
(2006) 10 MAD CK 0199

In the Madras High Court

Case No : Writ Appeal No's. 1138 of 2001 and 61 of 2003 and Writ Appeal Miscellaneous Petition No's. 1666 and 1667 of 2006

North Arcot District Central Co-operative Bank Ltd.

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 20-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 113 FLR 968

Hon'ble Judges : P.R. Shivakumar, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Parthiban and J. Saravana Vel, for the Appellant; J. Saravana Vel and R. Parthiban, for the Respondent

Judgement

D. Murugesan, J.—Both the appeals arose out of a common order made in Writ Petition No. 19871 of 1993, dated 30 August 2000. For the purpose of disposal of the writ appeals, we only refer the pleadings in Writ Appeal No. 1138 of 2001.

The appellant is the North Arcot District Central Co-operative Bank, Ltd. The second respondent was issued with two chargememo, dated 16 October 1975 and 23 December 1976. In chargememo, dated 16 October 1975, the second respondent was charged for 16 misconducts and in the additional chargememo, dated 28 December 1976, he was charged for 8 misconducts. As the explanation was not satisfactory, he was dismissed from service.

2. It appears that the second, respondent who was working as a Secretary of the appellant Co-operative bank filed an appeal before the Joint Registrar and the same was dismissed. Questioning the order made in the appeal, he filed a revision before the Government, which was also rejected. Thereafter, he preferred a review before the Government and by order, dated 12 March 1984, the Government referred the matter to the Labour Court for adjudication as to the non-employment of the second respondent.

3. As preliminary objection has been initially raised, Labour Court decided the said issue that the enquiry was not fair and proper. Hence the Labour Court permitted the appellant-bank to lead evidence. Accordingly, two witnesses by name Sri Venkatesan and Varadan were examined and as many as 20 exhibits were marked. On behalf of the second respondent, he examined himself as witness. But he did not mark any document. The Labour Court found that the order of dismissal was illegal and consequently awarded reinstatement into service. Questioning the said award, the appellant had preferred a writ petition. The learned Judge while partly allowing the writ petition, confirmed the award of reinstatement, but restricted the back-wages only to 50 per cent. Aggrieved by the said award the bank has preferred W.A. No. 1138 of 2001. We may also add here that questioning the very same order of the learned Single Judge, the second respondent also has filed W.A. No. 61 of 2003 inasmuch as the reduction of the back-wages to 50 per cent.

4. We have heard Sri R. Parthiban, learned Counsel appearing for the appellant and Sri J. Saravanavel, learned Counsel appearing for the second respondent.

5. Sri Parthiban, learned Counsel appearing for the appellant firstly pointed out that inasmuch as the second respondent was working as a Secretary of the appellant-bank, he is not a workman and the Labour Court would not have jurisdiction to adjudicate and pass an award. In this context, the learned Counsel would refer the judgment of this Court reported in *P. Baluchamy v. State* (represented by the Secretary to Government, Co-operative, Food and Consumer Protection Department, Chennai, and Ors. 2003 (3) LLN. 337 and contended that the Secretary of Co-operative Bank is not a workman and the provisions of Industrial Disputes Act are not applicable. Secondly, the learned Counsel would contend that the second respondent has in fact admitted almost all the charges and the Labour Court has miserably failed to take note of the same and has given perverse finding as if charges were not proved. The learned Single Judge in the writ petition has correctly appreciated the stand of the appellant and found that the charges are proved. Having found that the charges are proved, the learned judge ought not to have continued the award.

6. Per contra, learned Counsel appearing for the second respondent would submit that inasmuch as the appellant-bank has not raised the question of jurisdictional the Labour Court to try the dispute so far, he may be allowed to raise such a dispute in the appeal stage. In so far as the question of second respondent's reinstatement, learned Counsel would submit that the Labour Court has in fact factually found that the charges were not proved and such a finding cannot be interfered by this Court in exercise of the power under Article 226 of the Constitution of India, as this Court does not sit as an appellate Court and re-appreciate the evidence.

7. We have given our anxious consideration to the above submissions.

8. In so far as the first contention of the appellant is concerned, there is no

dispute that the second respondent was working as a Secretary of the appellant-bank, as it could be seen from the chargememo itself wherein in Para. 17 of the chargememo, dated 16 October 1975, it is stated as follows:

From the above, it is clearly understood that the Secretary has restored to not only adjustment of loans but also misappropriation of funds of the society. As per his own statement, he has to settle a sum of Rs. 15,000 to the society.

9. The stand of the appellant-bank itself was that the second respondent was working age Secretary in the bank when the chargememo was pending. This has not been disputed by the respondent in his reply and factually he was working only as a Secretary of the appellant-bank at the relevant point of time, Hence, on the basis of the judgment of this Court reported in 2003 (3) L.L.N. 337 (vide supra), referred to above the second respondent cannot maintain industrial dispute on the ground that he is a workman. Nevertheless, the issue as to whether such a question could be allowed to raise at this stage is a matter for further consideration.

10. The learned Counsel, appearing for this appellant had brought to our notice the judgment of the Supreme Court reported in Union of India (UOI) and Others Vs. Upper Ganges Sugar and Industries Ltd., . In fact, in that case the Supreme Court was considering an issue arose under Central Excise Rules. While the question as to whether any provision under the Central Excise and Salt Act for payment of interest was made, without the same being raised on an earlier occasion, the Supreme Court entertained such a plea on the ground that any legal contention and any questions of law can be entertained as the same cannot be ignored by the Court even though such ground has not been raised in S.L.P.

11. However, we are afraid whether such judgment could be pressed into service on the facts of this case. Firstly, the Labour Court had adjudicated the dispute only on a reference made by the State Government. The appellant-bank has not questioned the reference so far and has submitted itself to the adjudication. Secondly, this contention was not at all raised in the counter and was not put in issue before the Labour Court and there was no adjudication, Further, the appellant-bank has not raised this as a ground before the learned Single Judge even in the memorandum of grounds of appeal. The appellant has not chosen to raise this as one of the grounds. Only at the time of argument, the learned Counsel for the appellant has contented that he is entitled to raise this ground though he could have allowed the Counsel to raise tills issue ever at the appellate stage, as there cannot be any impediment for raising any question of law even at the appellate stage, but for the facts which we have stated above such order of reference was not questioned and the same hart become final and on the basis of that, the adjudication was made, which ultimately ended in writ appeal. We are not inclined to entertain such plea at this stage.

12. In so far as the second contention is concerned, our attention is drawn to the explanation given by the second respondent for each of the charges. The second

respondent had submitted his explanation and for almost all charges, he has accepted the charges. In fact, he had proceeded to reply the delay in remitting the amount, which he ought to have remitted in time was only due to mistake. Though this Court cannot re-appreciate the evidence, as this Court sit as an appellate authority over the orders of the Labour Court are Industrial Tribunals, considering the fact that the second respondent had himself admitted the Labour Court has totally ignored and failed to consider those explanations and no finding is rendered. Secondly, on behalf of the appellant-bank, two witnesses by name Venkatesan and Varadan were examined. We have perused the evidence let in by those two individuals. Having specifically deposed the involvement of the second respondent in the misconduct by co-relating their evidence to the exhibits marked. In fact the evidence of Venkatesan is to the effect that the second respondent has failed to obtain a pronote from one Kuppusamy, who has availed loan on 31 May 1974. as per Exhibit M-20 due to failure to obtain the pronote, the arbitration proceedings initiated by the appellant-bank had failed. Considering all the above only, the learned Judge has found that the charges are proved. In our considered view, when once this Court comes to the conclusion that the charges are proved the imposition of punishment ought to have been confirmed. As we have found on facts that the finding of the Labour Court in representing that the charges are not proved is perverse, as such finding does not reflect the actual evidence placed before the Labour Court, equally when once the learned Judge has found that the charges were proved, the writ petition at the instance of the appellant-bank ought to have been allowed. Secondly, the award of reinstatement with back-wages should have been set aside, There is absolutely no reason by the learned Single Judge as to the confirmation of the award by restricting the back-wages only to 50 per cent.

13. For all the above reasons, we are of the considered view that when once the charges are held to be proved, the award of reinstatement as well as 50 per cent back-wages has to be set aside. However, we arcs told that pending proceedings, the second respondent, after attaining the age of superannuation, retired and died. The Lrs are brought on record by our order today. Against, the writ petition is allowed in respect to setting aside the order of the learned Single Judge in directing the appellant-bank to pay 50 per cent of the back-wages to the legal heirs of the second respondent. Writ Appeal No. 1136 of 2001 is allowed and for the same reason W.A. No. 61 of 2003 is dismissed. The appellant-bank is entitled to withdraw whatever amount deposited before the Labour Court towards representing the back-wages as we have set aside the direction regarding payment of 50 per cent of back-wages. The appellant-bank shall disburse the terminal benefits to which the second respondent is entitled to within a period of two months from the date of receipt of a copy of this order or production of the same by the legal heirs of the second respondent.