



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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Writ Petition (MD)No.6665 of 2011

and

M.P.(MD).No.2 of 2011

The Management
Virudhunagar District Central Co-operative Bank Limited,
Virudhunagar,
represented by its Special Officer. ... Petitioner
Vs.

1.The Secretary,
Virudhunagar District Central Co-operative Bank Staff Union,
6, Pitchai Street,
Virudhunagar 626 001.

2.The Presiding Officer,
Labour Court,
Madurai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the award passed in I.D.No.125 of 2003, dated 31.08.2010 by the Labour Court, Madurai, the second respondent herein and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For R1 : Mr.R.Saravanan

O R D E R

This writ petition has been filed challenging the award passed by the Labour Court in I.D.No.125 of 2003, dated 31.08.2010 and quash the same.

2. The case of the petitioner Management is that the first respondent Union has raised several demands before the Labour Court, Virudhunagar. Subsequently, the Government of Tamil Nadu, Labour and Employment Department has referred four issues before the Labour Court, Madurai under Section 10(1)(c) and (d) of the Industrial Disputes Act, vide G.O.(D).No.812, dated 13.08.2003. The following references were made in the above said G.O:

1.Demand 3: Whether the demand to cancel the circular of the Management dated 03.10.2001 that the employees have to participate the enquiry by availing leave is justified?



2.Demand 4: Whether the demand to pay the arrear of salary that withheld by way of withholding increment to Mr.M.Narayanasami is justified ?

3.Demand 5: Whether the demand to pay the withheld increment from 01.07.2001 to Mr.P.Narayanasami, is justified?

4.Demand No.6: Whether the demand to allow fitment of scale to the adhoc employees as per the Government order is justified?

3. After adjudication, the Labour Court has rejected the first and fourth references and allowed the second and third references. Against which, the present writ petition is filed by the Management.

4. The learned counsel appearing for the petitioner Management would submit that in respect of the second reference, a charge memo was issued against Mr.N.Narayanasami for his lapse in the banking activities and the same was ended on 04.05.1987, withholding of two years increment with cumulative effect. The said order was passed in the year 1987 and in compliance of the order of punishment, the said amount was withheld as against Mr.N.Narayanasamy. After lapse of 17 years, the said reference was made before the Labour Court and the Labour Court has erroneously set aside the order of punishment and allowed the reference in favour of Mr.N.Narayanaswamy, which is unsustainable one. Further, in respect of the third reference, Mr.P.Narayanaswamy was suspended from service for his lapse and the suspension order was challenged before this Court in W.P.Nos.2564 of 2001, 11042 of 2001, 15901 of 2002 and 8039 of 2004 and all the writ petitions were dismissed. Finally, the said P.Narayanaswamy has filed a writ petition in W.P.No.26497 of 2003, challenging the termination order and the said writ petition was also dismissed on 23.03.2008. He would further submit that when the person is dismissed from service, there is no question of payment of increment during the suspension period and that was also settled. However, the Labour Court has arrived at a contra conclusion, which is unsustainable one and he prayed for allowing the writ petition.

5. The learned counsel appearing for the first respondent Union would submit that the Union have every right to question before the appropriate authority and hence, the Union has made references before the Labour Court and the Labour Court has also passed an award in favour of the Members of the Union, which cannot be interfered with by this Court.

6. Heard the learned counsel appearing for the petitioner, learned counsel appearing for the first respondent and perused the materials available on record.



7. The facts in the present case are not in dispute. In respect of the reference Nos.1 and 4, the Labour Court has rejected the same, which is not an issue before this Court and the issue before this Court is in respect of the reference Nos.2 and 3. The second reference is with regard to withholding of two years increment with cumulative effect. However, it is for Mr.M.Narayanaswamy's lapse. The disciplinary authority has initiated the disciplinary proceedings prior to 1987 and the same was ended against Mr.M.Narayanaswamy on 04.05.1987. The said order was not challenged before any other forum and the same cannot be challenged by the first respondent Union by way of reference, after a lapse of 17 years. In the present case, the order of punishment was not set aside by any other forum. Hence, the order of Labour Court is liable to be set aside in respect of the second reference. The third reference is with regard to non allowing of increment from 01.07.2001 to Mr.P.Narayanaswami. The disciplinary proceedings initiated against the said Mr.P.Narayanaswamy by the competent authority and the writ petitions filed by him were dismissed by this Court. Finally, the writ petition in W.P.No.26497 of 2003 was also dismissed by this Court, dated 13.03.200. The dismissed employee has no right to demand the annual increment for the suspension period and without application of mind, the Labour Court has passed an order in favour of the first respondent Union and the same is liable to set aside. Accordingly, the award passed by the Labour Court, Madurai in I.D.No.125 of 2003, dated 31.08.2010 is set aside and the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Presiding Officer,
Labour Court, Madurai.

Copy to
The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.R.SARAVANAN, Advocate (SR-784[F] dated 11/01/2021)

+1 CC to M/s.D.SHANMUGARAJA STHUPATHI, Advocate (SR-915[F] dated
18/01/2021)

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PK(CO)
TR(09.02.2021) 4P 6C