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W.P.No.8757 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.8757 of 2017
and
W.M.P.No.9605 of 2017

The Management,
The Shevapet Urban Co-operative Bank Limited,
Shevapet,
Salem – 636 002.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.N.Gnanasekar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in I.D.No.377 of 2000 on the file of Labour Court, Salem, the first respondent herein, quash the final award dated 06.02.2016 (which was published on 08.09.2016 and came into effect on 08.10.2016) read with the preliminary award dated 27.03.2006 passed therein.

For Petitioner : Mr.M.R.Raghavan

For Respondents : Mr.V.Manohar [R2]



W.P.No.8757 of 2017

ORDER

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This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records in I.D.No.377 of 2000 on the file of Labour Court, Salem, the first respondent herein, quash the final award dated 06.02.2016 (which was published on 08.09.2016 and came into effect on 08.10.2016) read with the preliminary award dated 27.03.2006 passed therein.

2. The case of the petitioner is that, it is a Co-operative Bank established in accordance with the provisions of Tamil Nadu Co-operative Societies Act and the second respondent was employed as a Cashier at the relevant point of time. During his course of employment, he manipulated vouchers, receipts and accounts and misappropriated a sum of Rs.1,16,317/- between the period from 06.08.1996 to 06.08.1997 and 07.08.1998 to 22.03.1998, thereby, the petitioner Management issued a detailed charge memo to the second respondent on 22.05.1998 and the second respondent sent a reply dated 04.06.1998. Thereafter, Enquiry Officer was appointed and he conducted the enquiry. After providing personal hearing to the second respondent, the second respondent was dismissed from service on 13.02.1999. Challenging the order of dismissal, the second respondent raised an Industrial Dispute before the first respondent/Labour Court. The first respondent/Labour Court passed the



W.P.No.8757 of 2017

preliminary award as if the petitioner Management not conducted the enquiry in a proper manner. As against the preliminary award, the petitioner Management filed a writ petition before this Court in W.P.No.14517 of 2006 and this Court dismissed the said writ petition with a liberty to the petitioner Management to canvass all those points before the Labour Court. Subsequently, the final award was passed on 06.02.2016 directing reinstatement of the second respondent with 40% back wages and all other benefits. Challenging the same, the above writ petition has been filed before this Court.

3. The learned counsel for the petitioner submits that, the second respondent was employed as Cashier and he committed various irregularities viz., manipulated vouchers, receipts and accounts and misappropriated more than Rs.1 lakh, which was clearly established before the Labour Court. In fact, during the domestic enquiry, the second respondent himself admitted his guilt vide his letters dated 23.03.1998 and 04.06.1998. Based on the admission of the second respondent, the Enquiry Officer has drawn the proven minute, which was not properly appreciated by the Labour Court, which is not sustainable. Further, the Labour Court awarded 40% back wages in favour of the second respondent is without any basis even though the second respondent has not even averred in his claim petition with regard to the gainful employment during



W.P.No.8757 of 2017

the non-employment period. In the absence of any averments, without framing issues and without providing any opportunity to the petitioner Management, the Labour Court has mechanically arrived a conclusion that the second respondent is entitled for 40% back wages is not sustainable. Therefore, he seeks interference of this Court.

4. The learned counsel appearing for the second respondent submits that the respondent was employed as a Cashier in the petitioner Management and after completion of 18 years, the petitioner Management made allegations as against the second respondent as if he manipulated vouchers, receipts and other materials and illegally gained money of the petitioner Management. However, the said fact was not properly proved before the Labour Court and to that extent, no complaint was filed before the Law Enforcing Agency or under 87 enquiry and 81 enquiry, except the proceedings initiated by the petitioner Management. Further, alleged that the confession letters dated 23.03.1998 to 04.06.1998 were not marked before the domestic enquiry or before the Labour Court. Even, there was a discussion before the Labour Court that all those were prepared in order to defeat the rights of the second respondent, which fact was not considered by the Labour Court. Thereafter, the Labour Court arrived a conclusion for order of reinstatement with 40% back wages.



W.P.No.8757 of 2017

5. Further, he submits that the second respondent has averred in his claim petition that he is depending on the employment in the petitioner Management and he do not have any alternate employment available in the future. He also submits that, such a plea was averred in the claim petitioner and the same was considered by the Labour Court, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the second respondent and perused the materials available on record.

7. The second respondent was employed as a Cashier in the petitioner Management and it is alleged that the second respondent has committed misconduct by way of preparing bogus vouchers and receipts and he enriched himself to the tune of Rs.1,16,317/-, for which, show cause notice was issued, subsequently, after conducting enquiry, he was dismissed from service. However, the Labour Court arrived a conclusion that the enquiry conducted by the petitioner Management was not in a proper manner and the petitioner Management had not properly maintained records. Further, the petitioner Management not established the case before the Labour Court by producing



W.P.No.8757 of 2017

proper evidence including the alleged confession statements given by the second

respondent. Though the said document was produced before this Court, however, the same was not marked before the Labour Court. In the absence of any documents, the fact finding conclusion arrived by the Labour Court cannot be interfered with in this writ petition. Hence, this Court is not inclined to interfere with the order of reinstatement ordered by the Labour Court. The next issue is that, whether the second respondent is entitled for the back wages awarded by the Labour Court. This Court, perused the claim petition, from which, it is clear that, except the vague statement for the non-employment, the second respondent has not averred much for his gainful employment during the non-employment period. To that extent, there is no discussion before the Labour Court and without any discussion and without adducing any evidence and without giving any opportunity to the petitioner Management, the Labour Court has mechanically arrived for 40% back wages to the second respondent, which is not sustainable.

8. In view of the above, the order passed by the Labour Court with regard to reinstatement in favour of the second respondent is confirmed and the back wages awarded by the Labour Court in favour of the second respondent is set aside. However, the second respondent is entitled for continuity of service and



W.P.No.8757 of 2017

other terminal benefits. The terminal benefits shall carry interest at the rate of 6% per annum from the date of superannuation till the date of payment. Hence, the petitioner Management is directed to settle the entire benefits to the second respondent, which he is entitled for, along with interest above, without back wages, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. This Writ Petition is disposed of with the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

27.07.2023

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

The Presiding Officer,
Labour Court,
Salem.



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W.P.No.8757 of 2017

M.DHANDAPANI, J.

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