would have caused hardship to the first respondent, but the same cannot be treated as a punishment for the charge levelled against him. Therefore, taking into consideration the past conduct of the first respondent and also the present charge levelled against him, we impose the punishment of censure. Accordingly, the order passed by the learned Single Judge is modified by imposing a punishment of censure on the first respondent/writ petitiner.

8. With these modification, the Writ Appeal is partly allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Deputy Commissioner of Labour,
Under the Shops and Establishment Act,
Appellate Authority,
Tirunelveli.

+1 CC to M/s.D.SHANMUGARAJASETHUPATHI, Advocate (SR-2034[F] dated 20/01/2020)

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-2373[F] dated 22/01/2020)

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