



WEB COPY

W.A(MD)No.450 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2022

(Reserved on 23.03.2022)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.450 of 2011

M.Dinakaran

... Appellant/2nd Respondent
vs.

1.The Management,
A876, Cumbum Urban
Co-operative Society,
Nehruji Street, Cumbum,
Theni District-625 516.

... 1st Respondent/ Writ Petitioner

2.The Presiding Officer,
Labour Court,
District Court Buildings,
Mellur Road, Madurai-625 020.

... 2nd Respondent/1st Respondent

Appeal filed under Clause 15 of Letters Patent, against the order dated 27.01.2011 in W.P(MD)No.9607 of 2005 on the file of this Court.

Prayer in WP(MD) . 9607/ 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, call for the records relating to the impugned order of the 1st respondent, in his file I.D.No. 159/97 and Quash the order dt. 27/10/2004

For Appellant : Mr.T.Ravichandran

For R1 : Mr.J.Mathesh

JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The appellant/writ petitioner challenges the order of the Writ Court made in W.P(MD)No.9607 of 2005, dated 27.01.2011, in and by which, the Writ Court had allowed the writ petition filed by the Management, challenging the award of the Labour Court which directed the reinstatement of the appellant with continuity of service and backwages.

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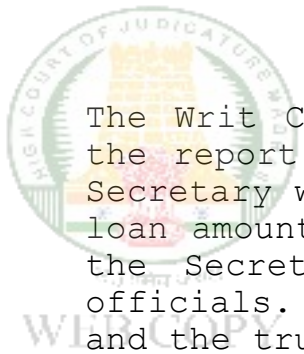
2. The facts that led to the filing of the writ petition are as follows:-

The appellant who was working as a Clerk in the 1st respondent Co-operative Society from 1986 onwards, was suspended on 29.02.1996. A charge memo was issued on 21.03.1996, accusing the appellant of conniving with the Secretary for misappropriation of jewel loan amount. The charges that were levelled against the appellant are that the appellant helped the Secretary to misappropriate the loan amounts temporarily. A domestic enquiry was conducted and a finding of guilt was pronounced. The Management accepted the report of the enquiry officer and terminated the services of the appellant on 16.05.1997. The order of termination also revealed that the termination takes effect from the date of suspension.

2.1. The appellant, therefore, moved the Labour Court under Section 2A(2) of the Industrial Disputes Act, 1947, seeking a direction for reinstatement. The Labour Court, upon a consideration of the evidence on record, found that the misappropriation was done by the Secretary and the only complaint against the appellant was that he did not inform the higher officials about the misappropriation. Therefore, the Labour Court held that the punishment of dismissal from service is too harsh. The Labour Court also took note of the fact that the Deputy Registrar of Co-operative Societies had fixed the liability on the erstwhile Secretary Mr.Kottaimayan and absolved the appellant from any liability. The Labour Court concluded that the punishment that is awarded to the appellant is disproportionate to the proven delinquency. The Labour Court, in fact, recorded a finding that the termination with retrospective effect, that is from the date of suspension, is also not valid. On the above findings, the Labour Court set aside the order of termination and directed reinstatement of the appellant with all attendant benefits including backwages.

2.2. The award of the Labour Court was challenged before this Court. The Writ Court found that being a bank employee, the appellant should have acted with utmost bonafides and he should have reported the misdeeds of the Secretary immediately to the Management. The Writ Court refused to buy the argument of the appellant that it was the Secretary Mr.Kottaimayan, who has been dealing with the jewel loan accounts and the appellant was only in possession of the keys of the locker.

2.3. In answer to the argument that the entire loss has been made good by the Secretary, the Writ Court concluded that the repayment of the loan amount would not absolve the appellant of the delinquency and therefore, the same cannot be an answer in the disciplinary proceedings. The finding of the Deputy Registrar in the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, regarding the liability also, was not taken into



The Writ Court relied upon the findings of the enquiry officer in the report dated 07.12.1996 to conclude that the appellant and the Secretary were jointly responsible for the misappropriation of jewel loan amount and the appellant has not informed the cheating acts of the Secretary of the Society on different dates to the higher officials. The Writ Court considered the duty of a bank employee and the trust that is imposed by the public on the banks to conclude that the award of the Labour Court should be set aside. On the above conclusions, the Writ Court allowed the writ petition and set aside the award of the Labour Court and the order imposing the punishment of dismissal was revived.

3. Mr.T.Ravichandran, learned counsel appearing for the appellant would vehemently contend that the Writ Court overlooked the fact that the Secretary was the superior officer and he was in-charge of the affairs of the Society. He would point out that as a Secretary, he was in a dominating position and the appellant being a Clerk, had to obey his commands. He would also point out that the appellant has even attained the age of superannuation and all that he would be entitled to at this distant point of time, would be backwages and he would plead that the Court should take a sympathetic or humanitarian view.

4. Contending contra, Mr.J.Mathesh, learned counsel appearing for the Management would submit that no doubt, the loss caused because of the illegal acts of the Secretary have been made good by him, but at the same time, the appellant cannot be allowed to go scot-free for his misdeeds, that is, not informing the Society about the dereliction of duty on the part of the Secretary.

5. We have considered the rival submissions.

6. The charge memo issued against the appellant is not that the appellant has indulged in misappropriation. The first three charges accused the appellant of being hand-in-glove with the Secretary and not bringing the misdeeds of the Secretary to the knowledge of the higher officials. The 4th and 5th charges are consequent upon the first three charges. The appellant in his explanation has said that the Secretary was in a dominating position and he had influenced the will of the appellant. He had also stated that he would make good the money in the very near future and the interest of the Society would not suffer. The enquiry officer had not recorded a finding that the appellant was responsible or the appellant had misappropriated the funds of the Society. The one and the only charge or the proven charge against the appellant is that he did not bring the misdeeds of the Secretary to the notice of the Society then and there. It is also seen that the Deputy Registrar of Co-operative Societies has exonerated the appellant from liability in the proceedings under Section 87 of the Act. Though the claim was made by the Society against the appellant and the Deputy Registrar of Co-operative Societies has held

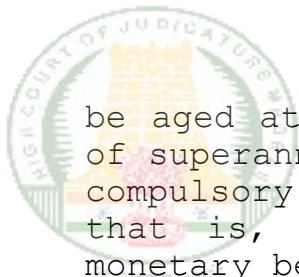


that it is only the Secretary who is responsible for the loss caused to the Society and it is he who has to recoup the same. The Labour Court has taken note of the above aspects and has held that punishment of dismissal from service would be disproportionate.

7. The order of dismissal with retrospective effect from the date of suspension is also unknown to service law. No doubt, the Writ Court had held that as a bank employee, a very high degree of integrity is required from the appellant and he should have reported the misdeeds of the Secretary forthwith. As rightly pointed out by the learned counsel for the appellant, the Writ Court has lost sight of the fact that the appellant being a Clerk, is subordinate to the Secretary and the Secretary was holding a dominant position and was able to influence the will of the appellant. It is very common for a junior employee to either turn a blind eye to the misdeeds of the seniors or to refrain from reporting the same to the higher-ups. We are not giving a clean chit to the appellant. At the same time, if we put ourselves in the position of the appellant, we find that it would have been very difficult for the appellant to have taken a call to report the misdeeds of the Secretary to the higher-ups. We should also bear in mind that the employer is a Co-operative Society in which, a Secretary wields lot of power than in case of other banking institutions.

8. We find that the punishment imposed namely, dismissal from service for the proven charges, is shockingly disproportionate. The Writ Court has referred to certain judgments which arose out of cases where other banking institutions were involved. If the functioning of a Co-operative Society which is involved in money lending is examined in terms of the hierarchy, the Secretary wields a real position of power and dominance. The same is not the case of other banking institutions. Even under the very provisions of the Co-operative Societies Act, a Secretary of a Co-operative institution is in a key position and the other employees have to be subservient to him and they cannot take a call independently. We are, therefore, unable to endorse the views of the Writ Court, where it held that as an employee of a banking institution, the appellant must have reported the misdeeds of the Secretary to the higher-ups, as he is a trustee of the funds of the customers. No doubt, a certain amount of trust is imposed upon the employees of a bank by the customers, but at the same time, the hierarchical system in the bank should also be taken into account while concluding that the appellant is guilty.

9. We, therefore, find that the punishment is disproportionate and in the normal course, we must have remitted the matter for re-consideration of the punishment to the Management. But, in the case on hand, such a recourse would cause more harm and prejudice to the appellant, since he has already attained the age of superannuation. He was aged 46 years in the year 2005 and therefore, he would



be aged atleast 63 years now. He has, therefore, attained the age of superannuation. We, therefore, modify the punishment into one of compulsory retirement from the date of the order imposing punishment that is, 16.05.1997. The appellant would be entitled to all monetary benefits as he has been compulsorily retired on 16.05.1997.

10. In fine, the Writ Appeal is partly allowed and the order dated 27.01.2011 made in W.P(MD)No.9607 of 2005 is set aside. The punishment imposed is modified to one of compulsory retirement on and from 16.05.1997. No costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Presiding Officer,
Labour Court,
District Court Buildings,
Mellur Road, Madurai-625 020.

+1 CC to M/s.T. RAVICHANDRAN, Advocate (SR-16775[F] dated 06/04/2022)

+1 CC to M/s.J. MATHESH, Advocate (SR-17423[F] dated 08/04/2022)

W.A(MD)No.450 of 2011

DATED : 06.04.2022

_RD(18.04.2022) 5P 4C