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W.A.No.3050 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL**

W.A.No.3050 of 2023

N.S.Palanisamy

... Appellant

Vs.

1.Erode District Central Cooperative Bank Ltd.,
rep.by its Special Officer,
Bhavani Main Road, Karungalpalayam,
Erode 638 003.

2.The Presiding Officer,
Labour Court, Salem.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent against
the final order dated 21.02.2023 passed by this Court in W.P.No.7063 of
2016.

For Appellant : Mr.S.Sundar Narayan

For Respondent : Mr.L.S.M.Hasan Fizal,
Standing Counsel for R1



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J U D G M E N T

(Judgment of the Court was made by J.NISHA BANU,J.)

Challenging the order dated 21.02.2023 passed by the learned Judge of this Court made in W.P.No.7063 of 2016, by which, the award of the Labour Court, directing the Management to reinstate the appellant herein together with 50% of backwages, continuity of service and other attendant benefits, was modified by setting aside the award of 50% of the backwages and directing the Management to disburse the entire retirement benefits from the date of dismissal till date of his superannuation by extending the continuity of service and other attendant benefits within a period of four weeks from the date of receipt of a copy of the said order.

2. The appellant is an employee working under the 1st respondent Bank. Alleging unauthorised absence of 170 days, the 1st respondent had levelled charges against the appellant through a charge memo dated 25.08.2000. An enquiry was conducted, in which, the charges were held to be proved. A second show cause notice dated 17.11.2005 was issued, to which, the appellant had given his explanation. Being not satisfied



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with the explanation given by the appellant, the 1st respondent bank imposed punishment of dismissal from service on 26.06.2006. The appellant raised industrial dispute in I.D.No.31 of 2007. The Industrial Labour Court passed an award directing the management to reinstate the appellant together with 50% of back wages, continuity of service and other attendant benefits. Challenging the same, the Management filed a writ petition in W.P.No.7063 of 2016. The Writ Court, modified the award, by setting aside the award of 50% of the backwages and directed the Management to disburse the entire retirement benefits from the date of dismissal till date of his superannuation by extending the continuity of service and other attendant benefits within a period of four weeks from the date of receipt of a copy of the said order. Aggrieved by the said order insofar as rejection of backwages, the present appeal has been filed.

3. (i) Learned counsel for the appellant would state that the Medical Board before whom the appellant was directed to appear on 24.10.2000 had not rejected the medical leave application filed by the appellant but directed him to join duty. Learned counsel would further



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submit that the learned Judge erred in setting aside the grant of 50% of the backwages awarded by the Labour Court on the ground that the appellant had not produced any document for his unauthorized absence but the fact remains that the 1st respondent Bank had marked Ex.M4 to M11 before the Labour Court, the leave applications filed by the appellant with medical certificates issued by the doctor certifying that the appellant was sick.

(ii) Learned counsel would further state that the learned Judge failed to appreciate that the Labour Court rejected the contention of the Management that the appellant availed leave on false premise and the leave applications were false and fabricated and came to a categorical conclusion that the appellant had availed leave for medical reason by giving proper leave applications as he was unwell. By accepting the unsubstantiated plea of the 1st respondent Bank, the learned Judge ought not to have set aside the payment of backwages.

(iii) Learned counsel for the appellant would further state that the appellant was acquitted of all the charges in the criminal case lodged by



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his sister in law before the Judicial Magistrate No.II, Gobichettipalayam, by judgment dated 21.10.2003 in C.C.No.105 of 2000 and there was no basis for the 1st respondent Bank to accuse the appellant of any charges of misconduct. Learned counsel would further state that once the termination is held to be illegal, the learned Judge ought to have directed the 1st respondent Bank to disburse the entire backwages. Hence, he would pray to allow the writ appeal.

4. Per contra, the learned Standing Counsel appearing for the respondent bank would state that when the enquiry was conducted in accordance with the principles of natural justice and it was substantially proved before the Labour Court that the unauthorised absence of the appellant respondent was not justified, the Labour Court ought not to have directed for reinstatement of the appellant in service together with 50% backwages and other benefits. The termination order was passed on the basis of the charges framed and the enquiry conducted according to the principles of natural justice. The order of dismissal passed by the respondent Bank is just and proper considering the gravity of misconduct committed by the appellant. However, the Labour Court had passed an



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award taking into consideration that when the respondent Management had treated the period of absence as 'no work, no pay', the imposition of penalty of dismissal from service would amount to second punishment and on that basis alone, the order of dismissal was set aside. The appellant is not entitled for backwages. Therefore, he would pray to dismiss the appeal.

5. Heard both sides and also perused the materials available on record.

6. It is the contention of the appellant that while he was working in Kunnathur Branch at Erode District Central Co-operative Bank Ltd., he fell ill and applied for Medical leave from 08.05.2000 to 13.05.2000 enclosing doctor's certificate. Subsequently, he applied for extension of leave from 14.05.2000 to 20.05.2000 along with medical certificate. Since he did not recover from illness, again he sought for extension of leave from 22.05.2000 to 29.05.2000. He had submitted medical certificate for that period also. Since he was suffering from peptic ulcer, he took treatment from a Homeopathy Medical Practitioner. He was



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continuously undergoing treatment from 30.05.2000 till 30.08.2000.

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7. It is not in dispute that the appellant was absent from duty between 08.05.2000 and 30.08.2000. All leave applications were submitted by the appellant / workman with necessary medical certificates by a competent doctor and neither the Medical Board nor the Labour Court came to a conclusion that the appellant had taken leave on a false premise. The Medical Board did not give any opinion regarding the permissibility of sanctioning medical leave based on the certificate issued by the homeopathy medical practitioner, but directed the appellant to join duty.

8. Admittedly, the 1st respondent Bank had marked Ex.M4 to M11 before the Labour Court, the leave applications filed by the appellant with medical certificates issued by the doctor certifying that the appellant was sick. Further, once the learned Judge held that the termination is illegal and also held that the award for reinstatement with continuity of service and other attendant benefits is justifiable, the learned Judge ought to have sustained the payment of 50% backwages.



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9. It is the settled legal position that if the termination of an employee was found to be illegal and arbitrary, the relief of reinstatement with full back wages would ordinarily follow. However, in the instant case, considering that the absence of the appellant is inordinate number of days i.e., 170 days, the Labour Court had awarded 50% backwages, which, in our considered opinion, is just and proper. The Writ Court is not justified in setting aside the 50% backwages awarded by the Labour Court.

10. Though the appellant has prayed to set aside the order dated 21.02.2023 passed in the writ petition and to allow the writ appeal by directing the 1st respondent Bank to pay full backwages, we are of the opinion that ends of justice would be met, if the award of the Labour Court is confirmed.

11. Accordingly, the Writ Appeal is allowed, setting aside the order passed in W.P.No.7063 of 2016 dated 21.02.2023 and the award passed in I.D.No.31/2007 dated 09.02.2015 is confirmed. The 1st



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respondent Management is directed to comply with order passed by this Court within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

(J.N.B,J.) (P.D.B., J.)
04.07.2024

sk/vsi

To
The Presiding Officer,
First Additional Labour Court,
Chennai.



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J. NISHA BANU, J.
and
P.DHANABAL, J.

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