

**(1999) 04 MAD CK 0124**

**In the Madras High Court**

**Case No : Writ Petition No's. 1374 of 1991**

Thanjavur District Co-operative Central Bank, Ltd.

APPELLANT

Vs

First Additional Presiding Officer, First Additional Labour Court  
and Another

RESPONDENT

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**Date of Decision : 05-04-1999**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A, 18(1)

**Citation : (2000) 3 LLJ 1143**

**Hon'ble Judges : N.V. Balasubramanian, J**

**Bench : Single Bench**

**Final Decision : Partly Allowed**

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## **Judgement**

N.V. Balasubramanian, J.—The award of the Labour Court ordering reinstatement of the second respondent with 50 per cent back-wages is the subject matter of the writ petition. The second respondent was employed as a Manager in the petitioner-bank and according to the petitioner, while he was working as Manager he had committed certain misconducts such -

- (i) obtaining leave on fictitious grounds while he continued to engage himself in his own business;
- (ii) obtaining a signature from a customer and using the signature to take an amount of Rs. 2,500 on the fixed deposit of the customer without the knowledge of the customer;
- (iii) indulging in activities which resulted in a bad reputation for the bank ; and
- (iv) acting in a manner resulting in loss of confidence among the public; etc.

The petitioner embodying the above charges, issued two charge memos, dated March 4, 1977 and April 16, 1983 and after getting the explanation submitted by the second respondent, found that the explanation was not satisfactory, and appointed an enquiry officer and the enquiry officer conducted the enquiry. The

enquiry officer on the basis of the enquiry held by him submitted his report holding that all the charges framed against the second respondent were proved except the charge No. 2 of the charge memo, dated March 4, 1977. The report of the enquiry officer was accepted by the writ petitioner and after giving a show-cause notice to the second respondent and after considering the explanation submitted by the second respondent, the writ petitioner dismissed the second respondent from service with effect from April 7, 1983.

2. The order of dismissal was the subject matter of a reference by the Government of Tamil Nadu to the Labour Court and the Labour Court by the award impugned held that the charge No. 1 of the charge memo dated March 4, 1977, and the charge No. 2 of the charge memo, dated April 16, 1983, were proved and as regards other charges, the Labour Court came to the conclusion that those charges were not proved. The Labour Court however in exercise of the powers u/s 11-A of the Industrial Disputes Act, 1947, directed the writ petitioner to reinstate the second respondent with continuity of service and 50 per cent back-wages for the period of non-employment. The award of the Labour Court is the subject matter of the present writ petition.

3. During the pendency of the writ petition, it is stated that a settlement was arrived at between the parties u/s 18(1) of the Industrial Disputes Act whereby the second respondent was reinstated without back-wages and other attendant benefits and the second respondent was also promoted and posted as Assistant Executive Officer (Agri. Credit) of the petitioner-bank. It was also made clear that the settlement as well as the promotion of the second respondent would depend upon the outcome of the writ petition. The second respondent has not challenged that part of the award of the Labour Court which went against him.

4. The challenge in the writ petition is that the Labour Court was not justified in holding that the charge Nos. 3, 4, 6, 7, and 8 of the chargememo, dated April 16, 1983, were not proved. In so far as the charge Nos. 3 and 4 are concerned, the gravity of the charges was that the second respondent had brought a bad reputation to the petitioner-bank. In so far as the charge Nos. 6, 7 and 8 of the charge memo, dated April 16, 1983 are concerned, they relate ] to the obtaining of a loan from a fixed deposit standing in the name of one Murugan without his knowledge. In so far as the charge Nos. 6, 7 and 8 are concerned, I do not find any infirmity in the award passed by the Labour Court. The Labour Court has correctly come to the conclusion that the person in whose name the deposit was standing and in whose name the loan was obtained was not examined and without examining the person in whose name the fixed deposit was standing, it could not be said that the charges were proved, particularly, when it was found that the signature in the loan application form belonged to the deposit holder. The fact that some of the relatives of the holder of the fixed deposit were examined is of no relevance in the absence of the examination of the holder of the fixed deposit, and in my view, the Labour Court was correct in coming to the conclusion that the charge Nos. 6, 7 and 8 of the charge memo, dated April 16,

1983 were not proved.

5. In so far as the charge Nos. 3 and 4, viz., bringing a bad name to the petitioner is concerned, the Labour Court was also justified in holding that the said charges were not proved. As far as the other charge that the second respondent was engaged in another business while he was working as Manager of the petitioner-bank is concerned, the Labour Court accepted the finding of the enquiry officer and held that the charge was proved. Similarly, the Labour Court came to the conclusion that the second respondent received an advance amount of Rs. 1,000/- from the bank but he did not account for the same. The Labour Court in its award upheld the findings of the enquiry officer and held that the said charge was also proved. As already stated, the award of the Labour Court on that aspect has not been challenged and the finding of the Labour Court has become final.

6. The only question that arises is whether the Labour Court was justified in ordering reinstatement of the second respondent. The Labour Court was quite correct in coming to the conclusion that the second respondent was wrong in engaging in another business while he was working as manager of the petitioner-bank. But the reasonings given by the Labour Court that he had not made any profit in the other business carried on by him outside his employment in the bank and no criminal proceedings were taken against the second respondent by the person who paid money to the second respondent and the second respondent should be reinstated are not justifiable in law.

7. In so far as the charge of non-accounting for a sum of Rs. 1,000/- is concerned, the reasoning given by the Labour Court is that it is open to the petitioner to recover the advance amount paid from the second respondent is also not justified in law. In my view, when the charges were held to have been proved against the second respondent, the Labour Court, on an erroneous view was not justified in ordering reinstatement of the second respondent. The charges levelled against him are grave in nature and the second respondent while he was working as Manager of the petitioner-bank also carried on another business of acting as an agent for an outsider in the business carried on by him. The Labour Court on the materials found that the said charge was proved and after holding that it is not permissible for an employee to indulge in other business while he was in employment of the petitioner-bank, the fact that he has not made any profit in the said other business is not a relevant consideration at all. So also, the fact that the person who paid money to the second respondent has not taken any criminal action is also not a relevant consideration in considering the question whether the punishment of removal from service is justified or not. The other charge that was proved was that the second respondent did not account for the advance money of Rs. 1,000/- received by him and the Labour Court on the basis of materials on record came to the conclusion that the second respondent had not accounted for the same and the reasoning given by the Labour Court that it is open to the petitioner to recover

the money from the second respondent is also not warranted to come to the conclusion that the second respondent should be reinstated into service. The Labour Court in my opinion, has not exercised its discretion properly u/s 11-A of the Industrial Disputes Act in ordering reinstatement into service.

8. Learned counsel for the second respondent referred to a decision of my learned brother, P. SATHASIVAM, J., in the case of Management of Essorpe Mills (P) Ltd. Vs. Presiding Officer, Labour Court and Another, . But that decision has no application as in that case, it was found that the employee therein who run a canteen was selling snacks to other co-workers by using bogus canteen tickets and on that factual situation, the Labour Court taking into account earlier service record of the employee modified the punishment of dismissal into one of reinstatement into service with 50 per cent back-wages. The learned Judge found that the Labour Court exercised its discretion properly and the learned Judge held that the Labour Court has necessary powers to interfere with the order of termination from service. But, that decision has no application to the facts of the case. On the facts of the case, it is found, the second respondent was engaged in another business. It is not open to him to do other business while he was employed" in the petitioner-bank. In other words, it is impermissible for the second respondent to ride on two horses at the same time. The second respondent was bound to obey all the rules and regulations of the bank and if the second respondent is permitted to do other business, it will amount to violation of terms and conditions of the employment and the Labour Court was not justified, in holding that the act of the second respondent would not amount to violation on the Wound that the second respondent merely carried on the other business, but he did not make any profit in the transaction.

9. The decision of C. shIVAPPA, J. in Bank of India, Regional Office, Bangalore Vs. D. Padmanabhudu and Another, would be relevant and the learned Judge held that in the case of misappropriation, even repayment would not absolve the liability. The observations of learned Judge in the said case, in para. 6, which read as under are relevant for the purpose of this case.

"6. The bank is the custodian of the money of the customers and cashier is a person who deals with the money and he must be more diligent and honest and justify the trust reposed in him by the bank and by the customers. If once the customers lose the confidence in the dealings the entire organisation suffers and confidence of the customers is the basis on which the entire edifice of the banking system is built. The learned Judge has assigned the reason that the money misappropriated by the first respondent has been paid back to the customer and it is the amount of the customers and not of the bank. The learned Judge has lost sight of the principle that the intentional temporary retention of the money which does not belong to a person is also a misappropriation. Mere repayment will not absolve the liability or the misconduct committed by the first respondent. When once the money is put in bank by the customer, the bank owes a duty to repay and the reasoning that it is the money of the customer and

not of the bank is a perverse reasoning. The second reason that the first respondent belongs to a scheduled caste normally is not a relevant criterion to weigh while considering the cause. Caste should not be the ground while appreciating the facts and law in a given case. The second reasoning also does not merit any consideration. The third reasoning that he ought to have been given an opportunity to reform himself of course, may be on humanitarian grounds. But this aspect depends upon the facts of each case. The learned Judge has relied on a decision of the Supreme Court in *Scooters India Limited Vs. Labour Court and Others*, . That was a case where the workman indulged in distribution or exhibition of offensive hand bills, pamphlets, etc. inside the factory premises. In such a circumstance, the Labour Court took the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be loyal and disciplined employee. The facts of that case cannot be equated and applied to the instant case. Here, it is the misuse of office or betrayal of the trust shaking the very confidence reposed by the customer in a banking system. It is settled law that when once the confidence is reduced, or a responsible post is misused or a sensitive or a strategic position is abused, the Court should not lightly consider the same and grant the relief. [See *L. Michael and Another Vs. Johnson Pumps Ltd.*, ]. To reinforce confidence in the mind of the customers stringent punishment is essential and, therefore, the case relied on by the learned Judge has no application and the reasoning of the learned Judge is perverse."

Applying the said principle laid down by the learned Judge, I am of the view that the Labour Court has not exercised its discretion properly in ordering reinstatement of the second respondent. Though the order of the Labour Court is liable to be set aside, in view of the subsequent agreement arrived at between the parties u/s 18(1) of the Industrial Disputes Act, the reinstatement of the second respondent is not disturbed. Since the second respondent had been promoted and he was working in an higher cadre, the second respondent would also be entitled to salary during the period in which he was working and also during the promotional period. Though the salary paid to him on the basis of the settlement is not disturbed, however, in so far as the payment of back wages is concerned, since I am setting aside the order of the Labour Court ordering payment of 50 per cent of back-wages, I hold, the question of payment of back wages does not arise on the facts of the case:

10. In the result the writ petition is allowed to the above extent. However, there will be no order as to costs.