

**Kannan S. (D) and ors. and Vs. Deputy Commissioner of Labour (Appeals) and ors.**

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**Court :** Chennai

**Decided On :** Aug-17-2001

**Reported in :** (2002)IILLJ1015Mad

**Judge :** P. Sathasivam and ;A. Subbulakshmy, JJ.

**Acts :** Tamil Nadu Shops and Establishments Act, 1947 - Sections 41

**Appeal No. :** W.A. Nos. 911 & 1250/1991 & Contempt Appeal No. 15/1992

**Appellant :** Kannan S. (D) and ors. and ;karur Vysya Bank Ltd.;deputy General Manager, Karur Vysya Bank Ltd.

**Respondent :** Deputy Commissioner of Labour (Appeals) and ors.;s. Kannan (D) and ors.

**Advocate for Def. :** V. Karthic, Adv. for ;Gopalan, Adv. for Respondent No. 2 in W.A. No. 911/1991 and N.R.G. Prasad, Adv. for ;Row & Reddy for Respondent Nos. 3 to 6 in W.A. No. 1250/1991 and Contempt Application No.

**Advocate for Pet/Ap. :** N.G.R. Prasad, Adv. for Row & Reddy in W.A. No. 911/1991 and V. Karthic, Adv. for ;Gopalan, Adv. in W.A. No. 1250/1991 and Contempt Application No. 15/1992 and ;V. Karthic, Adv. for ;Gopalan, Adv.

**Judgement :**

**P. Sathasivam, J.**

1. Since the issue in all the matters is one and the same and interconnected, they are being disposed of by the following common order. Writ Appeal No. 911 of 1991 is filed against the order of the learned single Judge, dated February 8, 1981, made in Writ Petition No. 9124 of 1997. Writ Appeal No. 1250 of 1991 is filed against the order of the very same learned Judge, dated August 23, 1991 made in W.M.P.No. 14055 of 1991 in Writ Petition No. 9124 of 1987, in and by which, the learned Judge clarified his order, dated February 8, 1991. Contempt Appeal No. 15 of 1992 is against the order passed in Contempt Application No. 464 of 1992, dated December 2, 1992, holding the respondent therein/Deputy General Manager, Karur Vysya Bank Ltd., guilty of contempt of the order, dated February 8, 1991 read with clarificatory order, dated August 23, 1991. For the convenience, we shall refer the parties as arrayed in Writ Appeal No. 911 of 1991.

2. The admitted facts are as follows: The appellant joined services of the Karur Vysya Bank Ltd., Karur, second respondent in Writ Appeal No. 95 of 1991 and appellant in Writ Appeal No. 1250 of 1991 as a clerk in the year 1959. He was promoted as Cashier (II Officer) in the year 1962. On September 13, 1976 on transfer he assumed charge as the Branch Manager of Royapuram branch and thereafter he was transferred on March 24, 1981 to Kozhikode branch of the second respondent-bank. On June 25, 1982 the appellant was issued a charge-sheet for certain irregularities committed in Royapuram branch. On July 24, 1982 he submitted his explanation denying all the charges. An enquiry officer was appointed on December 31, 1982. During the enquiry proceedings that is on April 9, 1983, according to the appellant, the enquiry officer and the presenting officer informed him that if he accepts the charges, a minor punishment would be imposed. He conveyed his decision and requested the enquiry officer to view the matter leniently and impose punishment, if any, other than capital punishment. On March 25, 1985 he was given a show-cause notice regarding the proposed punishment of dismissal. On April 25, 1985, the appellant was dismissed from service. On April 26, 1985 he preferred an appeal to the General Manager, appellate authority of the bank. On May 28, 1985, the appellate authority rejected his appeal, however, recommended for fresh appointment, if he applied for.

Pursuant to said communication, the appellant on June 3, 1985 applied for fresh appointment in the officer cadre. On October 14, 1985 the bank rejected the appellant's claim for reappointment. Against the order of the appellate authority (General Manager), the appellant filed a review petition on November 14, 1985 before the Board of Directors of the bank and, according to him, the same had not been disposed of. On March 12, 1986 he preferred an appeal under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 as T.S.E. No. 12 of 1986 before the Deputy Commissioner of Labour (Appeal), Madras. The appellate authority, by order, dated June 11, 1987, dismissed the said appeal. Against the dismissal of the appeal filed under the Tamil Nadu Shops and Establishments Act, the appellant filed Writ Petition No. 9124 of 1987 before this Court on September 14, 1987.

3. The second respondent-bank has filed a counter affidavit disputing various averments made by the petitioner. By order, dated February 8, 1991, the learned single Judge disposed of the said writ petition with a direction to the second respondent bank to offer him (writ-petitioner) fresh employment in a category immediately below Officers Grade within 4 weeks from the date of receipt of that order as per the observations made by the appellate authority (General Manager). Against the said order, the second respondent-bank filed Writ Appeal No. 243/1991 and the same was dismissed by the Division Bench on March 14, 1991. Against the very same order of the learned single Judge, the appellant herein also preferred an appeal in Writ Appeal No. 911 of 1991 on March 26, 1991 and the same has been admitted by the Bench of this Court. It is further seen that on May 15, 1991 the bank offered clerical post to the appellant instead of Officers' Scale I as per the order in W.P.No. 9124 of 1987. Thereafter, the appellant filed W.M.P.No. 14055 of 1991 on June 10, 1991 for clarification. In his order, dated August 23, 1991, the learned Judge has clarified that inasmuch as the petitioner was holding the Scale II Grade in the Officers Grade, the offer of the employment should be only in the Scale I category in the Officers Grade. Meanwhile the bank sent a letter of appointment on September 14, 1991 imposing numerous conditions. On receipt of the letter of the appointment, the appellant sent a legal notice on September 18, 1991 to the bank, drawing their attention to the clarificatory order and their disobedience. The appellant has also filed Contempt

Application No. 464 of 1992 against the bank on September 30, 1991. The bank has also filed Writ Appeal No. 1250 of 1991 on October 7, 1991 against the order in W.M.P.No. 14055 of 1991 in W.P.No. 9124 of 1987. Though the writ appeal was entertained by the Bench, by order, dated November 6, 1991 the Division Bench dismissed their stay petition C.M.P. No. 13434 of 1991. On December 4, 1991 the appellant died in a road accident. In the Contempt Application No. 464 of 1992, dated December 2, 1992, after considering the rival claim, the learned single Judge found the respondent therein/Deputy General Manager of the bank guilty of contempt, and also directed the bank to pay the petitioners (appellant's legal representatives) the arrears of pay from August 24, 1991 till December 4, 1991 (date of death of appellant-S. Kannan) on the time-scale of pay Scale I Officer with all allowances on or before December 31, 1992. Against the said order, the bank preferred Contempt Appeal No. 15 of 1992 on December 21, 1992. In view of the death of the appellant in a road accident, his legal representatives were brought on record as appellants 2 to 5 as per order in C.M.P.No. 1430 of 1992, dated July 29, 1992, by the Division Bench of this Court.

4. The points for consideration in these appeals are:

(i) Whether the learned Judge is justified in directing the second respondent bank to offer the appellant a fresh employment in a category immediately below the Officer grade?

(ii) Whether the learned Judge is right in passing a clarificatory order, dated August 23, 1991, clarifying his earlier order, dated February 8, 1991, that the offer of employment should be only in the Scale I category in the Officers Grade when the said order, dated February 8, 1991, has been confirmed by the Division Bench on March 14, 1991?

(iii) Whether the appellant is entitled to salary and other benefits from February 8, 1991, when the learned Judge passed an order or from June 3, 1985, the date on which he applied for fresh appointment?

5. Considering the questions raised, it is unnecessary to refer the charges levelled against the appellant, enquiry proceedings and the ultimate order of dismissal

passed by the bank. However, while dismissing the appeal filed by the appellant against the order of dismissal passed by the enquiry officer, the General Manager of the bank (internal appellate authority), based on the request of the appellant and considering the long services he has put in, requested the management to give fresh employment in case the appellant applies for. Based on the observation made by the appellate authority (General Manager), the appellant applied for fresh appointment on June 3, 1985. In the said request, the appellant has prayed for fresh employment in the officer cadre. The relevant portion is as follows:

'... While confirming the punishment the appellate authority has recommended fresh employment in the Bank in view of my long service. I submit that I may please be appointed in the bank as afresh employment in the officer cadre, '

However, on October 14, 1985 the Board rejected his (appellant's) claim for employment. Thereafter, the appellant preferred T.S.C. No. 12 of 1986 before the Deputy Commissioner of Labour/Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947. The said appeal was also dismissed on June 11, 1987 and questioning the same, he filed W.P.No. 9124 of 1987 before this Court. After considering the merits of the rival claim, the learned Judge agreed with the conclusion arrived at and Appellate Authority (under Tamil Shops and Establishments Act). However, taking note of the order of the appellate authority (General Manager) dated May 28, 1985, wherein there was a direction to the management to give fresh appointment to the appellant if he applies for the same, and also taking note of the reply of the appellant to the report of the enquiry officer, directed the second respondent-bank to offer the writ-petitioner fresh employment in a category immediately below the officers grade. No serious argument was advanced with regard to the merits of the order of the learned Judge confirming the order of the appellate authority (under the Tamil Nadu Shops and Establishments Act). However, the bank has preferred Writ Appeal No. 243 of 1991 against the direction of the learned Judge, dated February 8, 1991. There is no dispute that on March 14, 1991 the Division Bench of this Court dismissed the writ appeal (WA.No. 243 of 1991) filed by the bank. It is also fairly stated that even the special leave petition filed by the bank before the Supreme Court has been dismissed. In the meanwhile, that is on May 15, 1991 the bank offered clerical post

to the appellant instead of Officer Scale I as per the order in W.P. No. 9124 of 1987. Realising the unreasonable attitude of the bank offering clerical post instead of Officer Grade I, the appellant filed W.M.P. No. 14055 of 1991 in W.P.No. 9124 of 1987 on June 11, 1991 for clarification. After considering the claim of both parties, the learned Judge has passed the following order on August 23, 1991:

'3. Having given my anxious consideration to the arguments of the rival counsel, I have no hesitation in coming to the conclusion that my intention in giving the direction on February 8, 1991 was to enable the petitioner to get an appointment in the Grade immediately below the Grade which he was holding. Inasmuch as the petitioner was holding the Scale II Grade in the Officer's Grade the offer of employment should be only in the Scale I category in the Officers Grade. Therefore clarify my order dated February 8, 1991 and direct that my order dated February 8, 1991 shall stand clarified in the above manner....'

The said order is under challenge in Writ Appeal No. 1250 of 1991.

6. Learned counsel appearing for the bank would contend that in view of dismissal of their Writ Appeal No. 243 of 1991 dated March 14, 1991 by the Division Bench, the earlier order of the learned Judge, dated February 8, 1991, in Writ Petition No. 9124 of 1987 upon which the said appeal arose, is deemed to be merged with the Division Bench order, dated March 14, 1991, hence the learned Judge is not justified in clarifying his order dated February 8, 1991, after the disposal of the appeal, i.e., on August 23, 1991. In other words, according to him, if the appellant has any grievance regarding the order, dated February 8, 1991, the proper course would be to approach the Division Bench for clarification. We are unable to accept the said contention. We have already referred to the direction of the appellate authority (General Manager) to the management of the bank and the application for appointment made by the appellant thereon. Considering the long service put in by the appellant as well as the direction made by the appellate authority (General Manager), the learned Judge, while disposing of the writ petition, directed the second respondent bank to offer him fresh employment in a category immediately below the officer's grade. In the clarificatory order, dated August 23, 1991, the learned Judge has clearly mentioned that his intention in giving direction

on February 8, 1991 was to enable the petitioner to get an appointment in the grade immediately below the grade which he was holding. It is clear that at the time of passing orders on February 8, 1991, the fact that the petitioner was holding the Scale II Grade in the Officer's Grade and the next grade is Scale I has not been brought to his notice. After getting those information, the learned Judge has rightly clarified and said that:

'the offer of employment should be only in the Scale I category in the Officers Grade.'

No doubt, learned counsel appearing for the bank has brought to our notice the reply dated April 26, 1985, given by the appellant wherein he offered his willingness to accept a punishment of demotion from the present cadre which he was holding to the clerical cadre. As rightly argued by Sri N.G.R. Prasad, though the appellant had made such a request offering his willingness to work in the clerical cadre, admittedly his request was not accepted by the bank. In such a circumstance, the same cannot be put against him. Likewise, even though the appellant had applied for fresh appointment on June 3, 1985, the bank rejected his claim for employment on October 14, 1985. Inasmuch as the bank did not accept the offer of the appellant at the appropriate (sic) time, we are of view that the said offer cannot be put against him in the later proceedings. As a matter of fact, even the appellate authority (General Manager) has not recommended for his fresh appointment in the clerical cadre. However, considering the request and long service of the appellant, he requested the management to give fresh employment in case the appellant applies for. We have already extracted the request of the appellant, dated June 3, 1985, for fresh employment in the bank wherein he had requested the bank for fresh employment in the officer cadre. In such a circumstance, taking note of all the above aspects, particularly the direction made by the appellate authority (General Manager), the long service put in by the appellant Scale I category in the Officers Grade is lower in level than the Scale II Grade in the Officers Grade, the learned Judge has rightly clarified in the order dated August 23, 1991. Accordingly we find no substance in the argument of the learned counsel for the second respondent- bank. In view of our conclusion, their appeal, namely, Writ Appeal No. 1250 of 1991 is liable to be dismissed.

7. Though the appellant (S. Kannan) has preferred Writ Appeal No. 911 of 1991 challenging the order of the learned Judge, dated February 8, 1991, in view of the fact that he died in a road accident on December 4, 1991 and also of the fact that his legal representatives, who were subsequently brought on record, are pursuing the said appeal, they are very much concerned with the monetary benefits. It is pertinent to note that due to the death of the appellant (S. Kannan), Sri N.G.R. Prasad, learned counsel appearing for the appellant, has confined his argument only with regard to the monetary benefits available to him. Sri N.G.R. Prasad, after narrating the entire events, vehemently contended that pursuant to the direction of the appellate authority (General Manager), dated May 28, 1985, the appellant applied for fresh appointment on June 3, 1985 and in fairness the bank ought to have accepted his claim and passed orders within a reasonable time of two months. In view of the order of the learned Judge based on the direction of the appellate authority (General Manager), learned counsel for the appellant would contend that the appellant would be paid salary and other benefits from the date of his application, namely, June 3, 1985 or at least from August 1, 1985, the date on which the bank could have passed orders accepting his application for fresh appointment in the Officers Grade. Learned counsel appearing for the bank has very much opposed the claim of the learned counsel for the appellant. Undoubtedly, the appellant would be entitled to salary and other benefits in the Scale I category in the Officers Grade from the first order of the learned Judge, namely, February 8, 1991. Inasmuch as fresh appointment has rightly been clarified by the learned Judge in his subsequent order, dated August 23, 1991, namely that the offer of the employment should be only in the Scale I Category in the Officers Grade and in view of the direction of the appellate authority (General Manager) for giving fresh appointment as well as the application made by the appellant for fresh appointment even on June 3, 1985, and considering all the events and the claim of both parties, we are of the view that the appellant would be entitled to salary and, other benefits from August 1, 1985, the date on which the bank could have passed an order on his application dated June 3, 1985. Accordingly, we hold that appellant would be entitled to salary and other benefits in Scale I Category in the Officers Grade from August 1, 1985 till the date of his death in a road accident, that is, on December 4, 1991. The legal representatives



of the deceased appellant S. Kannan, who were brought on record, are entitled to the said monetary benefits from the bank.

8. Now we shall consider Contempt Application No. 15 of 1992 filed by the Bank. We have already referred to the order passed in Writ Petition No. 9124 of 1987. Based on the said order, by a letter, dated May 13, 1991, the Deputy General Manager of the bank offered an appointment as a clerk which is the category below that of an officer grade and requested the appellant to report for duty. The appellant seems to have sent a reply stating that the offer was not in conformity with the order of the learned Judge, dated February 8, 1991, because immediately below the post of Grade II officer which he was holding there was a post available in Grade I Officer. In view of the attitude of the bank, we have already referred to the application filed by the appellant for clarification and the clarificatory order passed by the learned Judge on August 23, 1991. Even after the clarificatory order, in view of the various conditions imposed by the bank treating the appellant as a probationer for a period of 1 1/2 years, paying consolidated salary of Rs. 2,100 for a period of six months, putting him to learn to speak, read and write an Indian language other than his mother tongue, to furnish staff security of Rs. 3,000 in cash and also to furnish copies of certificates for his qualification and date of birth, etc., as if the appellant is a fresher, he filed Contempt Application No. 464 of 1992 for violation of the orders of the learned Judge, dated February 8, 1991 and August 23, 1991. Pursuant to the notice issued by the learned Judge, the bank had filed a counter statement highlighting their stand. Though the bank had filed an appeal against the order of the learned Judge, admittedly, the Division Bench has dismissed the same on March 14, 1991. Even against the clarificatory order, dated August 23, 1991 in W.M.P. No. 14055 of 1991, the bank preferred a stay petition in C.M.P. No. 13435 of 1991 in W.A. No. 1250 of 1991, and admittedly the Division Bench has dismissed the said petition on November 6, 1991. In spite of these things, though the bank had taken a longer time in issuing orders, as directed, after reluctance, they issued an order treating the appellant as a fresh entrant, the learned Judge has considered the relevant factors, namely, that at the time of his fresh appointment, he was 57 years' old, that at the fag end of his service, he was asked to join duty at New Delhi, and that he was asked to learn a new language. As rightly observed by the learned Judge, though they are

technically within their rights to impose such conditions, it is clear that they had no intention to give re-employment as directed by the learned Judge in the orders, dated February 8, 1991, and August 23, 1991. We have also referred to the various conditions imposed in the fresh order of appointment issued by the bank. We are pained to note that at the fag end of his career in spite of specific direction by the Court, instead of gracefully accepting order of the Court and give fresh employment in the Scale I Category of the officers grade, the management had imposed severe conditions just to defeat his claim. We are fully in agreement with the observation of the learned Judge that:

'the prestige of the bank would have been; enhanced if they had offered the post and given him the scale of pay attached to the post without any conditions....'.

Though Sri V. Karthic, learned counsel appearing for the bank, by relying on several decisions, would contend that there is no wilful disobedience of the order of the learned Judge, in view of the discussion and facts narrated above, we are unable to accept his contention.

Since the facts are clear it is unnecessary for us to refer the decisions cited by him. We are unable to appreciate the conduct of the bank in treating the appellant and imposing several conditions as if he is a fresher even after the clarificatory order of the learned Judge dated August 23, 1991. The bank cannot plead ignorance and react like an ordinary illiterate litigant. The learned Judge is perfectly right in holding that the respondent (Deputy General Manager, Karur Vysya Bank, Central Office, Karur) guilty of contempt of his order, dated February 8, 1991 read with his clarificatory order, dated August 23, 1991. After holding so, the learned Judge honourably accepted the apology tendered and has not imposed any punishment. Considering all the materials, facts and circumstances demonstrated before us we are fully in agreement with the conclusion arrived at by the learned Judge and we do not find any merit in the contempt appeal.

9. To sum up, we pass the following order:

(i) Writ Appeal No. 1250 of 1991 filed by Karur Vysya Bank is dismissed.

(ii) In Writ Appeal No. 911 of 1991 in view of the death of the appellant S. Kannan, his legal representatives, namely appellants 2 to 5 are entitled to salary and other monetary benefits intended to the deceased S. Kannan in the Scale I Category in the Officer's Grade with effect from August 1, 1985 till the date of his death that is on December 4, 1991. The entire monetary benefits shall be paid to the appellants 2 to 5 within a period of eight (8) weeks from today. The Writ Appeal is ordered to this extent.

(iii) Contempt Appeal No. 15 of 1992 is dismissed; and

(iv) There shall be no order as to costs in all the appeals.

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