



W.P.No.23123 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON
01.12.2023

PRONOUNCED ON
.01 . 2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.23123 of 2005
and W.M.P.No.1672 of 2008

The Karur Vysya Bank Ltd.,
Pethampalayam Branch, Karur.

... Petitioner

Vs

1.The Presiding Officer,
Central Govt Industrial Tribunal,
Cum Labour Court,
Shastri Bhavan,
26, Haddows Road, Chennai – 600 006.

2.P.Nallaswamy (Deceased)
3.Leelavathi
4.Vadivukarasi
5.Vennila
6.Kokila

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 1st respondent in I.D.No.70 of 2003 and quash its order dated 09.02.2005 and pass such further orders.



WEB COPY



W.P.No.23123 of 2005

For Petitioner : Mr.P.Raghunathan
for M/s. T.S.Gopalan & Co.

For R1 : Labour Court
For R2 : Died
For RR3 to 6 : Mr.V.Ajay Khose

ORDER

The Writ Petition has been filed challenging the Award of the Labour Court in directing the reinstatement of the second respondent with continuity of service and other attendant benefits.

2. Heard Mr.P.Raghunathan, learned counsel for M/s T.S.Gopalan & Co., appearing for the petitioner and Mr.V.Ajay Khose, learned counsel for the respondents 3 to 6.

3. The learned counsel for the petitioner would submit that, the second respondent was working as a Clerk in the Pethampalayam branch of the petitioner bank from 08.07.1987. He would submit that in the branches of the petitioner bank where there is only one officer, who will be the Manager, the clerk who is incharge of the cash section will be made as a joint custodian for undertaking additional responsibilities, and such clerk will be



W.P.No.23123 of 2005

paid with Special Allowance. In the bank where the second respondent was employed had one Branch Manager, a clerk and a sub-staff.

4. He would further submit that, the Manager K.Kanakaraj, was attending the duties of a cashier and the second respondent being the other employee being the joint custodian were holding the second set of keys of the branch. He would contend that during May, 1977 when the Manager K.Kanakaraj, was transferred to Kannanur Branch, he had attempted to destroy the bank records by setting fire. At this point a detailed investigation was conducted and it was found that the Manager Kanagaraj, had unauthorisedly removed cash from the bank and had also altered the closing cash balance and removed a sum of Rs.5,00,000/- and had also used the bank stationaries, as a consequence the bank has suffered a loss of Rs. 49.90 lakhs.

5. He would submit that, if the second respondent was diligent enough in discharging his duties, the fraud could not have taken place and for the misconduct falls under Para 19.5(j) of the Bipartite Settlement. Hence, the



W.P.No.23123 of 2005

second respondent was issued with charge memo dated 18.8.1997. A domestic enquiry was conducted and the second respondent had given his explanation on 18.09.1997 for the charges framed against him. On 25.11.1998, based on the enquiry the Enquiry Officer had held that the charges levelled against the second respondent was found to be proved. Thereafter, the Disciplinary Authority issued a notice dated 27.10.1999, proposing the punishment of dismissal and directed the second respondent to appear for a personal hearing.

6. He would submit that, on 29.05.1997 the second respondent was suspended from service. Thereafter, on 24.11.1998 the second respondent was served with a second charge memo and an enquiry was conducted and all charges framed against the second respondent was held to be proved. The copy of the enquiry report was duly served to the second respondent on 10.06.1999, for which he had given his representation dated 30.06.1999. The petitioner had called for the second respondent for a personal hearing on 04.12.1999. On 07.12.1999, the Disciplinary Authority had passed orders dismissing the second respondent from service.



W.P.No.23123 of 2005

WEB COPY

7. He would further submit that, against the order of dismissal the second respondent had raised an industrial dispute before the first respondent, who by order dated 09.02.2005 had held that the enquiry conducted was in a fair and proper manner. Further the first respondent has given a findings that the Manager has committed fraud on the bank and the second respondent was negligent and he has allowed the Branch Manager to act on his own way and allowed him to commit fraud on the Bank. Being a joint custodian the second respondent had failed to act accordingly. With regard to the second charge memo the first respondent held that there were no documentary proof to show that the misconducts were committed by the second respondent.

8. He would further submit that, when the first respondent has held several charges under the first and second charges memos are proved, then on the basis of charges been not proved the second respondent cannot be reinstated into the services. Therefore, the order of the first respondent warrants to be interfered with as the Manager and the second respondent are



W.P.No.23123 of 2005

joint custodians of the bank, they are jointly and severably held liable for the misconducts and prays to set aside the order of the first respondent directing reinstatement and seeks to allow this Writ Petition.

9. Countering his arguments, the learned counsel for the respondents would submit that, the second respondent has joined in the services of the petitioner Bank as a clerk on 20.12.1978. During the year 1987, he was posted at Pethampalayam Branch. Apart from him one Branch Manager and one sub-staff alone were working in the said Branch. He would further submit that as per the circulars and directives in force, the clerk will have to perform the works of a cashier. He would submit that in the branches like the one where the second respondent was working, the Manager and Clerk will have to act as joint custodians. He would contend that, one K. Kanakaraj, who was the Branch Manager of the said branch, had himself looked after the cashier work and the second respondent was asked to perform other works.

10. He would further submit that, as a joint custodian the second



W.P.No.23123 of 2005

respondent was responsible for physical cash placed in safe. Only at the end of the day's transaction and for the number of jewel bags and number of stationery books, but the second respondent was not responsible for the quantities or the number of jewels in the jewel bags and he is not responsible for the number of leaf in the stationery books. After the transfer of Kanagaraj, he had made an attempt to burn the records of the bank. On such incident the Central Office has sent official to investigate the matter, only then it came to light that the Branch Manager Kanagaraj had committed several frauds and had misappropriated the bank's money. But the petitioner bank despite taking action against the said Branch Manager had issued charge memo dated 18.08.1997 to the second respondent alleging negligence and levelled six charges against him and stating that the then Branch Manager has committed frauds only due to the negligence of the second respondent.

11. He would further submit that, the alleged charges framed against the second respondent are for the misconducts that happened on 18.11.1995, first charge is that the second respondent has failed to verify



W.P.No.23123 of 2005

cash denomination book, Secondly, the other joint custodian the Manager had placed only Rs.95,000/- in the safe, and entered the same as Rs.1,15,000/- in the cash-in-and out register. Further the second respondent had failed to verify the actual cash placed in the safe. Thirdly, the second respondent did not verify and authenticate the entries in cash-in-and-out register on 28.12.1995 to 05.01.1996 as joint custodian of the bank branch. Fourthly, he did not ensure that the cash-in-and-out register was maintained on and after 25.04.1996. Fifthly, he did not verify the closing cash balance on 25.08.1997 kept in the safe and sixthly on 11.12.1996, the second respondent had written a demand draft to one customer, but on the same date he had failed to ensure the remaining draft leafs in the D.D book.

12. He would submit that, all the allegations levelled against the second respondent is a clear case of victimisation and he is made as a victim for the fraud committed by the Branch Manager for no fault of him. The documents furnished to the second respondent alleging various charges are not relevant. He would further contend that the petitioner bank has issued another charge memo dated 24.11.1998, wherein three charges were levelled



W.P.No.23123 of 2005

against the second respondent. The charges were that the second respondent had availed loan in the name of a third party, with a view to derive undue pecuniary benefits, secondly, he borrowed money from Bank of India and failed to repay and thirdly, the second respondent took a chit from one M/s. Sakthi Finance and failed to repay the finance and they had filed a criminal case for dishonour of cheque which has affected the image of the bank.

13. He would further submit that, taking disciplinary action for the private conduct and affairs has nothing to do with the employment of the second respondent with the bank. The first respondent has held that there was no evidence to prove that the loan taken by the third party was by pledging the jewels which belongs to the second respondent. He would submit that, on the charge against the borrowings from other financial institutions it was held that there is no specific Rule or Clause in the Bipartite Settlement which prohibits external borrowings by the employees of the Bank and that in the absence of such Rule, it cannot be said that the borrowings from outsiders will amount to misconduct. He would further contend that the first respondent has held that the punishment of dismissal



W.P.No.23123 of 2005

for the alleged acts of negligence was disproportionate and excessive and had directed the reinstatement of the second respondent with no back wages and imposition of punishment of stoppage of three annual increments.

14. He would submit that, the first respondent has given a findings that the second respondent has not involved in the fraud committed by the Manager Kanagaraj, but he was negligent in his duties, and the Tribunal had imposed a punishment of stoppage of annual increment for three years with cumulative effect and the first respondent has also directed to reinstate the second respondent into service with continuity of service and other attendant benefits but without any backwages. Hence, seeks to dismiss this Writ Petition.

15. I have heard the submissions on the behalf of the respective parties and have perused the materials available on record before this Court.

16. After hearing the arguments made by the respective counsels and



W.P.No.23123 of 2005

considering the fact that the 1st respondent/ Tribunal had given a specific finding that there has been no proof in respect of certain charges as against the 2nd respondent and had directed the petitioner to produce the records relating to the disciplinary proceedings. Pursuant to the said direction, the relevant records are also produced before this Court.

17. I have perused the departmental proceedings in respect of the charges that had been framed against the 2nd respondent. From a through reading of the same, I am of the view that the findings and the reasonings arrived at by the Tribunal in holding that certain charges to have not been proved has been made on appreciation of the relevant facts. In such event, I do not wish to re-appreciate the findings given by the Tribunal in exercise the power under Article 226 of the Constitution of India.

18. Therefore, the only question that looms large upon this Court is as to whether the 1st respondent/ Tribunal was right in concluding that the punishment that has been imposed by the petitioner on the 2nd respondent was shockingly disproportionate to the proved charges leveled against him and if so, whether the Tribunal was right in coming to conclusion of the



W.P.No.23123 of 2005

modified punishment imposed by the Tribunal.

WEB COPY

19. The proved charges against the 2nd respondent was that he had been negligent in doing his duties being the joint custodian of the properties of the Bank which allowed the then Manager of the Bank to commit a fraud on the Bank. It is not the case of the Bank that the 2nd respondent had committed the fraud along with the then Manager or he was the beneficiary of the fraud committed by the then Manager. Since, he is the joint custodian along with the then Manager, definitely he was negligent in performance of his duties. Since, the 2nd respondent had been negligent in performance of his duties, definitely, he is liable to be proceeded with departmentally and inflicted with a punishment. I also find no infirmity or perversity or illegality in the conclusion arrived at by the 1st respondent/ Tribunal to hold that the punishment inflicted upon the 2nd respondent on the charges that it had held to be proved is shockingly disproportionate.

20. When that be so, I am of the view that the Tribunal was right in exercising its power under Section 11A of the Industrial Disputes Act, 1947. Since, having found that the punishment was shockingly



W.P.No.23123 of 2005

disproportionate directed reinstatement with continuity of service but without the backwages of the 2nd respondent. It had also further inflicted a punishment of stoppage of increment for 3 years with cumulative effect. The 2nd respondent had not challenged the order of the Tribunal.

21. It has been brought to the notice of this Court that the 2nd had died in the year 2010 and he was aged about 62 years at the time of his death. The impugned award passed by the Tribunal was made as early as in the year 2005. Further, considering the fact that the order of reinstatement having been passed in the year 2005, having held that the 2nd respondent was not entitled to any backwages which remained unchallenged by him and by considering the death certificate, the age mentioned in the death certificate, it would be impediment that if the 2nd respondent had been reinstated into service he would have put in a further service of only 1 year from the date of the Award. As he would have reached the age of superannuation in the year 2006 itself.

22. The learned counsels appearing on either side had relied upon various judgments in support of their arguments. I do not propose to deal with them for brevity as they may not be relevant to the facts of the present



W.P.No.23123 of 2005

case.

WEB COPY

23. Since, I have come to the conclusion that there was no infirmity or perversity in the Award passed by the Tribunal. Considering the fact that the 2nd respondent would have superannuated pending this Writ Petition and that he had also passed away in the year 2010, I do not wish to interfere with the order of reinstatement and continuity of service and the stoppage of increment for three years with cumulative effect passed under the impugned award. But, since, the petitioner had not been reinstated in service and that he would have also superannuated pending this Writ Petition, I hold that he would not be entitled to any salary for the said period on the basic principle “no work, no pay”. Since, I have upheld the order of reinstatement, the petitioners are directed to calculate only the terminal benefits that would have accrued to the 2nd respondent including any pensionary benefits to him and pay the same to the legal heirs of the deceased 2nd respondent who have been impleaded as respondents 3 to 6 in this Writ Petition and pay the same within a period of eight (8) weeks from the date of receipt of a copy of this order.



W.P.No.23123 of 2005

24. With the aforesaid modification to the Award, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions is closed.

31.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba
To
The Presiding Officer,
Central Govt Industrial Tribunal,
Cum Labour Court,
Shastri Bhavan,
26, Haddows Road, Chennai – 600 006.



WEB COPY



W.P.No.23123 of 2005

K.KUMARESH BABU.,J.

gba

W.P.No.23123 of 2005
and W.M.P.No.1672 of 2008

31.01.2024