
(2011) 09 MAD CK 0291

In the Madras High Court

Case No : Writ Petition No. 35132 of 2004 and W.P.M.P. No's. 42356 of 2004, 8172 of 2005 and 827 of 2009

The Management, E. 1217, Kattumannarkoil Co-operative
Primary Agricultural and Rural Development Bank Ltd.,
Kattumannarkoil, Cuddalore District

APPELLANT

Vs

The Presiding Officer, Labour Court, Cuddalore and Mr. V.
Sekar

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2011) 09 MAD CK 0291

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S.M. Subramaniam, for the Appellant; S. Ganesh for R2, for the Respondent

Final Decision : Allowed

Judgement

The Hon''ble Mr. Justice T. Raja

1. The Management of E1217, Kattumannarkoil Co-operative Primary Agricultural and Rural Development Bank Limited, Cuddalore District has filed the present writ petition challenging the award passed by the first Respondent, Labour Court, Cuddalore in I.D. No. 126 of 1997, dated 11.10.2004 on the ground that the Labour Court failed to consider the gravity of the offence committed by the second Respondent, since the order of reinstatement, if not set aside, will affect the administration of the Petitioner's Bank.

2. It was argued by the Learned Counsel appearing for the Petitioner that the second Respondent, while serving as a Clerk in the Petitioner's Bank, involved in many irregularities. Therefore, a set of charges were issued against him for committing misconduct and other irregularities. The misconduct committed by him was grave in nature for which an enquiry was conducted by placing him

under suspension. The Enquiry Officer conducted a detailed enquiry by giving reasonable opportunity to the second Respondent and on completion of the enquiry proceeding, the Enquiry Officer also submitted a detailed report, holding that the second Respondent was found guilty of all charges including the allegations of abusing the Officers of the Bank under intoxication. When the Disciplinary Authority, finding that the second Respondent has been proved guilty of habitually absenting and visiting the Office under heavy intoxication, found him misfit for keeping in the service of the Petitioner's bank. Thereafter, the second Respondent raised the Industrial Dispute before the Labour Court and the Labour Court, after giving a finding that the Petitioner's Management had held fair and proper domestic enquiry, again, accepting the findings of the Enquiry Officer as confirmed by the Disciplinary Authority without furnishing any reason whatsoever to interfere with the quantum of punishment, ordered for reinstatement without back wages, however with continuity of service from the date of suspension till the date of reinstatement. Further, emphasizing the interest to interfere with the impugned order of reinstatement passed by the Labour Court, the Learned Counsel appearing for the Petitioner pleaded that the second Respondent was not only proved to be a habitual absentee but also proved to be an unworthy of Bank's employee to work in the Petitioner's bank, since he used to come to the Petitioner's Bank after taking heavy dose of Alcohol and more than that he was also convicted by the Judicial Magistrate in C.C. No. 1101 of 1991 by paying a fine of Rs. 100/- for his proved misbehaviour. When such being the case of the second Respondent, the Petitioner's bank will be put to heavy prejudice if the award passed by the Labour Court is implemented by reinstating the Petitioner back to service.

3. Opposing the above arguments, the Learned Counsel appearing for the second Respondent, after relying on the counter, submitted that the second Respondent joined the service of the Petitioner's Bank in the year 1975 as Clerk, since then, he has been working not only sincerely and to the satisfaction of his superiors. While so, all of a sudden, he was placed under suspension on 10.01.1994 by the Special Officer of the Petitioner's Bank without any valid reason and with an intention to penalize him. Subsequently, when the Charge Memo dated 20.07.1989 was issued on 14.02.1994 for the allegation of unauthorisedly absent without submitting any leave letter, the second Respondent submitted his explanation. However, in the meanwhile, the second Respondent also preferred an appeal to the Deputy Registrar of Co-operative Societies, Vridhachalam and the Joint Registrar of Co-operative Societies, Cuddalore on 08.04.1994 against the order of suspension stating that the order of suspension has been passed by the Special Officer with malafide intention. During the pendency of the appeal before the Joint Registrar of Co-operative Societies and the Deputy Registrar of Co-operative Societies, the Special Officer of the Petitioner's Bank issued another charge memo dated 29.04.1994, alleging that the second Respondent has disobeyed his duties and higher officials command and thereby acted contrary to the Bye-laws of the Society, for which the Petitioner also submitted a

detailed explanation denying all the charges levelled against him. Subsequently, a domestic enquiry was held on 28.09.1994. On completion of the enquiry, the Enquiry Officer submitted his report finding that the guilt has been proved against the second Respondent. Thereafter, the Disciplinary Authority after receiving further representation, passed the final order dated 01.11.1994 terminating the second Respondent from service with effect from 01.01.1994. Aggrieved by the order of termination, the second Respondent filed I.D. No. 126 of 1997 before the Labour Court, Cuddalore. The learned Labour Court, after considering the fact that the second Respondent had worked for 19 years and he has been imposed with the punishment of dismissal, finding that the major punishment being disproportionate to the proved charges, allowed the industrial dispute in favour of the second Respondent ordering reinstatement of service without back wages. Therefore, such order cannot be found fault with. On that basis, he prayed for dismissal of the writ petition.

4. Mr. V. Sekar, second Respondent herein, joined the service of the Petitioner's Bank as Clerk in the year 1975. While working in the Petitioner's Bank, he was placed under suspension by the Special Officer of the Petitioner's Bank on 10.01.1994 for the reason that the second Respondent had committed misconduct in visiting the Petitioner's Bank with intoxication and also for remaining unauthorisedly absent without prior permission from the Special Officer, for which he was also issued with a charge memo dated 29.04.1994 containing four allegations. Two among them are serious in nature. The second Respondent said to have misbehaved with the officers of the Petitioner's Bank and used to abuse the Officers of the Bank under intoxication and consequently, used to remain unauthorisedly absent without prior permission from the Special Officer. After receipt of the said charge memo, the second Respondent submitted his detailed explanation denying all the charges. However, the said explanation being not satisfactory, a domestic enquiry was held on 28.09.1994. The Petitioner, admittedly, participated in the enquiry proceeding and he has also signed in the enquiry report acknowledging his participation in the said enquiry proceeding. On completion of the said enquiry proceeding, the Enquiry Officer submitted his report holding that all the charges levelled against him were established. Thereafter, the Disciplinary Authority issued a second charge memo calling upon the second Respondent to submit his further representation on the copy of the report of the Enquiry Officer for which the second Respondent also submitted his further representation. On receipt of further representation of the second Respondent, the Disciplinary Authority, taking note of the serious allegations of coming to the Petitioner's Bank under intoxication, accepting the findings of the Enquiry Officer by also keeping in mind the order passed by the Judicial Magistrate in C.C. No. 1101 of 1991 finding guilty of the second Respondent for which he admittedly paid a fine of Rs. 100/-, passed the order of termination.

5. Aggrieved by the said order of termination, the second Respondent raised an Industrial Dispute before the first Respondent, the Labour Court, who also in its

award, accepted the case of the Petitioner's Management that the Enquiry Officer had properly and fairly conducted the domestic enquiry. Further proceeding to the second question as to whether the quantum of punishment imposed against the second Respondent was valid and reasonable, again, the Labour Court had found that the second Respondent deserved to be punished. However, the Labour Court, by taking note of the major penalty of dismissal from service, has ordered reinstatement of the second Respondent in the service of the Petitioner's bank without back wages, but with continuity of service from the date of suspension till the date of reinstatement. A mere reading of the award passed by the Labour Court goes to show that the Labour Court was very well aware of the misconduct proved against the second Respondent by the Enquiry Officer. The award also dealt with every misconduct including the fine paid by the second Respondent before the Judicial Magistrate admitting his guilt in C.C. No. 1101 of 1991. While accepting the every case of the Petitioner's management only on a limited ground that the second Respondent has served in the Petitioner's bank for 19 years, the Labour Court has passed the award directing reinstatement of the second Respondent in the service of the Petitioner's Bank. This approach of the Labour Court, directing reinstatement of a person, who was already found guilty of misbehaviour with the officer of the Petitioner Bank under intoxication coupled with unauthorisedly absent from duty, cannot be overlooked. What is not acceptable to this Court is the Labour Court on finding the report of the Enquiry Officer as confirmed by the Disciplinary Authority admitted the case of the Petitioner Bank that the second Respondent has rendered himself as unbecoming member of the Petitioner's Bank for the simple reason that the allegation of his misbehaviour in coming to the Bank under heavy intoxication and his unauthorised absent were established. While so, without any reason, the Labour Court cannot go beyond the scope of the statutory power conferred u/s 11-A of the Industrial Disputes Act by merely ordering reinstatement without backwages, but also with continuity of service from the date of suspension till the date of reinstatement. Therefore, this Court does not agree with the order of reinstatement as it does not support with any proper reasons. Accordingly the same is set aside and the writ petition is therefore, allowed. No costs. Consequently, connected miscellaneous petitions are closed.