

(1974) 02 MAD CK 0021
In the Madras High Court

V. Raju

APPELLANT

Vs

The President, Madurai Dist. Central Co-operative Bank Ltd.
and Another

RESPONDENT

Date of Decision : 21-02-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33C

Citation : (1975) 2 LLJ 240

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

Ismail, J.—The petitioner herein was an employee of the first respondent and he was placed under suspension pending enquiry into certain

charges with effect from 1st December, 1968. Subsequently, by an order, dated 7th November, 1969, the petitioner was dismissed from service

with effect from the date of suspension, namely, 1st December, 1968. The petitioner thereafter filed claim Petition No 5 of 1970 on the file of the

Labour Court, Madurai u/s 33C(2) of the Industrial Disputes Act claiming a sum of Rs. 2,006 said to be wages due to him for the period of

suspension from 1st December, 1968 to 10th November, 1969. Before "the Labour Court, the first respondent, apart from contending that the

order of suspension was valid on merits, also contended that the Labour Court at Madurai had no jurisdiction to entertain the petition u/s 33C(2)

of the Industrial Disputes Act since the suspension of the petitioner could have been the subject-matter of an industrial Dispute referred u/s 10(1)

of the Industrial Disputes Act as laid down by this Court in The Management, Udipi Hindu, Restaurant Madurai v. The Presiding Officer, Labour

Court, Madurai and Anr. (1970) 83 L.W. 367. The Labour Court accepted this contention of the first respondent and dismissed the petition filed

by the petitioner herein. The Labour Court also stated that the first respondent has the power to suspend the petitioner. 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.

2. In view of one consideration, it is unnecessary to consider any other aspect of the matter. As I pointed out already, the petitioner was

suspended pending enquiry and subsequently by an order, dated 7th November, 1969 he was dismissed from service with effect from the date of

suspension, namely, 1st December, 1968. As the order of the Labour Court itself shows the said dismissal was pending before the Labour Officer,

Madurai at the time when the Labour Court was dealing with the matter and consequently the dismissal of the petitioner with effect from 1st

December, 1968 constituted separate and independent proceedings not forming part of the proceedings before the Labour Court in the present

case. As a matter of fact, it is brought to my notice by the learned Counsel for the first respondent that the Government in G.O (Rt.) No. 2539,

Labour, dated 2nd November, 1970, declined to make a reference in respect of the dismissal of the petitioner with effect from 1st December,

1968. Under these circumstances, the question for consideration is whether the petitioner was entitled to claim the wages for the period of

suspension referred to already.

3. In *C. Krishnan v. The Special Officer, The Madurai District Co-operative Supply Marketing Society Limited, Madurai and Anr.* W.P. No.

4700 of 1961, I have taken the view that once the order of dismissal takes effect from the date of suspension and that order has become final,

there is no question of the suspension period subsequently subsisting as an independent entity or separately and, therefore, there is no question of

the employee claiming any wages separately for the period of suspension. The same view was taken by me in a subsequent decision, dated 30th

November, 1973 in *A. Ramaswami and P. Rangaswami v. The President Salem Co-operative Central Bank Limited, Salem and Anr.* W.P. Nos.

2038 and 2047 of 1971. In those cases also the petitioners therein were originally suspended but subsequently part of the period of suspension

was treated as leave on loss of pay. The petitioners filed petitions u/s 33C(2) of the Industrial Disputes Act before the Labour Court. The Labour

Court dismissed the petitions holding that so long as the order directing the treating of the period of suspension as leave on loss of pay stood, the

petitioners could not claim wages for the said period of suspension. I upheld that order of the Labour Court and dismissed the writ petitions.

Consequently, my decisions in those two cases are directly in point and, therefore, so long as the order of dismissal dismissing the petitioner from

service with effect from 1st December, 1968 stands, the petitioner cannot file a petition u/s 33C(2) of the Act claiming wages for the period of

suspension as if the period of suspension stood separately "without getting itself merged in the order of dismissal.

4. My attention was drawn to a judgment of Palaniswamy, J., in *The Madurai District Co-operative Supply and Marketing Society Limited,*

Madurai v. Veerannan and Anr. (supra), wherein the learned Judge has referred to my judgment in W.P. No. 4700 of 1968, already referred to.

While dealing with that judgment, the learned Judge has observed:

The learned Judge has, therefore, no occasion to consider the validity of an order of dismissal directed to take effect retrospectively, if the

employee is entitled to claim salary during the period of suspension.

In this case also, the validity of the order of dismissal, either retrospectively or prospectively, could not have been and was not the subject-matter

of the claim u/s 33C(2) of the Industrial Disputes Act before the Labour Court and consequently the validity of such an order of dismissal is not

before me and hence the decision of Palaniswamy, J., in that case has no application to the facts of the present case and my decision in the cases

referred to already directly applies to the present case. Hence the writ petition fails and is dismissed. There will be no order as to costs.