



WEB COPY



W.P.No.7063 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21..02..2023

Coram

The Honourable **MR.JUSTICE M.S.RAMESH**

Writ Petition No.7063 of 2016

and

W.M.P.No.6272 of 2016

Erode District Central Co-operative

Bank Limited,

Rep. by Special Officer,

Bhavani Main Road,

Karungalpalayam,

Erode 638 003.

..... Petitioner

-Versus-

1.The Presiding Officer,

Labour Court, Salem.

2.N.S.Palanisamy

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in I.D.No.31 of 2007 on the file of the 1st respondent - Labour Court, Salem and to quash the Award dated 09.02.2015 read with order dated 24.10.2013 passed in I.D.No.31 of 2007 by the 1st respondent - Labour Court, Salem.

For Petitioner : Mr.M.R.Raghavan

For Respondents : Mr.K.V.Shanmuganathan for R2

R1 - Court



W.P.No.7063 of 2016

ORDER

WEB COPY

Challenging the Award dated 09.02.2015 read with order dated 24.10.2013 passed by the 1st respondent - Labour Court, Salem, in I.D.No.31 of 2007, the present writ petition has been filed by the cooperative society.

2. For unauthorised absence of 170 days, the petitioner bank had levelled charges against the petitioner through a charge memo dated 25.08.2000. Not being satisfied with the explanation rendered to the levelled charges, an enquiry was conducted in which charges were held to be proved. A second show cause notice dated 17.11.2005 was issued to which the 2nd respondent had rendered his further explanation. Not being satisfied with the explanation rendered by the 2nd respondent, punishment of dismissal from service was passed on 26.06.2006. Thereafter, a dispute before the Labour Court came to be raised in I.D.No.31 of 2007 under Section 2-A(2) of the Industrial Disputes Act, 1947 and by the award dated 09.02.2015, the management was directed to reinstate the 2nd respondent together with 50% of back wages, continuity of service and other attendant benefits. Challenging the award, the present writ petition has been filed by the management.



W.P.No.7063 of 2016

3. The learned counsel for the petitioner submitted that when the enquiry was conducted in accordance with the principles of natural justice, it was substantially proved before the Labour Court that the unauthorised absence of the 2nd respondent was not justified, the Labour Court ought not to have directed for reinstatement of the 2nd respondent in service together with 50% of back wages and other benefits.

4. Per contra, the learned counsel for the 2nd respondent submitted that the entire process of enquiry was appreciated by the Labour Court in a proper perspective and having found that the dismissal was illegal, the punishment was set aside and therefore, no interference is required to the impugned order.

5. Before the Labour Court, the management had let in 2 oral witnesses and had marked 25 documents. The 2nd respondent had also examined himself as a witness and had marked 7 documents. The Labour Court had taken into consideration that when the management had treated the period of 2nd respondent's absence between 08.05.2000 and 30.08.2000 as 'no work, no pay', the imposition of penalty of dismissal from service would amount to second punishment and on this basis, the



W.P.No.7063 of 2016

order of dismissal was set aside. I do not find any infirmity with such finding insofar as it relates to setting aside the order of punishment of dismissal from service. But, insofar as granting 50% of back wages is concerned, the Labour Court had not rendered any acceptable finding at all either for award of back wages or for restricting it to 50%. As a matter of fact, in normal circumstances, whenever the order of punishment is rendered to be illegal, payment of full back wages would be ordered. But, in the instant case, the unauthorised absence of the 2nd respondent for 170 days seems to be an inordinate number of days. The 2nd respondent had not even produced a single document to substantiate the reason for his unauthorised absence. On the other hand, the management had produced the request of the petitioner for medical leave and the subsequent communication directing the 2nd respondent to appear before the Medical Board. It is the clear case of the management that the 2nd respondent had been taking leave on some false pretext or the other. It was brought to the notice of this court that the 2nd respondent had attained the age of superannuation in 2014. It was also brought to the notice of the Labour Court about the past misconduct on the part of the 2nd respondent which aspect has also not been touched upon by the Labour Court.



W.P.No.7063 of 2016

6. On a conjoint appreciation of all these aspects, this court is of the view that while the award for reinstatement with continuity of service and other attendant benefits is justifiable, the award for 50% of the back wages, cannot be sustained. In this back ground, the impugned order insofar it awards 50% of the back wages is concerned, is set aside. All the other findings culminating to the award of reinstatement, continuity of service and for other attendant benefits the award of the Labour Court is confirmed.

7. In the light of the orders of this court, modifying the award of the Labour Court in I.D.No.31 of 2007, the management shall disburse the entire retirement benefits from the date of dismissal till date of his superannuation by extending the continuity of service and other attendant benefits within a period of four weeks from the date of receipt of a copy of this order. This writ petition stands partly allowed with the above directions. No costs. Consequently, connected miscellaneous stands closed.

21..02..2023

Index : yes / no
Neutral Citation : yes / no
kmk



W.P.No.7063 of 2016

To

1. The Presiding Officer, Labour Court, Salem.



WEB COPY



W.P.No.7063 of 2016

M.S.RAMESH.J.,

kmk

W.P.No.7063 of 2016

21..02..2023