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W.A.No.1094 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.1094 of 2018

S.Asoak

... Appellant

Vs.

1.The Zonal Head
Bank of Baroda, Zonal Office
Baroda Prida, New No.41,
III Floor, Luz Church Road
Mylapore, Chennai – 600 004.

2.The Regional Head
Bank of Baroda, Regional Office
(CMR – II), 123, Dugar Towers
Near Rajarathinam Stadium
P.O.No.514, 2nd Floor, R.L.Road
Egmore, Chennai – 600 008.

3.The Presiding Officer
Central Government Industrial Tribunal
Sastri Bhavan
Chennai – 600 006.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 19.03.2013 in W.P.No.12076 of 2004, to the limited extent of denial of continuity of service and pass orders directing the respondents 1 to 3 to reinstate the appellant in service with continuity of service but without



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backwages.

For Appellant : Mr.K.M.Ramesh, Senior Counsel
for Mr.S.V.Subramani
For Respondents : Mr.G.R.Lakshmanan
for RR1 & 2
for R3 - Court

JUDGMENT

This Writ Appeal is filed, aggrieved by the order of the learned Single Judge in W.P.No.12076 of 2004 dated 19.03.2013, in as much as, while directing reinstatement of the appellant, the learned Single Judge held that the same would be without continuity of service and without backwages.

2.The factual matrix on which the present Writ Appeal is filed is that while the appellant was working as a Cashier – cum - Clerk in the Salem Branch of the respondent Bank, a charge memo was issued to him on 07.01.1998, alleging that without any prior sanction/leave on credit, from 24.04.1997 to 01.08.1997 and thereafter again from 03.08.1997 to 22.12.1997, the appellant remained un-authorisedly absent, under the pretext of one or the other. Further, it is also alleged that he gave an undertaking that he will be regular in his duties. The appellant submitted his explanation that he was suffering from Bronchities and Gastrities and that his father was not



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well and therefore, on medical grounds, he could not attend the office and requested to drop the charges. However, the explanation was not accepted and enquiry officer was appointed. The appellant remained *exparte* in the domestic enquiry. Ultimately an order of dismissal from service was passed on 23.02.2000. Aggrieved by the same, the appellant raised an Industrial Dispute in I.D.No.754 of 2001 on the file of the Central Industrial Tribunal cum Labour Court and by an award dated 26.02.2003, reference was answered by the Labour Court, punishment of dismissal from service on the appellant was justified as legal and that he was not entitled to any relief. Challenging the said award, the appellant filed a Writ Petition in W.P.No.12076 of 2004.

3.It is pertinent to state here that before this Court, even in the affidavit, it is averred by the appellant that he was arrested by the police on 23.12.1997 and was remanded to judicial custody and was in custody upto 05.01.1998.

4.There was a complaint dated 17.03.1997, preferred against him to the police, in respect of an occurrence, which is said to have been taken place on 15.02.1996, in which it was alleged that an account holder by name, one Ravi Kumar alleged fraud in his account in the respondent Bank, for a sum of



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Rs.2,50,000/- and that the appellant was responsible for the same. Further, it is pertinent to note here that the same was not the case in the explanation submitted to the charges.

5.Before the learned Single Judge, the appellant filed an affidavit dated 18.03.2013, undertaking that he is willing to forgo the back wages, in the event of he being reinstated into service. Ultimately, after considering the said affidavit and the facts and circumstances in detail, the learned Judge dispose of the Writ Petition by an order dated 19.03.2013 and the operative portion reads as under:-

“9.Under such circumstances, the respondents 1 to 3 are directed to reinstate the petitioner without continuity of service and without back wages within a period of one month from the date of receipt of a copy of this order. It is made clear that at the time of superannuation, the petitioner is entitled for terminal benefits for the period of 17 years from 03.07.1981 to 23.12.1997 also.”

Aggrieved by the same, the present Writ Appeal has been filed.

6.Heard, *Mr.K.M.Ramesh*, Senior Counsel, appearing for the appellant



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and *Mr.G.R.Lakshmanan*, learned counsel appearing for the respondents 1 and

2.

7.*Mr.K.M.Ramesh*, learned Senior Counsel appearing for the appellant would submit that it can be seen that the appellant was directed to file an affidavit, after the hearing before the learned Single Judge and both sides as a matter of fact consented that the appellant will be reinstated into service and that appellant will forgo back wages. While, the factual position remained the same, the learned Single Judge ordered reinstatement, even without continuity of service. Therefore, the said operative portion of the learned Single Judge, ordering reinstatement without continuity of service alone is erroneous in law. In any event, no undertaking has been given by the appellant in the affidavit and therefore, the same is liable to be interfered with.

8.Per contra, *Mr.G.R.Lakshmanan*, learned counsel appearing for the respondents 1 and 2/Management would submit that there was no consent on behalf of the Management. As a matter of fact, reinstatement itself ordered by taking a lenient view. The respondent/Management also complied with the same, only because it was without continuity of service and without back



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wages. The appellant also joined the service and attained the age of superannuation. Therefore, he prayed to dismiss the Writ Appeal.

9. We have considered the rival submissions made by the learned counsel on either side.

10. We have extracted the operative portion of the learned Single Judge, above. It can be seen that while the period of 17 years, from 03.07.1981 to 23.12.1997 is ordered to be taken into account for granting of terminal benefits, the learned Single Judge, in respect of service has ordered that the same would be without continuity of service and without back wages. Considering the nature of the charges levelled as against the appellant, considering the nature of explanation given by him, considering the additional fact, which is now brought to the notice of this Court that he was involved in the criminal case, the said facts were not forming part of the explanation, when the learned Single Judge has taken into consideration, the over all facts and circumstances of this case, by taking a lenient view exercised the discretion to allow the appellant for reinstatement, however, without continuity of service, without back wages, no ground is made out, before this Court, to interfere with the same. We cannot conclude that the same was a consent order and that the



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respondents consented for reinstatement with continuity of service, especially when nothing regarding the same is found in the learned Single Judge's order.

11. Accordingly, finding no merits in the Writ Appeal, the same shall stands dismissed. However, there shall be no order as to costs.

(J.N.B,J.) (D.B.C, J.)

21.06.2023

Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
Neutral Citation : Yes / No
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