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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.1419 OF 2013

The Koslapuri Primary Agricultural
Co-operative Bank Ltd., R.No.1615
represented by its President
Kuppam Post (via) K.Paramathi
Karur Taluk and District

...Appellant

Vs

1.N.Nityanandham
2.The Labour Court
Trichy

...Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 06.01.2012 made in W.P.No.2139 of 2000.

Prayer in W.P.No.2139 of 2000 : This Writ Petition is filed for a Writ of Certiorari, calling for the records including the award dated 10.06.1999 passed in I.D.No.291 of 1992 on the file of the Labour Court, the first respondent herein confirming the order of termination dated 22.06.1991 passed by the second respondent and quash the order dated 10.06.1999 and consequently direct the second respondent herein to reinstate the petitioner in service with full back wages and continuity of service from 12.04.1991.

For Appellant : Mrs.P.V.Rajeswari

For Respondents : Mr.K.V.Ananthakrishnan for R1
R2-Court

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

The Koslapuri Primary Agricultural Co-operative Bank Limited represented by its President, Kuppam, Karur District has filed this writ appeal against the impugned order passed by the learned single Judge in Writ Petition No.2139 of 2000 dated 06.01.2012, wherein the learned single Judge, setting aside the



award dated 10.06.1998 passed by the Labour Court, Tiruchirappalli and the order of termination passed by the appellant Bank dated 22.06.1991, directed the appellant to pay 50% of the backwages, on the ground that the first respondent reached the age of superannuation on 05.01.2009.

2. The facts in nutshell leading to the filing of the writ petition would show that the first respondent joined the Co-operative Bank as Secretary on 18.10.1974 and on 10.10.1990, one Mr.P.Palanivelu was elected as the President of the Bank. From the date of taking over charge as President, the said Palanivelu was in full and complete charge of the day-to-day affairs of the Bank. Later on, when an inspection was done by the Supervisor on 22.03.1991, certain irregularities and lapses were found to have been committed by the first respondent. Thereafter, the first respondent had deposited a sum of Rs.63,569.06p and also a sum of Rs.40,729.26p towards the value of shortage in fertilizer stock. Subsequently, the first respondent was also placed under suspension on 12.04.1991. Within a couple of weeks, he was also issued with a charge memo dated 29.04.1991 containing two charges, namely, (a) that he had misappropriated the cash balance of Rs.63,569.06p and (b) that he had committed fraud by misappropriating the fertilizer stocks of the Bank valued at Rs.40,729.26p. On receipt of the said charge memo on 06.05.1991, the first respondent sent a letter dated 07.05.1991 to the President seeking permission to peruse the records. But without giving any opportunity to the first respondent to peruse the records for giving a suitable explanation, the President appointed an enquiry officer on 10.05.1991, on the premise that the delinquent could peruse the relevant records before the enquiry officer. Even the enquiry notice dated 10.05.1991 fixing the date of enquiry on 17.05.1991, was received by the first respondent only on 18.05.1991. Again the first respondent sent another letter on 21.05.1991 requesting the President to fix a fresh date for enquiry and also grant him permission to peruse the records. In the meanwhile, a paper publication was made in the Malai Malar Tamil daily on 29.05.1991 fixing the date of enquiry on 01.06.1991. After seeing the paper publication, the first respondent again sent a letter to the President and the enquiry officer to grant him permission to peruse the records. When the enquiry was initiated, Mr.P.Palanivelu, the President, who is also the disciplinary authority, appeared as a management witness and also gave evidence against the first respondent supporting the charge memo.

3. On the basis of the enquiry report dated 03.06.1991 submitted by the enquiry officer, a second show cause notice was issued on 05.06.1991 calling upon the first respondent to give his explanation as to why his services should not be terminated. In the second show cause notice, the President has also fixed



the personal hearing on 10.06.1991. After receiving the second show cause notice on 13.06.1991, the first respondent sent a reply on 14.06.1991 informing the President/disciplinary authority that he was not given reasonable opportunity to peruse the documents for giving his explanation. Secondly, the enquiry was not properly and fairly conducted, because, in the enquiry, the President, who is also the disciplinary authority, appeared as a management witness, therefore, the same witness cannot serve as the disciplinary authority. On this basis, the first respondent requested to drop the enquiry. But the order of termination was issued on 22.06.1991. Aggrieved thereby, the first respondent filed an application before the Assistant Commissioner of Labour, Tiruchirappalli for conciliation. Since the conciliation ended in failure, the first respondent raised an industrial dispute in the renumbered I.D.No.291 of 1992 on the file of the Labour Court, Tiruchirappalli. The Labour Court, after hearing both parties, affirming the order of termination, passed the award dated 10.06.1999. Aggrieved thereby, the first respondent filed the writ petition and the learned single Judge, after finding that no opportunity was given to the first respondent to peruse the documents and also considering the fact that the disciplinary authority appeared as a witness before the enquiry officer and supported the charge memo issued against the first respondent, allowed the writ petition by setting aside the award of the Labour Court as well as the order of termination and directed the appellant to pay 50% of the backwages, for the reason that the first respondent has reached the age of superannuation on 05.01.2009. Challenging the said order, the appellant Bank has filed the present appeal.

4. Learned counsel appearing for the appellant, assailing the impugned order, submitted that the learned single Judge, without considering the vital fact that the first respondent in his letter dated 22.03.1991, had accepted the guilt that he was responsible for the shortage of fertilizer stock worth about Rs.40,729.26p and he also embezzled a sum of Rs.63,569.06p of the Bank, has wrongly allowed the writ petition, because, when the facts are admitted, there is no need for further enquiry. Moreover, when the first respondent appeared before the enquiry officer on 01.06.1991, he walked out of the proceedings without even perusing the documents and without co-operating with the enquiry officer by producing any oral and documentary evidence to disprove the charges. Therefore, left with no other option, the enquiry officer, on the basis of the admission made by the first respondent, has rightly submitted his report holding the first respondent guilty of both the charges. This ought not to have been interfered with by the learned single Judge sitting under Article 226 of the Constitution of India. Concluding her arguments, the learned counsel appearing for the appellant submitted that when the Labour Court, Tiruchirappalli also



accepted the approach and the method adopted by the enquiry officer in the domestic enquiry, it is unjustified on the part of the learned single Judge to reverse the findings and the conclusions reached by the Labour Court. On this basis, she prayed for allowing the writ appeal.

5. In reply, Mr.K.V.Ananthakrushnan, learned counsel appearing for the first respondent submitted that when the first respondent was working as Secretary from 18.10.1974, after 17 long years, the inspection took place on 22.03.1991. However, without even disclosing the report of the inspection made by the Supervisor, unilaterally, it was concluded that the first respondent had committed misappropriation of Rs.63,569.06p in the name of the Bank and the said report also held that the first respondent was responsible for the shortage of fertilizer stock worth about Rs.40,729.26p. Immediately after the inspection made by the Supervisor, the President of the Bank advised the first respondent to deposit the entire amount. Based on the advice given by the President, the first respondent, although was not responsible for anyone of the allegations, deposited the entire amount. However, based on the letter dated 22.03.1991 given by the first respondent at the instance of the President, he was placed under suspension. Subsequently, the charge memo dated 29.04.1991 was issued containing two charges, namely, (a) that he had misappropriated the cash balance of Rs.63,569.06p and (b) that he had committed fraud by misappropriating the fertilizer stocks of the Bank valued at Rs.40,729.26p. When the charge memo was issued against the first respondent, it is a rudimentary and basic principle that the delinquent, who has been slapped with the charges, should be given a reasonable opportunity to give his explanation. Therefore, the first respondent has given the letter dated 07.05.1991 seeking permission to peruse the records so that he would be able to give his detailed explanation to the charge memo. But for the reasons best known, the President of the appellant Bank refused to consider the same and thereafter, overlooking the fact that the first respondent would be able to submit his explanation only after perusing the documents available with the Bank, ordered for enquiry.

6. Secondly, when the enquiry notice dated 10.05.1991 was issued fixing the date of enquiry on 17.05.1991, ironically, the same was received by the first respondent only on 18.05.1991, one day after the enquiry date. This was also immediately brought to the notice of the enquiry officer to give him an opportunity to peruse the records and on receipt of the explanation, if the same is found unsatisfactory, then to hold an enquiry. But overlooking the said reasonable request made by the first respondent, for the reasons best known to the appellant, a paper publication was made as though the first



respondent refused to receive the notice of enquiry. Although the first respondent took part in the enquiry held on 01.06.1991, he renewed his request to grant him permission to peruse the records. However, the repeated request made by the first respondent was refused. Surprisingly, when the enquiry was held, the President, Mr.P.Palanivelu, who is also the disciplinary authority, appeared as a management witness before the enquiry officer and supported the charges issued against the first respondent. After the President, who is also the disciplinary authority, appeared as a management witness before the enquiry officer, he ought not to have passed the order of termination as the disciplinary authority. In the present case, the President, Mr.P.Palanivelu, who appeared as a management witness before the enquiry officer supporting the charge memo, relying on the report of the enquiry officer holding the first respondent guilty of both the charges, has passed the order of termination. Therefore, the learned single Judge, referring to the judgment of the Apex Court in the case of State of U.P. v. Mohamed Nooh, AIR 1958 SC 86, deprecating the approach adopted by the enquiry officer not permitting the delinquent to peruse the documents and equally finding fault with the approach adopted by the disciplinary authority, who appeared as a management witness before the enquiry officer and passed the order of termination, that would be violative of the golden principles of natural justice, set aside the order of termination and the findings and conclusions reached by the Labour Court, Tiruchirappalli and allowed the writ petition. Since the first respondent, in the meanwhile, had reached the age of superannuation on 05.01.2009, the learned single Judge, he pleaded, has rightly ordered for payment of 50% of backwages to the first respondent. When the first respondent is entitled to get full backwages for the simple reason that no enquiry was held, however, the first respondent has not filed any appeal. Therefore, the appellant ought to have disbursed the amount representing 50% of backwages without filing this appeal. Since they have filed the appeal against the ratio laid down by the Apex Court in the case of State of U.P. v. Mohamed Nooh, AIR 1958 SC 86, the appellant has no legs to stand and the appeal is liable to be dismissed, he pleaded.

7. We find full force on the submissions made by the learned counsel appearing for the first respondent. When the first respondent was issued with the charge memo containing two charges, namely, (a) that he had misappropriated the cash balance of Rs.63,569.06p and (b) that he had committed fraud by misappropriating the fertilizer stocks of the Bank valued at Rs.40,729.26p, he has immediately given a letter dated 07.05.1991 requesting the appellant to permit him to peruse the records enabling him to prepare a suitable reply/explanation to the charge memo. The learned counsel appearing for the



appellant, while arguing before this Court, has fairly submitted that the first respondent could have participated in the enquiry and during the course of enquiry, he could have perused the records. This argument of the learned counsel for the appellant itself clearly shows that the appellant was not prepared to provide reasonable opportunity to the first respondent to prepare a suitable explanation by allowing him to peruse the records. As the first respondent in his letter dated 04.06.1991 has clearly mentioned the fact that he was unable to give his explanation without perusing the documents held by the appellant, not providing an opportunity to peruse the records clearly shows that the finding of the learned single Judge that the first respondent was denied a reasonable opportunity, cannot be found fault with.

8 Secondly, Mr.P.Palanivelu, the President, who is also the disciplinary authority, has appeared as a management witness and supported the charges framed against the first respondent. In our considered opinion, having appeared as a management witness and supported the charges, he ought not to have continued as the disciplinary authority for passing the order of termination against the first respondent.

9. In this context, useful reference can be had from the judgment of the Hon'ble Apex Court in the case of State of U.P. v. Mohamed Nooh, AIR 1958 SC 86. In the said case, a departmental enquiry was initiated against the respondent therein, a Head Constable and the enquiry was held by the District Superintendent of Police as an enquiry officer. During the enquiry, the District Superintendent of Police himself appeared as a witness and gave evidence supporting the charges levelled against the delinquent/Head Constable. Thereafter, he had again continued as an enquiry officer and proceeded with the enquiry and ultimately passed the order of dismissal against the respondent. On a challenge made to the said order by the delinquent, the High Court quashed the order of punishment by holding that the enquiry officer cannot act both as the Judge and as a witness. When the said order of the High Court was taken on appeal by the State of U.P., the Apex Court, deprecating the approach adopted by the enquiry officer, while upholding the order of the High Court quashing the order of punishment, laid down the law that once the enquiry officer appeared as a witness, he cannot once again serve as the enquiry officer, as the same would be contrary to the rules of natural justice and fair play.

10. In the light of the above ratio laid down by the Hon'ble Apex Court, in the case on hand, as highlighted above, Mr.P.Palanivelu, who was the President of the appellant Bank, appeared as a management witness before the enquiry officer and



gave evidence against the delinquent/first respondent. Having appeared as a management witness and supported the charges, in our considered opinion, he ought not to have served as the disciplinary authority. But violating the settled legal position, the disciplinary authority, after appearing as a management witness, has accepted the report of the enquiry officer and also passed the order of termination against the first respondent. Therefore, the learned single Judge, giving a finding that no reasonable opportunity was given to the first respondent, has rightly set aside the order of termination and also the award of the Labour Court, Tiruchirappalli and directed the appellant to pay 50% of the backwages, for the reason that the first respondent had also reached the age of superannuation on 05.01.2009. Hence, we do not find any error or infirmity in the order passed by the learned single Judge. Accordingly, the writ appeal fails and it is dismissed.

11. A perusal of the calculation memo filed by the appellant dated 17.09.2013 shows that the first respondent is entitled to a sum of Rs.2,84,702.30p representing 50% of the backwages as ordered in the writ petition and pursuant to the interim order dated 01.08.2013 passed in the writ appeal, the appellant had deposited a sum of Rs.1,42,352/- on 13.09.2013 to the credit of the I.D.No.291 of 1992 before the Labour Court, Tiruchirappalli, out of which, the first respondent was already permitted to withdraw 50% of the amount and the remaining amount along with interest was ordered to be kept in fixed deposit in a nationalised bank, pending disposal of the appeal, as per the order dated 15.07.2019. In view of the order passed by this Court dismissing the writ appeal, the appellant is hereby directed to deposit the balance 50% of the backwages i.e., Rs.1,42,352/- to the credit of the I.D.No.291 of 1992 before the Labour Court, Tiruchirappalli within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the first respondent is entitled to withdraw the entire amount along with accrued interest by making a proper application before the Labour Court, Tiruchirappalli. Consequently, M.P.No.1 of 2013 is closed. However there is no order as to costs.

Sd/-

Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

ss

To

1.The Presiding Officer,
Labour Court, Tiruchirappalli



2.The President
Koslapuri Primary Agricultural
Co-operative Bank Ltd., R.No.1615
Kuppam Post (via) K.Paramathi
Karur Taluk and District

+1cc to Mr.K.V.Ananthakrishnan, Advocate Sr.No.19946

+1cc to M/s.P.V.Rajeswari, Advocate Sr.No.20051

W.A.No.1419 of 2013

AD(CO)
RVM(27/06/2022)