



Rev.Appl.No.212 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Rev.Appl.No.212 of 2022

N.Nityanandham

... Petitioner

Vs.

1.The Kosalapuri Primary
Agricultural Coop. Bank Limited,
K.Paramathi Via.,
Karur Taluk and District.

2.The Labour Court,
Trichy.

... Respondents

Prayer : Review Application filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the order dated 23.03.2022 made in W.A.No.1419 of 2023 on the file of this Court.



Rev.Appl.No.212 of 2022

For Petitioner : Mr.K.V.Ananthakrishnan
For R1 : M/s.P.V.Rajeswari
R2 : Labour Court

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This Review Application is filed to review the order of this Court dated 23.03.2022 made in W.A.No.1419 of 2023.

2.Brief facts that are necessary for the purpose of this Review Application are as follows :

2.1.The review petitioner originally joined in the 1st respondent Cooperative Bank as a Secretary in the year 1974. The petitioner, while he was in service, was suspended from service on 12.04.1991. Subsequently, a charge memo was issued by the President of the Society to the petitioner on 29.04.1991. Though the petitioner made several representations for permitting the petitioner to peruse the records, he was not permitted. An Enquiry Officer was appointed. The petitioner made several allegations against the conduct of disciplinary proceedings against the petitioner. The



second show cause notice was issued on the basis of the report of the Enquiry Officer on 05.06.1991. Despite the petitioner sending a reply, order of termination dated 22.06.1991 was sent to the petitioner.

2.2.After failure of conciliation in 1992, the petitioner raised an Industrial Dispute in I.D.No.291 of 1992 challenging the order of termination on various grounds. I.D.No.291 of 1992 was dismissed by order of Labour Court on 10.06.1999.

2.3.The petitioner challenged the order of the Labour Court in a writ petition in W.P.No.2139 of 2000. Learned Single Judge of this Court allowed the writ petition in the following lines :

“38.In the result, the writ petition is allowed and the order passed by the Labour Court on 10.06.1998 and the order passed by the second respondent on 22.06.1991 are set aside.

39.It is not known whether the writ petitioner has attained the age of superannuation and if he has not attained the age of superannuation, the second respondent is directed to reinstate the petitioner with continuity of service. In so far as the backwages are concerned, considering the fact that the writ petition is allowed on the ground of not affording adequate opportunity, the second respondent is directed to pay 50% of the backwages from the date of



termination to till date. Though normally liberty is given to the management to proceed with the enquiry afresh from the stage where it was found to be defective, in this case, I am not inclined to grant that opportunity as the termination order was passed on 22.06.1991 and at this stage, it is not possible to proceed with the enquiry from the stage of submitting the writ petitioner's explanation to the charge sheet issued on 29.04.1991, that after inspecting the documents relating to the period March 1991.”

2.4. Aggrieved by the same, the 1st respondent preferred an appeal in W.A.No.1419 of 2013. By order dated 23.03.2022, the order of the learned Single Judge was confirmed. However, while confirming the order of the learned Single Judge, this Court, taking note of the fact that the petitioner had attained the age of superannuation, directed the 1st respondent to pay a sum of Rs.2,84,702.30p representing 50% of the backwages as ordered in the writ petition, after deducting the amount which is already deposited pursuant to an interim order passed in the Writ Appeal.

2.5. Seeking review of the order in the writ appeal in W.A.No.1419 of 2013, dated 23.03.2022, the above Review Application is filed.



Rev.Appl.No.212 of 2022

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3.Learned counsel appearing for the review petitioner submitted that the petitioner is entitled to get a sum of Rs.16,75,133/- as per the calculation of the petitioner and that the order of this Court directing to pay a sum of Rs.2,84,702/- towards 50% of the backwages, for the period during which the petitioner was out of employment on the wrong assumption of facts, has to be modified. Learned counsel pointed out that the learned Single Judge has categorically held that the petitioner is entitled to backwages. However, the Division Bench, while disposing of the Writ Appeal, found that the petitioner cannot be reinstated in service. It is only in lieu of reinstatement, 50% backwages was given to the petitioner.

4.Learned counsel appearing for the 1st respondent, to sustain the order of Division Bench, pointed out that the issue was in fact considered on the basis of the stand taken by the 1st respondent before the Division Bench while passing the order.

5.Question is not whether the petitioner is entitled to backwages or not. That being concluded by this Bench, the quantum should be based on actual wages for the



period, which is in tune with the conclusion reached by this Court. Having regard to the findings of the learned Single Judge while allowing the writ petition, which were also confirmed by the Division Bench, this Court, at no stretch of imagination, could think that the quantum of backwages should be calculated on the basis of salary that was paid to the petitioner at the time when he was terminated from service. This plea is not supported by any of the findings of the learned Single Judge or by this Court in the order which is sought to be reviewed.

6.The scope of review is limited. Learned counsel for the petitioner confined his submissions only to the quantum that was found in the order in the Writ Appeal which is based on the erroneous input by the learned counsel appearing for the 1st respondent during the course of hearing. This Court finds that the petitioner is entitled to backwages by calculating 50% of the actual salary receivable by him along with all monetary benefits, from the date of termination till his retirement. Even though the learned counsel appearing for the petitioner was willing for a settlement, the 1st respondent was not inclined to accept a reasonable amount which the petitioner has suggested.



Rev.Appl.No.212 of 2022

WEB COPY

7.It is to be noted that the petitioner was out of employment from 1991 to 2019, for almost 18 years. Therefore, this Court finds that the order suffers from an error apparent on the face of the record by fixing the quantum without any rational basis. The petitioner is entitled to 50% of backwages that can be calculated only on the basis of actual amount payable to petitioner by way of salary if he was in service.

8.For this reason, this Review Application is allowed. The 1st respondent is directed to calculate the amount payable to the petitioner as per his eligibility, i.e., 50% of the pay and other monetary benefits payable for the period during which he was out of employment pursuant to the order of termination. It is made clear that the petitioner is entitled to increments and other benefits like revision of salary in tune with other employees of the Cooperative Society. The 1st respondent is directed to consider the statement of the petitioner which he has submitted before this Court. No costs.

(S.S.S.R., J.) (S.S.K., J.)
28.08.2024

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Rev.Appl.No.212 of 2022

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