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W.P.No.12766 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.12766 of 2009
M.P.No. 1 of 2009, 1 & 2 of 2010

The Management of Athoor
Pudhupettai Primary Agricultural
Co-operative Bank Limited,
Rep. by its Special Officer,
Pudupet, Attur, Salem District.

....Petitioner

Vs.

1. A. Rajendran

2.The Labour Court,
Salem, Salem Court.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the proceedings of the Second Respondent in I.D.No. 96 of 2001, dated 28.09.2004, and the consequential award dated 10.01.2006, quash the same.

For Petitioner : Mr.P.S.Siva Shanmuga Sundaram

For R1 : Mr.S.V. Navin Prabhu

For R2 : Labour Court



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ORDER

The writ petition is filed by the petitioner Management challenging the Preliminary Award dated 28.09.2004 passed in I.D.No. 96 of 2001 and the final Award dated 10.01.2006.

2. The brief facts leading to filing of this writ petition are that the first respondent workman was working as an Office Assistant in the petitioner's Co-operative Society. While so, it is alleged that on 15.06.1993 the first respondent arranged for a third person to impersonate that she was one Pappathi and took her to one M.R.Jewellery and made a representation that she had pledged jewels in the Cooperative Bank weighing 79.200 grams and if they give an advance, the jewels will be redeemed and will be re-pledged to the said M.R.Jewellery. On strength of the said representation, the said M.R Jeweller paid an advance of Rs.3000/- and with the help of the same, they made payment and redeemed the jewellery through the said bogus person and had taken away the jewellery belonging to the member and sold



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it to the M.R.Jewellery for a sum of Rs.27,200/- and misappropriated the said amount. As such, it can be seen that the charge is serious in nature. Initially an enquiry under Section 81 of the Co-operative Societies Act was conducted and the charge memorandum dated 07.03.1996 was issued to the first respondent. The first respondent submitted his explanation denying the charge that he was not involved in the incident. Thereafter, an Enquiry Officer was appointed. In the domestic enquiry, the delinquent official denied the charges. The Special Officer was examined as the witness and exhibits M1 to M3 were marked. M1 was the memorandum dated 08.10.1993, M2 was the enquiry report dated 30.06.1994 and M3 was the charge memorandum dated 07.03.1996.

3. The Enquiry Officer returned a finding that the charge is proved by its report dated 12.07.1996. The second showcause notice dated 02.09.1996 was issued, to which the first respondent submitted an explanation on 09.09.1996. Not accepting the same, the first respondent was removed from service by proceedings dated 24.08.2000. Aggrieved by



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the same, the first respondent raised an Industrial Dispute and by the preliminary award dated 28.09.2004, the procedure adopted in the domestic enquiry was found to be violative of principles of natural justice, since the first respondent was not granted an opportunity to cross examine the witnesses. Thereafter, evidence was let in before the Labour Court and by an award dated 10.01.2006, reinstatement with backwages was ordered.

4. Heard Mr.P.S.Siva Shamnuga Sundaram, learned counsel appearing on behalf of petitioner and Mr.S.V.Navin Prabhu, learned counsel appearing on behalf of the respondent.

5. Mr.P.S.Siva Shamnuga Sundaram, learned counsel appearing for the petitioner impugning the award would submit that firstly, upon verification of the record of the domestic enquiry proceedings, it can be seen that an opportunity for cross examination was given to the workman and it is only the workman, who did not avail the opportunity. Therefore, the preliminary Award as if no opportunity was granted to the workman and that



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the procedure was not fair and proper is incorrect. As far as the final award is concerned, he would submit that when 81 enquiry report was very much there, merely because the other employees teamed up with the petitioner and all of them jointly paid the amount and did not support the case of the petitioner society, still the Labour Court ought to have seen that the 81 enquiry report contained the facts based upon, on-field enquiry and ought to have held that the charge against the first respondent has been proved and ought not to have ordered reinstatement with back wages. The learned counsel for the petitioner would further submit that in any event, the Labour Court ought to have seen the nature of charge and the fact that the first respondent is now left scot-free only on the lapses which are alleged as against the petitioner Management and therefore ought not to have granted the entire back wages to the workman.

6. Mr.S.V.Navin Prabhu, the learned counsel appearing on behalf of the respondent workman would submits that in this case, even after this Court has ordered 17B wages, till date the 17B wages have not been paid to



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the workman. He would submit that the 81 enquiry report is only a fact finding enquiry that is not made by giving ample opportunity to the workman. On the mere basis of 81 enquiry report, the charge cannot be held to be proved. In the domestic enquiry, only the Special Officer was examined and the statements which are made in the 81 enquiry report alone is relied upon by the Enquiry Officer. In the absence of any opportunity to cross examine, the preliminary Award of the Labour Court cannot be found fault with. Once the opportunity was granted to the management to let in evidence before the Labour Court, even before the Labour Court neither the said Pappathi whose jewels were said to have been wrongfully redeemed and sold by the first respondent was examined nor any witness from the said M.R.Jewellery to whom the Jewel was sold was examined. Only the employees of the petitioner's society alone were examined. But however, all of them deposed that they did not have any personal knowledge about the incident at all and therefore when the management could not muster any evidence before the Labour Court, the Labour Court has rightly ordered reinstatement with back wages.



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7. The arguments relating to reduction of backwages should not be entertained by this Court inasmuch as the petitioner management did not even comply with the direction to pay the 17B wages and therefore the writ petition has to be dismissed by giving further direction to the Management to comply with the directions of this Court and also to settle the entire backwages within such time as may be directed by this Court. He would further submit that the enquiry was not proper because no subsistence allowance was also paid pending the enquiry.

8. I have considered the rival submissions made on both sides and perused the material records of the case.

9. As far as the preliminary Award is concerned, though it can be said that an opportunity was granted to the workman to cross examine the only witness, who is examined namely M.W.1, who is only the Special Officer, it can be seen that the domestic enquiry report is based on the 81 enquiry report and in the 81 enquiry, the witnesses were examined behind the back



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of the first respondent, which is only a fact finding enquiry and as such no exception whatsoever can be taken to the findings of the Labour Court with reference to the preliminary award that the entire procedure is vitiated as there was no opportunity for the workman to cross examine the witnesses whose statements were relied upon to sustain the charge and therefore the procedure is held to be not fair and proper and the said finding cannot be interfered with.

10. As far as the final Award is concerned, when opportunity is granted by the Labour Court for the management to let in evidence, the management sought to examine as many as seven witnesses. All these seven witnesses are co-employees of the first respondent workman. Instead, the management ought to have tried to examine the appropriate witness namely the said Pappathi, the member who lost her jewels and the representative or an employee from the M.R.Jewellery where the jewel was sold or the Special Officer of the society who maintains the records who would have deposed. On the other hand, all the seven employees who were the co-employees



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turned hostile and deposed before the Labour Court that they did not know about the particulars of the incident and they did not have any knowledge about the incident.

11. It is seen that the management has also not chosen to take any action against them. In that view of the matter, even in the domestic enquiry or before the Labour Court when there is no evidence at all, worth the name, even to *prima facie* discharge the burden of the management who is alleging the charge, I am not able to come to rescue of the management with reference to proof of charge. Once the charge is not proved, the Labour Court has rightly found that the order of dismissal from service is not justified and has granted the relief of reinstatement to the workman. Once the workman is reinstated, normally the relief of backwages ought to be granted. But however, in this case only considering the fact that the workman was on duty from 1988 to 1996 and he attained the age of superannuation in the year 2020 and the management has to pay a huge arrears of backwages from the year 1996 upto 2020 and only considering



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the fact that the workman who faced the serious charge is reinstated on technical grounds alone, as the co-employees of the workman had turned hostile during the Trial before the Labour Court and only for want of proper evidence, the workman being exonerated of the charge. When the exoneration is only on technical grounds, the Court can also reduce the amount by way of back wages and accordingly, considering the overall facts and circumstances of the case, I am inclined to reduce the backwages from 100% to 50%. But however, it can be seen that the petitioner management is yet to comply with the direction to pay the last drawn wages also.

12. In view thereof, this Writ Petition is disposed of on the following terms:

(i) The preliminary award of the Labour Court made in I.D.No.96 of 2001 dated 28.09.2004 stands upheld.

(ii) The final award of the Labour Court dated 10.01.2006 stands partially modified by upholding the same inasmuch it orders reinstatement of the first respondent with all continuity of service and all other service benefits, but



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however stands modified only with reference to the payment of backwages. 50% of backwages payable to the workman is ordered instead of entire backwages. The amount of backwages and all other retiral benefits which are due to the workman shall be paid within a period of eight weeks from the date of receipt of copy of this order.

(iii) The management shall also pay the terminal benefits with further interest at the rate of 6% per annum from the date of superannuation of the first respondent till the date of disbursal.

(iv) It would be open for the Deputy Registrar of Co-Operative Societies to scrutinize the entire issue in this case. Firstly, it can be seen that the appropriate witnesses were not being examined. Secondly, there is a huge delay when the employee had submitted his reply to the second showcase notice on 09.09.1996, for a period of four years, somebody has put the entire thing in cold storage and final order of punishment was passed only on 24.08.2000. Similarly, in the domestic enquiry, appropriate witnesses namely the member and also the jewellery shop employee and the concerned person who maintains the records were all



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not examined. Even in the domestic enquiry, the ledger, the First Information Report etc., were not marked as documents. When the Labour Court granted an opportunity, total number of seven employees were examined on behalf of the management. All the seven employees have turned hostile. It would be open for the Deputy Registrar of Cooperative Societies to conduct detailed enquiry in this regard and for all the loss which is sustained by the Society by way of the entire mismanagement of the affairs with reference to the proof of charge. Liability can also be fixed on the appropriate individuals including those witnesses if circumstances so warrants, and take further proceedings.

(v) No costs. Consequently, the connected miscellaneous petitions are also closed.

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Neutral Citation : Yes/No

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Salem, Salem Court.

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D.BHARATHA CHAKRAVARTHY, J.

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