

(2009) 06 MAD CK 0243

In the Madras High Court

Case No : Writ Appeal No. 3900 of 2002 and W.P. No. 39953 of 2002

Kangayam Co-operative Primary Agricultural and Rural
Development Bank Ltd.

APPELLANT

Vs

A.P. Poojamani and The Joint Registrar of Co-operative
Societies/Revisional Authority, Erode Region

RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 06 MAD CK 0243

Hon'ble Judges : R. Subbiah, J;P.K. Misra, J

Bench : Division Bench

Advocate : T.S. Gopalan, for C. Karthick, for the Appellant; K. Prem Kumar, for Respondent-1, for the Respondent

Judgement

P.K. Misra, J.—Heard Mr. T.S. Gopalan for the appellant and Mr. K. Prem Kumar for Respondent No. 1.

2. Appellant is a Co-operative Primary Agricultural and Rural Development Bank. Respondent No. 1 was appointed as a clerk under the Bank on 23.5.1997 and subsequently regularized in the post of Supervisor. The Special Officer of the Appellant Bank passed an order dated 31.8.2001 retrenching Respondent No. 1 from service. At that stage, Respondent No. 1 filed W.P. No. 17033 of 2001. The High Court by order dated 19.9.2001, directed Respondent No. 1 to file a Revision u/s 153 of the Tamil Nadu Co-operative Societies Registration Act and, accordingly, a Revision was filed before the second respondent, who by order dated 18.1.2002 allowed the Revision and set aside the order of retrenchment and directed reinstatement of Respondent No. 1 in service by observing that the provisions of Section 25-F of the Industrial Disputes Act, 1947, had not been complied with. It was further observed that prior permission of the Labour Department had not been obtained and a report relating to action had not been submitted to the Joint Registrar. Thereafter, Respondent No. 1 made several

representations during the month of April and May, 2002 for reinstating him in service. But, since the Bank declined to reinstate, Respondent No. 1 filed W.P. No. 29570 of 2002. Such writ petition was disposed of on 9.8.2002 directing Respondent No. 1 to implement the order of the Joint Registrar within 15 days by reinstating the person concerned with all backwages and other attendant benefits. Thereafter, Respondent No. 1 made a representation on 26.8.2002 for reinstatement in service. The appellant passed an order of reinstatement on 9.9.2002 without backwages and Respondent No. 1 joined on 19.9.2002. The appellant Bank passed a fresh order of retrenchment from service on 16.10.2002 on the ground of financial crunch in the bank, by enclosing a cheque for a sum of Rs. 37,950/- with purported compliance of Section 25-F of the Industrial Disputes Act. Respondent No. 1 filed W.P. No. 39974 of 2002 against such order of retrenchment, dated 16.10.2002. The appellant filed the present appeal against the order, dated 9.8.2002 in W.P. No. 29570 of 2002. On the very next day, the present Appellant filed W.P. No. 39953 of 2002 challenging the order of the Joint Registrar, namely, Respondent No. 2, dated 18.1.2002. Respondent No. 1 filed Contempt Appln.No.827 of 2002 alleging that the order in W.P. No. 29570 of 2002, which had directed reinstatement with backwages, had not been complied with inasmuch as the backwages and the attendant benefits had not been given. On 1.11.2002, W.P. No. 39974 of 2002 filed by the present Respondent No. 1 challenging the second retrenchment order, dated 16.10.2002, was dismissed on the ground that the writ petition was not maintainable against the Society. Even though a Review Petition was filed on 31.1.2003, such Review Application, which was not numbered, has apparently not been pursued by the present Respondent No. 1. On 15.10.2004, Contempt Appln.No.827 of 2002 was closed in view of the stay order dated 23.1.2003 passed in the present writ appeal. However, it had been indicated that the applicant (present Respondent No. 1) would revive the contempt application in case the decision of the appellate forum, namely, the present writ appeal, is decided in his favour.

3. It appears that during pendency of all these litigations, Respondent No. 1 has again been reinstated by the appellant Bank, subject to the result of the present Appeal.

4. The writ appeal is against the order of the learned single Judge directing reinstatement with backwages. The connected writ petition, namely, W.P. No. 39953 of 2002, has been filed by the very same Bank challenging the order passed by the Joint Registrar, dated 18.1.2002, u/s 153 of the Tamil Nadu Co-operative Societies Act. It is therefore obvious that result of the writ appeal would be dependent upon the result of the writ petition. It is therefore more appropriate to consider such writ petition before considering the appeal.

5. The main contention in the writ petition is to the effect that Section 25-F of the Industrial Disputes Act had been complied with by the Bank inasmuch as the Bank while issuing notice of retrenchment had also enclosed the amount payable by deducting the admitted amount which was payable by the employee to the

Bank on account of various loans and advances availed by the employee. It is to be remembered that the Joint Registrar had passed the order on 18.1.2002 and thereafter the order was passed in W.P. No. 29570 of 2002 directing the Bank to implement such order and also to pay backwages. In the counter affidavit, which was filed in W.P. No. 29570 of 2002, the Bank had admitted the basic averments in W.P. No. 29570 of 2002 and had stated that it was waiting for the orders of the Deputy Registrar of Co-operative Society to implement the order of the Joint Registrar of the Co-operative Society. Thereafter the Bank on 9.9.2002 had reinstated Respondent No. 1 in service. In other words, the Bank had already accepted the order and thereafter filed the writ petition and that too after a lapse of about nine months. That apart, the Bank had already passed a fresh retrenchment order on 16.10.2002. Under these circumstances, there is no escape from the conclusion that the Bank had already waived its right to challenge the order of the Joint Registrar. Under such circumstances, we do not find any scope to interfere with the order passed by the Joint Registrar.

6. The present Writ Appeal is directed against the order passed by the learned single Judge directing reinstatement with backwages. However, subsequently, a fresh order of reinstatement having been passed by the Bank, the basic order in W.P. No. 29570 of 2002, which had only directed implementation of the order of the Joint Registrar, had already been complied with. The only other question is relating to backwages. It is not in dispute that during pendency of such appeal, Respondent No. 1, even though he had been subsequently retrenched, was again been taken back in service. Under these changed circumstances, we do not think it would be appropriate to insist upon compliance with the direction relating to payment of backwages.

7. In the result, both the writ appeal and the writ petition are disposed of keeping in view the subsequent reinstatement of Respondent No. 1 in service. It is made clear that it is not necessary for the appellant to pay backwages as per the earlier direction.

8. With the above observations and directions, the writ appeal and the writ petition are disposed of. There is no order as to costs.