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W.A.No.272/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-03-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.272 of 2023

A.M.Loganathan

...

Appellant

-VS-

1.The Presiding Officer,
Labour Court,
Vellore.

2.The Special Officer,
Abdullapuram Primary Agriculture Co-operative Bank,
Abdullapuram Village and Post,
Vellore Taluk & District.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 01.04.2022, passed in W.P.No.23262 of 2013, on the file of this Court.

For Appellant : Mr.A.Deivasigamani

For Respondent 2 : Mr.K.V.Sajeev Kumar,
Spl.Govt.Pleader.



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JUDGMENT
(By *S.Vaidyanathan,J.*)

This appeal has been preferred against the order of the learned single Judge, dated 01.04.2022, passed in W.P.No.23262 of 2013, confirming the award of the Labour Court, rejecting the reinstatement with full back-wages and other attendant benefits.

2. Appellant, who was an employee under the second respondent Bank, was placed under suspension on 02.02.2002, but, in the claim petition, he erroneously mentioned that his suspension was on 02.02.2003. A copy of the order of the second respondent Bank, placing the appellant employee under suspension, which is produced before this Court, is dated 02.02.2002 and not 02.02.2003. Pursuant to the charges framed against the appellant employee with regard to deficit stock and non-remittance of amount, the appellant employee admitted the stock deficit and non-remittance of amount. The Labour Court came to the conclusion that the employee held a position of trust, where honesty and integrity were inbuilt requirements of functioning and, therefore, it would not be proper to deal with the matter leniently and misconduct in such cases was to be dealt with iron hands and that in the case on hand the admission with regard to deficit stock and non-remittance to the tune of Rs.4262.10 by the employee, who was working in the respondent Bank, could not be dealt with leniently. The employer also passed an order forfeiting the entire gratuity.



3. The contention of the appellant is that the employer has taken an LIC Policy as security, which is lying with them, and it cannot be detained but has to be returned. He would also contend that for a typographical error committed by him with regard to the date of suspension, he cannot be deprived of the wages for a period of sixteen months till the date of order of dismissal, dated 16.06.2003. It is also his case that he has contributed towards Provident Fund and the same has got to be refunded to him together with employer's contribution and that forfeiture of gratuity by the employer to the extent of Rs.36,450/- is bad.

4. We are not inclined to accept the contention of the appellant employee in part. When misappropriation is admitted by the employee, the employer is entitled to forfeit the gratuity in terms of Section 4 (6) of the Payment of Gratuity Act, 1972, which the employer has done correctly.

5. The Labour Court, based on evidence, came to the conclusion that the amount, which was collected by the employee for the deficit stock, was not remitted and that there was misappropriation, which finding of fact, affirmed by the learned single Judge, cannot be assailed before us. Since the employee was dismissed from service, he would be entitled to his share of contribution and he cannot demand employer's share of contribution. Hence, we are of the view that the employee is not entitled to gratuity and the employer's share of provident fund contribution towards Provident Fund. Therefore, the order of the learned single Judge, confirming the award of the Labour Court, does



not call for any interference by this Court. However, the employer has to pay subsistence allowance, which the employee is otherwise entitled to legally. Therefore, the second respondent Bank is directed to pay subsistence allowance to the appellant employee for the period of sixteen months i.e., from 02.02.2002 to 16.06.2003 at the rate of 50% for the first 90 days; 75% for the next 90 days i.e., up to 180 days; and, thereafter, 100% of wages till the date of dismissal, taking into account his salary as Rs.4,050/- per month, within a period of one month from the date of receipt of a copy of this order. The LIC Policy, which was collected by the second respondent Bank towards security, is directed to be returned to the appellant employee on or before 15.06.2023.

6. Writ Appeal stands disposed of accordingly. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (R.K.M.,J.)
21-03-2023

To

- 1.The Presiding Officer,
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Vellore.
- 2.The Special Officer,
Abdullapuram Primary Agriculture Co-operative Bank,
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