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W.P.Nos. 14762 of 2005, 20347 of 2007 & 25602 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos. 14762 of 2005, 20347 of 2007 & 25602 of 2013

M.P.No. 1 of 2007, 1 of 2008, 1 of 2013 & 16116 of 2005

W.P.No. 14762 of 2005

The Special Officer,
The B. Kumarapalayam
Co-operatitve Urban Bank Limited.,
405, Salem Main Road,
B. Kumarapalayam
Namakkal District.

....Petitioner

Vs.

1. Appellate Authority
under Section 41(2) of
Tamilnadu Shops & Establishments Act, 1947,
(Deputy Commissioner of Labour), Salem – 7.

2. R.Sivasankaran

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, call for the records on the file of appellate authority under the Tamilnadu Shops & Establishments Act, 1947, (Deputy



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Commissioner of Labour), Salem – 7, the first respondent in T.N.S.E.No. 2 of 1987 and quash the order dated 14.02.2005 passed therein.

For Petitioner : Mr.M.S.Palaniswamy
For R1 : Mr.Tamilvendhan,
Government Advocate
For R2 : Mr.P.Jagadeesan

W.P.No. 20347 of 2007

B. Kumarapalayam,
Co-operatitve Urban Bank Limited.,
Rep. by its Special Officer,
405, Salem Main Road,
B-Kumarapalayam,
Namakkal District.

....Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. R.Sivasankaran

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the first respondent in C.P.No. 398 of 2005 dated 20.01.2007 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy



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For R1 : Labour Court

For R2 : Mr.P.Jagadeesan

W.P.No. 25602 of 2013

B. Kumarapalayam,
Co-operatitve Urban Bank Limited.,
Rep. by its General Manager,
405, Salem Main Road,
B Kumarapalayam,
Namakkal District.

....Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. R.Sivasankaran

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the order passed by the first respondent in C.P.No. 188 of 2008 dated 15.05.2013 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For R1 : Labour Court

For R2 : Mr.P.Jagadeesan



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COMMON ORDER

These three writ petitions are connected to each other and are taken up by way of this Common order.

2. The respondent workman had originally got an award, under the Tamil Nadu Shops and Establishments Act, 1947 in his favour, whereunder, the petitioner Management was directed to reinstate him with full back wages and continuity of service. The said Award was passed in T.N.S.E.No. 2 of 1987 dated 14.02.2005. Even thereafter, the workman was not reinstated and neither his wages were paid and therefore, he filed the Computation Petition in C.P.No.398 of 2005 and by order dated 20.01.2007, the amount due was computed by the Labour Court pursuant to the said Award of the Shops and Establishment Authority. Even further none of the amounts were paid, therefore once again, yet another Computation Petition was filed in C.P.No.188 of 2008, in which further order of computation was passed on 15.05.2013. Challenging the original award of the Shops and Establishment Authority and also the consequential orders passed in the



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computation petitions, these three writ petitions are filed by the Management.

3. The case of the workman was that on 02.06.1982, he was appointed as a cashier in the petitioner Management, which is a Cooperative Bank. While so, a charge memorandum was issued to him on 21.03.1986 and the workman gave his explanation on 07.04.1986. The charge against the workman is that he had fictitiously obtained a loan by forging the signature of one Palanisamy, member of the Cooperative Bank and misappropriated and used the sum for himself and thereafter further records were created as if the said Palanisamy had repaid the amount. On the said charge, the enquiry officer after recording both oral and documentary evidence, submitted report dated 10.11.1986 holding the delinquent workman guilty of the charges. Thereafter, by an order dated 28.01.1987, the workman was terminated from service. As against the same, the workman preferred an Appeal under Section 41 of the Tamil Nadu Shops and Establishments Act in T.N.S.E.No.2 of 1987. The appeal was contested by the Management. By



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an order dated 10.10.1987, the order of termination was set aside and the workman was ordered to be reinstated into service. Aggrieved by the said order, the petitioner Management preferred Writ Petition No. 1077 of 1988 before the Court. The writ petition was disposed of on 24.01.1997 and this Court held that some of the materials which were relied upon by the Shops Act Authority were not properly placed by way of marking of the said documents and since those documents were also taken into consideration, the order was vitiated.

4. After holding so, the order of the Appellate Authority was set aside and the matter was remitted back for fresh consideration. Thereafter, the matter proceeded further for fresh consideration by the Appellate Authority under the Shops Act for another 8 years and the present Award was passed on 14.02.2005. Once again, after considering the entire materials on record, the Appellate Authority had held that there was absolutely no justification whatsoever in the charge which is levelled as against the workman and allowed the appeal and set aside the termination order and ordered



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reinstatement with full back wages. Aggrieved by the same, the petitioner Management has filed the present writ petition in the year 2005 which is now pending for almost 19 years.

5. It can be seen that the writ petition which was filed in the year 1988 was also pending for a period of 9 years and again the Appeal before the Shops Act Authority was pending for another 7 years. Thus, in order to decide whether the charge levelled against the workman stood proved or not and whether the termination of the workman on the basis of the said charge was valid, it has taken 37 years from 28.01.1987 till today. When the matters relate to workmen merely because they are poor, even in the present day scenario, in spite of beneficial labour statutes, the end result is “ஏழை சொல் அம்பலம் ஏறாது”

6. In a dismissal or termination from service arising out of the domestic enquiry, whether it is Labour Court or the Shops Act Authority, the first step is to find whether the domestic enquiry is fair and proper or not



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and the second question is whether there is evidence warranting the finding of guilt of the charge or not and the third question is that whether the punishment in the facts and circumstances justified or not?

7. If the Labour Court or the Shops Act Authorities finds that the domestic enquiry was not fair and proper then the scope with reference to the enquiry into the second and third questions is wider while it is restricted, if the Labour Court finds that the domestic enquiry is fair and proper. Whenever this Court under Article 226, finds that the Labour Court had error at any particular stage, this Court itself can consider all those three questions by itself and answer the same on merits, instead of remanding the matter back to the Labour Court or the Shops Act Authorities. If remanded, it results in a delay which causes injustice. The Cooperative Bank which is again run on public money, is now facing the prospect of ending up paying huge back wages till the superannuation of the workman in the year 2012 and now we are in 2024. The workman had also undergone undue punishment all these years even when the charge against him is found to be



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not proved. Therefore, I reject the submissions relating to further remanding the matter.

8. Now coming out on the merits of the matter, the charge against the workman is that he has forged the signature of one member of the society, namely Palanisamy and without even pledging any jewels, fictitiously obtained loan amount. The Appellate Authority had, apart from considering the evidence in the domestic enquiry, placed strong reliance on the judgement and decree of the Civil Court in O.S No.918 of 1986. The said suit was filed by the said member Palanisamy himself. He has gone before the Civil Court and claimed that he had only pledged his jewels and even though he has repaid the amount, the jewels have not been returned to him. The Management contested that the said suit and finding on merits have been entered into by the Civil Court and the suit was decreed as prayed for.

9. As a matter of fact, the first appeal in A.S.No 77 of 1992 and the second appeal in S.A.No. 1768 of 2001 came to be dismissed. As a matter of



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fact, the Appellate Authority has placed reliance on the original judgement, first appeal and the second appeal judgement and held, the charge against the workman is absolutely not justified. Even as on today, there is absolutely not an iota of evidence that the workman had only forged the signature of Palanisamy. Therefore, the findings of the Domestic Enquiry officer and also the disciplinary enquiry are nothing but findings without any iota of evidence and also cannot stand in the teeth of the considered judgment and decree of the Civil Court. Accordingly, I do not find any error whatsoever in the first respondent allowing the appeal of the workman and ordering reinstatement.

10. Normally in a case of this nature, especially when the charge against the workman is proved to be incorrect on merits and when the workman is sought to be reinstated into service on merits, the entire back wages has to be awarded. But at the same time, the only other factor this Court takes into consideration is the period of service of the workman. If the period of service of the workman is relatively very less and when the period



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of non-employment and the litigation is only large, then in appropriate cases, lesser back wages can also be awarded by this Court.

11. Mr.Palaniswamy, the learned counsel appearing on behalf of the petitioner would submit that in this case, after such a long time, instead of reinstatement with back wages, this Court should consider only awarding compensation in lieu of reinstatement with backwages since the workman has attained the age of superannuation on 31.05.2012.

12. Per contra, the learned counsel appearing on behalf of the respondent would placed strong reliance on the decision of the Hon'ble Supreme Court of India in ***M.D.Tamil Nadu State Transport Corporation vs. Neethivilangan reported in 2001 (3) CTC 372*** and ***T.C.Peethambaram vs. Kancheepuram Central Cooperative Bank (represented by its Special Officer), Kancheepuram reported in 1922-II L.L.N.55*** , to contend that the entire back wages as ordered by the Appellate Authority ought to be paid, that too with further interest.



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13. Foremost consideration for the grant of back wages is that whether or not the workman is being reinstated on any technical lapse or on merits. In this case it is on merits. There is absolutely nothing against the workman. Therefore, it is entirely the fault of the Management in levying an erroneous charge which ultimately could not be sustained by the Management. Therefore, in the normal course, full backwages should follow. As per the dictum of the Hon'ble Supreme Court of India in ***Deepali Gundu Surwase vs Kranti Junior Adhyapak & others*** reported in (2013) **10 SCC 324**, this Court has also take into consideration the period of service of the workman.

14. In this case, the workman had actually worked from 02.06.1982 upto 28.01.1987 for a period of 4 years and 7 months. Therefore only on that account, this Court is of the opinion that the backwages cannot be the entire amount, but can be a sum lesser than the entire amount. Considering



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the overall facts and circumstances of this case, I am of the view that instead of ordering the 100% backwages, in this case, the workman will be entitled to 60% of the back wages, Workman shall deemed to be in service until his date of superannuation and would be entitled for all the benefits upon his superannuation along with 60% of back wages. The entire arrears of backwages and also the terminal benefits shall be paid within a period of twelve (12) weeks from the date of receipt of the copy of the order. If the amount is not paid within twelve (12) weeks, then the same shall carry interest at the rate of 6% per annum from the date of superannuation of the petitioner (i.e) from 31.05.2012 till date of disbursement.

15. In view the above order being passed in W.P.No.14762 of 2005, the consequential computations which is on the basis of 100% back wages cannot be sustained. Therefore, those orders passed in C.P.No. 398 of 2005 dated 20.01.2007 and C.P.No. 188 of 2008 dated 15.05.2013 are consequentially set aside. It is made clear that the workman need not again approach the Labour Court for computation. If the entire back wages and



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the arrears as stated above is not paid, the workman will be entitled to approach this Court by way of contempt petition.

16. With the above observations and directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

19.11.2024

Neutral Citation : Yes/No

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D.BHARATHA CHAKRAVARTHY, J.

ns1

To

1. The Deputy Commissioner of Labour,
Authority under Section 41(2) of
Tamilnadu Shops & Establishments Act, 1947,
Salem – 7.

2. The Presiding Officer,
Labour Court, Salem.

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