
(2013) 02 MAD CK 0014

In the Madras High Court

Case No : W.A. No. 515 of 2011 and M.P. No. 1 of 2011

Management, Thirumalaipatty Primary Agricultural Co-operative Bank Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2013) 3 MLJ 397

Hon'ble Judges : M.M. Sundresh, J;M. Jaichandren, J

Bench : Division Bench

Advocate : K. Selvaraj, for the Appellant; N. Manokaran, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—This writ appeal has been filed by the appellant, who is the second respondent in the writ petition, challenging the order

passed by the learned single Judge made in W.P. No. 1623 of 2008, dated 29.6.2010, by which, the award passed by the first respondent has

been set aside by reinstating the Respondent No. 2 without backwages. The Respondent No. 2 was working as a salesman in the appellant's

Society. Two separate charge memos were issued to the second respondent on 3.9.1999 and 25.9.1999. The charges are that of

misappropriation, temporary misappropriation and falsification of records. An order of termination was passed against the Respondent No. 2 by

the appellant on 1.4.2000. It was also confirmed by the Respondent No. 1 by dismissing the Industrial Dispute raised. The Respondent No. 2 filed

a writ petition before this Court which was allowed in part, by ordering reinstatement without backwages. Challenging the same, the appellant has

come forward to file this appeal.

2. The learned counsel for the appellant has submitted that sufficient opportunities were given before the domestic enquiry. The order of dismissal has been passed on a consideration of relevant materials. The respondent did not produce sufficient materials to prove his innocence. Hence the order of the learned single Judge is liable to be set aside.

3. Per contra, the learned counsel for the second respondent would submit that the other two persons, who have been working as cashier and secretary had paid the misappropriated amount is not in dispute. The further fact that a sum of Rs. 7,117/- is also paid subsequently, is also not in dispute. It is also not the duty of the second respondent to remit the cash and in any case the appellant has not produced any material to substantiate the charges. Hence, considering the above said facts, the learned single Judge has rightly set aside the award by modifying the same to the effect of reinstatement.

4. We have perused the order of the learned single Judge. It is seen that the secretary and cashier of the appellant have repaid the misappropriated amount of Rs. 20,236.26. Consequent on the said payment, the charges against them have been dropped. In so far as the second respondent is concerned, he was only working as a salesman. Even in so far as the sum of Rs. 7,117/- is concerned, there is no sufficient material to substantiate the allegation, more so, the said amount has also been repaid. Furthermore the appellant has not produced the Daily Register maintained in the Bank to prove the material alteration. The Respondent No. 2 cannot be expected to prove the remittance as it is not his job. The appellant has also not produced the cash Register. It is trite law that in a departmental enquiry the management has to prove the charges against the delinquent officer which has not been done so in this case. Moreover the mere fact that the cashier and the Manager had paid the amount by itself would show that the charge of misappropriation against the Respondent No. 2 cannot be sustained. Taking into consideration of the above said facts, we do not find any ground to interfere with the order of the learned single Judge. Hence, the writ appeal is dismissed. However, considering the facts and circumstances of the case, the appellant is directed to reinstate the second respondent into service without backwages, within a period of six

weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.