



W.P.No.11583 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.11583 of 2013  
& M.P.No.1 of 2013

The Management,  
Tyspl-96, Ayan Rayampuram Primary  
Agricultural Co-operative Bank,  
Ayan Rayampuram,  
Ariyalur District – 621 718.

..... Petitioner

-Versus-

1.The Presiding Officer,  
Labour Court at Tiruchirappalli.

2.S.Subramanian

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to Award dated 12.12.2012 passed in I.D.No.147 of 2005 by the 1<sup>st</sup> respondent – Presiding Officer, Labour Court, Tiruchirappalli and to quash the same.

*For Petitioner* : *Mr.L.P.Shanmugasundaram*

*For Respondents* : *Mr.G.Purushothaman for R2*

*R1-Labour Court*



W.P.No.11583 of 2013

## **ORDER**

**WEB COPY** This writ petition challenges the Award dated 12.12.2012 passed by the 1<sup>st</sup> respondent in I.D.No.147 of 2005.

2. The 2<sup>nd</sup> respondent joined the services of the petitioner society as Accountant in the year 1979. While he was working as Secretary of the Society, he was issued with a charge memo and after enquiry, he was dismissed from service. According to the 2<sup>nd</sup> respondent, a Secretary by name Gandhi had involved in certain malpractices for which the 2<sup>nd</sup> respondent had lodged a complaint to the Deputy Registrar. The Deputy Registrar directed the President to initiate enquiry against all those involved in the misappropriation. The President had suspended the Secretary, however, thereafter, no action was taken and the secretary was later on reinstated in service. On 14.12.2001, when the 2<sup>nd</sup> respondent reported for duty, he was denied employment. Immediately, he filed a writ petition before this Court which was dismissed. Thereafter, on 09.02.2002, he was suspended from service. When the suspension order was challenged by way of Civil Suit in O.S.No.37 of 2002, the Civil Court, granted an order of interim injunction. In spite of that interim injunction, charge memo was given on 18.09.2002. The petitioner society claims that it had conducted an enquiry and passed a final order. It is seen from the records that the enquiry had



W.P.No.11583 of 2013

proceeded in *ex parte* manner. As stated above, on the basis of such enquiry, the 2<sup>nd</sup> respondent was dismissed from service. Challenging the same, the 2<sup>nd</sup> respondent had preferred I.D.No.147 of 2005.

3. The learned Labour Court framed the following issues:-

(1) Whether the material evidences placed before the enquiry officer are sufficient to prove the charges levelled against the petitioner?

(2) Whether the punishment imposed by the respondent as against the petitioner is shockingly proportionate?

(3) To what other relief?

4. The labour court came to a conclusion on the basis of the records produced before it that the enquiry was conducted in an *ex parte* manner even without service of notice. It further came to the conclusion that the domestic enquiry conducted by the petitioner society against the 2<sup>nd</sup> respondent was not fair and was not in accordance with law. The labour court had also found that

“(1) During the suspension period the petitioner was not given subsistence allowance. The claim that during that period the petitioner was not in the head quarters is





W.P.No.11583 of 2013

respondent. Apart from that, it also took note of the fact that during the period of suspension, the 2<sup>nd</sup> respondent was not paid any subsistence allowance. The second show cause notice which was sent on the basis of the enquiry report was also returned without service and despite the same, the petitioner society had proceeded to pass an order dismissing the 2<sup>nd</sup> respondent from service. The labour court had given liberty to the petitioner society to substantiate their case and found that the first charge levelled against the 2<sup>nd</sup> respondent is contrary to the records available before it. Similarly, with respect to the second charge for not reporting to duty, the labour court found that M.W.1 was responsible for not permitting the 2<sup>nd</sup> respondent to join duty. Further, the labour court had given specific findings against the petitioner society and in favour of the 2<sup>nd</sup> respondent herein which read as under:-

“On perusal of M.W.1's evidence to prove the charge, it revealed that the petitioner wanted to report to duty from the beginning, but he was not allowed to join duty by M.W.1 himself. Even though M.W.1 had admitted acknowledgement card marked before this Court alleging that the petitioner's willingness was informed to the society to joint duty, M.W.1 was deliberately telling lie before this Court that he did not know the contents of the documents. Even though M.W.1 had admitted the receipt of letter said to have



W.P.No.11583 of 2013

been sent to the respondent bank, M.W.1 is evading to accept that the petitioner expressed his willingness to join duty.

In the above said such circumstances, the contention of the petitioner that when the petitioner was refused to joint duty, he had reported to conciliation officer by Ex.W.88 and Conciliation Officer also summoned the respondent, Ex.W.89 and after receiving the conciliation proceeding, the respondent had deliberately suspended the petitioner on 09.02.2002.”

Thus, the labour court had come to the clear and categorical conclusion that the petitioner society had disobeyed not only the orders of the competent authority but also the orders of this Court and deliberately prevented the 2<sup>nd</sup> respondent from joining duty and further made him suffer without paying him subsistence allowance. The labour court came to the conclusion that there was no material evidence to prove the charges. Apart from that it also found that the entire material evidence revealed that the proceedings initiated by the petitioner society against the 2<sup>nd</sup> respondent was only for the purpose of victimizing the 2<sup>nd</sup> respondent and the entire enquiry is a mock one\* to cover the misdeeds of M.W.1 and his associates. Consequently, the labour court allowed I.D.No.147 of 2005, set aside the order of dismissal and directed the petitioner society to



W.P.No.11583 of 2013

reinstate the 2<sup>nd</sup> respondent in service immediately with continuity of service and with full back wages.

6. Heard both sides.

7. Mr.L.P.Shanmugasundaram, learned counsel appearing for the petitioner society vehemently contended that though the proceedings were *ex parte*, charges levelled against the 2<sup>nd</sup> respondent had been proved. He took me through the charge memo and the other records to substantiate his contentions.

8. Mr.G.Purushothaman, learned counsel appearing for the 2<sup>nd</sup> respondent, on the other hand, effectively refuted the submission made by the learned counsel for the petitioner society.

9. I have considered the arguments of either side and also gone through the records, more so, in the light of the award passed by the labour court, when there was violation of principles of natural justice commencing from issuance of show cause notice till order of dismissal, the labour court had no other option but to set aside the order of dismissal. The labour court had given an opportunity to the petitioner society to prove the charges before it as required under Section 11-A of the Industrial Disputes Act. The petitioner society had miserably failed to do so and the labour court had correctly come to the conclusion and passed award in favour of the 2<sup>nd</sup> respondent herein. There is no



W.P.No.11583 of 2013

perversity or illegality in the award passed by the labour court and therefore, I am not interfering with the order of the labour court insofar as it sets aside the order of dismissal. Insofar as reinstatement is concerned, it does not arise because the petitioner had retired as early as 24.01.2015.

10. Coming to the back wages, Mr.L.P.Shanmugasundarm, learned counsel for the petitioner society submitted that the petitioner society has continuously undergone loss for a period of over 10 years and it is financially not in a position to pay the back wages. Considering the above submission, insofar as the payment of full back wages is concerned, I am inclined to modify the award from full back wages to 50% of back wages.

**In the result,** this writ petition is allowed in part and the award of the 1<sup>st</sup> respondent except insofar as full back wages stands confirmed. The petitioner society is directed to pay 50% of back wages instead of full back wages to the 2<sup>nd</sup> respondent bimonthly in 5 Equal Instalments (every two months). The first such instalment shall be made on or before 11.08.2023. No costs. Consequently, connected MP is closed.

07..06..2023

Index : yes / no  
Neutral Citation : yes / no  
Speaking / Non Speaking Order  
kmk

Note: The Registry is directed to upload this order on or before 12.06.2023.



*W.P.No.11583 of 2013*

To  
WEB COPY

1.The Presiding Officer,  
Labour Court at Tiruchirappalli.



WEB COPY



*W.P.No.11583 of 2013*

V.LAKSHMINARAYANAN, J.

*kmk*

W.P.No.11583 of 2013

07..06..2023