

(1969) 08 MAD CK 0013
In the Madras High Court

Sambandam (A.R.)		APPELLANT
	Vs	
Central Government Labour Court and Another		RESPONDENT

Date of Decision : 07-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C

Citation : (1969) 2 LLJ 422

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The petitioner herein was employed as a cashier in respondent 2 bank in its Cochin branch. The petitioner was suspended

on 14 September 1961, pending enquiry into certain charges against him and was dismissed from service on 26 December 1961. The non-

employment of the petitioner was referred for adjudication to the industrial tribunal, and the Industrial tribunal on 12 April 1962, in Industrial

Dispute No. 8 of 1962, passed an award holding that the dismissal of the petitioner was unjustified and directing MB reinstatement with back-

wages and without break in the continuity of service. After the award, the petitioner was not reinstated, and respondent 2 filed Writ Petition No.

730 of 1962 on the file of this Court against the said award. During the pendency of the writ petition respondent 2 had obtained orders of this

Court staying the implementation of the award in Civil Miscellaneous Petition No. 4628 of 1962. The writ petition itself was dismissed by this

Court on 8 January 1965, and a petition for special leave to the Supreme Court was also dismissed. Thereafter, the petitioner was reinstated on 13

February 1966.

2. After the reinstatement, the petitioner filed a petition u/s 33C(2) of the Industrial Disputes Act, before the labour court, Madras, claiming wages

for the period from 14 September 1961 to the date of reinstatement, viz., 13 February 1966. In addition to his salary, he also claimed what was

called cashier or key allowance at the rate of Rs. 10 per month from September 1961 to December 1962 and thereafter at Rs. 11 per month. He

further claimed bonus for the concerned period.

3. Respondent 2 contested the claim of the petitioner. The ground put forward by respondent 2 was that the petitioner was not entitled to the

special allowance known as the key or cashier allowance, during the period when he was out of employment, because that allowance, was

payable, only if he was entrusted with the key which was not the case here. The second ground was that after the award the petitioner engaged

himself in lorry business and was also employed elsewhere and, therefore, he was disentitled to claim any salary. One other contention put forward

by respondent 2 was that out of any money that might be determined to be payable to the petitioner, respondent 2 was entitled to retain a sum of

Rs. 2,000, by way of security deposit, because a cashier has to make such a security deposit.

4. The labour court, by its order dated 25 April 1967 made in Claim Petition No. 14 of 1966, accepted all the contentions of respondent 2. The

labour court took the view that the petitioner took up lorry business from May 1962, that he was also employed from 14 February 1964 for six

months on a salary of Rs. 120 per month and thereafter till 31 January 1965 at Rs. 150 per month and that therefore, the petitioner was not

entitled to remuneration or back-wages from respondent 2 from 1 May 1962 till 19 December 1963 and again from 14 February 1964 till 31 May

1965. For the purpose of coming to this conclusion, the labour court relied upon Regulation 20 of the Staff Regulations and Rules of Service,

which I shall refer to later in the course of this judgment. With regard to the cashier allowance or the key allowance, the labour court accepted the

case of respondent 2 relying upon Regulation 33. As far as the claim of respondent 2 to deduct a sum of Rs. 2,000 out of whatever amount was

payable to the petitioner was concerned, the labour court concluded as follows:

The respondent (respondent 2 herein) contends, however, that the petitioner has

to furnish a security deposit in a sum of Rs. 2,000 for continuing his work as cashier and that the bank is hence entitled to withhold the said amount of the total amount due to him. This contention has to be sustained. There is no force in the contention of the petitioner to the contrary that the original security furnished by him to the bank was Rs. 1,000, that even at present there are cashiers who have deposited only Rs. 1,000 and that consequently the bank is entitled to deduct only Rs. 1,000 towards the security deposit and to permit it to do so would amount to a wrongful alteration of the conditions of his service.

Finally, the labour court arrived at the amount due to the petitioner at Rs. 2,468.18, deducting therefrom Rs. 2,000 for security deposit, passed an order in his favour for Rs. 468.18. It is to quash this order of the labour court the present writ petition under Article 226 of the Constitution of India has been filed.

5. Regulation 20 of the Staff Regulations and Rules of Service is as follows:

No employee shall engage in any commercial business or pursuit either on his own account or as agent for others nor act as an agent for an insurance company. No employee shall, under pain of dismissal, apply for any post outside without first getting the secretary's written permission to do so.

Regulation 33 provides that "allowances shall only be payable to employees who are actually at the time fulfilling conditions entitling them to such allowance." As far as Regulation 20 is concerned, the labour court took the view that, since the petitioner had violated Regulation 20, in the sense that he did not apply for and obtain permission of respondent 2 bank before getting employed elsewhere or engaging himself in the lorry business, he was not entitled to salary for the period in question. With regard to Regulation 33, the labour court accepted the contention of respondent 2 to the effect that the amount of key or cashier allowance was payable only to the person who was entrusted with the key and, since the petitioner, during the relevant period, was not factually entrusted with the key, he was not entitled to the allowance. In my opinion, the entire conclusion and the reasoning of the labour court are erroneous. What the petitioner claimed in the petition filed u/s 33C(2) of the Industrial Disputes Act was the benefit that was awarded to him by the award made by the industrial tribunal in

Industrial Dispute No. 8 of 1962. That tribunal directed reinstatement of the petitioner with back-wages and without break in continuity of service. Normally, once dismissal or discharge of a particular employee is held to be illegal or unjustified and, on that basis the reinstatement is directed, the consequence is as if that employee had not been discharged or dismissed from service and he continued to be in service all through. The result of that will be, whatever position the particular employee was occupying on the date when he was dismissed or discharged, he became entitled to occupy and whatever emoluments he was getting on the date when he was discharged or dismissed, he became entitled to get by virtue of the award made by the tribunal. In this particular case, not only the tribunal directed reinstatement of the petitioner with back-wages but also provided that the reinstatement must be without break in the continuity of service. This further emphasizes the consequence that the petitioner must be deemed to have been in service all through and not as having been dismissed from the service at all. If this is the position and, on the basis of this legal position, the petitioner was entitled to claim back-wages under the award, the labour court, functioning u/s 33C(2) of the Act, had no jurisdiction whatever to go behind the award and find out whether during the period for which the petitioner was entitled to back-wages, he got himself employed elsewhere or engaged himself in any profit-earning activity. To do such a thing will be practically going behind the award made by the industrial tribunal, which the labour court is not entitled to do. As a matter of fact, the labour court had not denied the relief of wages to the petitioner on the ground that the petitioner made any profits or earned any amount during the period in question but solely on the ground that there had been a violation of Regulation 20 of the Staff Regulations and Rules of Service. It is difficult to understand how the alleged violation of that regulation can lead to the conclusion that the petitioner is not entitled to wages for the period. If at all, strictly, with reference to Regulation 20, respondent 2 might have had a right to take action against the petitioner for violation of that regulation, but certainly that would not lead to the conclusion that the petitioner would not be entitled to wages for the period. The labour court has proceeded on the basis that there had been a violation of Regulation 20, because the petitioner must be deemed to

have been In service by virtue of the award made in Industrial Dispute No. 8 of 1962, at the time when the petitioner got employment elsewhere or

engaged himself in business. This consideration with regard to wages which the petitioner is entitled to will equally apply to the key or cashier

allowance because it is admitted that, on the date when the petitioner was suspended he was entrusted with the key and he was receiving the

cashier or key allowance. Therefore, there cannot be any answer to the claim of the petitioner that he must be paid the cashier or the key

allowance as well as the wages for the period. As a matter of fact, this point is really concluded by the judgment of Ramakrishna, J., In

Rangarathinam pillai v. Labour Court, Coimbatore, and Anr. 1969 I.L.J. 416. Since I entirely agree with the view of the learned Judge, It is not

necessary for me to deal in detail with the reasoning and the conclusion.

6. Sri Narayanaswami, learned Counsel for respondent 2, wanted to submit that, in this case, the tribunal in Industrial Dispute No. 8 of 1962 had

merely stated that the petitioner was reinstated with back-wages and without break in the continuity of service and, therefore, the expression

back-wages"" will refer only to wages payable to the petitioner from the date of suspension till the date of award and not for any period

subsequent to the date of the award. In this context, learned Counsel also sought to make a distinction between the terms of this award and an

award where it is provided that the employee was entitled to reinstatement with back-wages from the date of non-employment till date of

reinstatement. I am unable to see any distinction between the two. When the tribunal makes an award stating that the employee in question is

entitled to reinstatement with back-wages, It really provides that the employee should be paid his wages for the period for which he has been kept

out of employment and the fact that the award does not use the expression that he is ""entitled to back-wages till the reinstatement"" or ""with back-

wages till reinstatement"" does not make any difference. In this particular case, it is not as if the petitioner declined to join the service of respondent

2 after the award. On the other hand, as I pointed out already, it is respondent 2 who obtained orders from this Court staying the implementation

of the award and, therefore, it is not open to respondent 2 to contend, while it itself had prevented the petitioner from joining the service and

working in the bank that the petitioner is not entitled to any wages for the period in question. Further, the award that was the subject-matter of

consideration by Ramakrishnan, J., in Rangarathinam Pillai v. Labour Court, Coimbatore, and Anr. 1969 I.L.J. 416 (vide supra) contained the

same direction as the award in Industrial Dispute No. 8 of 1962 with which the case is concerned. Therefore, there is no distinction between the

case dealt with by Rama krishnan, J., in the writ petition referred to above and the present case, and, in view of my complete agreement with the

reasoning and conclusion of Ramakrishnan, J., I am of opinion that the order of the labour court cannot be sustained in this case.

7. With regard to the claim of respondent 2 to deduct Rs. 2,000, I have already referred to the terms in which the labour court disposed of the

matter. To say the least, the manner in which it was disposed of is thoroughly unsatisfactory, and the labour court does not give any reason

whatever for rejecting the contention of the petitioner and accepting the contention of respondent 2. However, a view of the fact the petitioner

himself had conceded that Rs. 1,000 may be deducted by way of security deposit by respondent 2, the labour court would be competent to order

the deduction of Rs. 1,000 alone. In view of the conclusion I have come to, with regard to the right of the petitioner to the cashier or the key

allowance as well as the wages for the period from the date of suspension, viz., 14 September 1961 (though the labour court refers to it wrongly

as 11 September 1961 in Para. 8 and as 13 September 1961 in Para. 9 of its order) till the date of reinstatement, the matter will have to go back

to the labour court, for the purpose of calculating the amount which will be payable to the petitioner.

8. I may refer to one further fact that, while the labour court had rejected the claim of the petitioner to bonus, that part of the order was not

challenged before me by the learned Counsel for the petitioner.

9. Under these circumstances, the award of the labour court is quashed to the extent indicated above and this writ petition is allowed. There will be

no order as to costs.