

**(2003) 01 SC CK 0004**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 4141 Of 2001**

Hissar Central Co-operative Bank Ltd.

APPELLANT

Vs

Kali Ram

RESPONDENT

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**Date of Decision :** 14-01-2003

**Acts Referred:**

**Citation :** (2005) 104 FLR 108 : (2004) 1 LLJ 232 : (2003) 10 SCALE 476 :  
(2003) 9 SCC 221 : (2003) SCC(L&S) 1229

**Hon'ble Judges :** P. Venkatarama Reddi, J;K. G. Balakrishnan, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

1. The respondent herein was the Secretary to the Society, Hissar Central Co-operative Bank. Series of charges were framed against him alleging that he had caused embezzlement of money of the Society. The enquiry officer found him guilty of the charges and he was thereafter removed from service. The matter by way of reference reached the Labour Court where the dismissal of the respondent from the Society was challenged. The Labour Court found that the enquiry was not done properly and there was no proof to the effect that the respondent had caused embezzlement and the respondent was ordered to be reinstated in service with full back wages.

2. The award passed by the Labour Court was challenged by the appellant Society before the High Court of Punjab and Haryana. When the matter was admitted, the Division Bench was pleased to issue notice only regarding the question of payment of back wages to the respondent. The award of the Labour Court directing the appellant to reinstate the respondent has thus become final.

3. Now, the question for consideration whether the respondent is, in fact, entitled to get full back wages from the date of the notice issued by him. The counsel for the appellant points out that in the award passed by the Labour Court, it is not stated that the respondent had not committed any irregularity rather, the

charges were not proved by producing satisfactory evidence. Our attention was also drawn to the reply filed by the respondent to the charge-sheet, wherein the respondent himself admitted that he omitted to make entry of receipt of certain amounts. It is also pertinent to note that there was a charge that the respondent had caused embezzlement of Rs. 8600 from the Society. As regards this allegation, the respondent in his reply stated that this amount was given to him as advance by the Society pursuant to a resolution passed by it. In the inquiry it was noticed that the resolution relied on by the respondent was found to be interpolated to the effect that the sum of Rs. 8600 as given as an Advance. The Labour Court also noticed this fact, but stated that there was no evidence as to who had made the interpolation of the resolution produced before the enquiry officer. The fact remains, that there was interpolation and it is reasonable to assume that the interpolation in the so-called resolution must have been done at the instance of the respondent as he is the sole beneficiary of it.

4. We are pointing out all these facts just to show that the respondent did not possess a clean record and his exoneration from all the charges was on the basis of reasonable doubt entertained by the Labour Court, These facts are relevant for the purpose of considering payment of full back wages. Counsel for the respondent contended that while ordering back wages, the only question that has to be considered is whether the employee while out of service was gainfully employed or not. But we do not think that that is the only matter to be looked into when ordering back wages. The nature of the charge, the extent of his involvement and whether his conduct has caused loss to the employer etc. are all relevant factors to be considered while granting back wages. In innumerable cases, this Court had kept in mind this principle while ordering back wages to the employees for the period they were out of employment. It is also to be noted that the appellant Society was not vigilant in adducing evidence before the Presiding Officer and the matter was prolonged for a long period. Reinstatement was also not effected by the appellant Society despite the fact that the matter became final in the High Court. Even the enquiry against the respondent was not done properly and it was without following the principles of natural justice.

5. Having regard to the facts and circumstances of the case, this is not a fit case where the respondent should have been given full back wages from December 3, 1991. The respondent was working in a Society where he was dealing with public money and if there is even the slightest evidence regarding the misappropriation of public money, the matter is to be viewed seriously. On an overall view, we direct that the back wages payable to the respondent shall be 25% of the amount due to him by way of back wages from December 3, 1991 till the date of reinstatement. The appellant shall pay the said amount to the respondent within a period of 8 weeks from today.

6. The appeal is disposed of accordingly.