

A.Krishnamoorthy Vs. the Common Cadre Authority and anr.

A.Krishnamoorthy Vs. the Common Cadre Authority and anr.

SooperKanoon Citation : sooperkanoon.com/910915

Court : Chennai

Decided On : Mar-01-2011

Judge : P.Jyothimani, J.

Acts : Tamil Nadu Co-operative Societies Act - Section 153

Appeal No. : W.P.No.20039 of 2007

Appellant : A.Krishnamoorthy

Respondent : The Common Cadre Authority and anr.

Advocate for Def. : Mr.K.Balasubramanian, Adv.

Advocate for Pet/Ap. : Mr.C.Prakasam, Adv.

Judgement :

ORDER

1. The writ petitioner, while working as a Secretary of the Marakkanam Primary Agricultural Cooperative bank, was imposed with a punishment of dismissal by the second respondent. It was against the order of the second respondent, the petitioner has filed a revision under Section 153 of the Tamil Nadu Co-operative Societies Act (for brevity, "the Act"). While the revision was pending, the Board of Directors of the second respondent/Bank had reconsidered the issue by constituting a Sub-Committee and the Sub-Committee has filed a report in favour of the petitioner. Based on the report of the Sub-Committee, the order of dismissal

from service passed against the petitioner came to be recalled by the Board on 9.2.2002 and thereafter, the petitioner joined duty on 9.2.2002. However, the revisional authority, before whom the revision was pending under Section 153 of the Act, instead of dismissing the revision by virtue of the order passed by the Board, has passed an order on 14.8.2002 confirming the dismissal of the petitioner.

2. Aggrieved by the order passed by the revisional authority, the petitioner has approached this Court by filing W.P.No.35617 of 2002 and that writ petition came to be allowed by this Court on 1.4.2004 setting aside the order of the revisional authority. The second respondent has filed a writ appeal against the said order in W.A.No.2628 of 2004 and a Division Bench of this Court in the judgment dated 16.12.2006, while confirming the order of the learned Single Judge, has however authorised the competent common cadre authority, namely the first respondent, to pass orders in accordance with law, after notice and hearing the petitioner. The operative portion of the judgment of the Division Bench is as follows:

"4. For the aforesaid reasons, we find no ground to interfere with the order passed by the learned Single Judge. However, this order will not stand in the way of the competent common cadre authority of the competent committee, if any, to pass any order in accordance with law, after notice and hearing the petitioner. The appeal is dismissed without any costs..."

3. Pursuant to the said observation made by the Division Bench, it is stated that the first respondent, who is the common cadre authority, has passed the impugned order dated 27.4.2007 denying the salary to the petitioner for the period between 2002 and 2007, but reinstating the petitioner from the year 2007.

4. This order is challenged by the petitioner in this writ petition on the ground that the observation made by the Division Bench enabling the first respondent to pass orders in accordance with law is only to enable the first respondent to proceed afresh in the disciplinary proceedings and pass orders after giving notice, however the impugned order has been passed, even though after giving notice to the petitioner, by denying the right of the petitioner to have salary for the period from 2002 to 2007 on the ground of no work no pay. It is the case of the petitioner that

he has been ready and willing to work, especially when he was already reinstated into service by the Board of Directors as early as 9.2.2002, while the revision under Section 153 of the Tamil Nadu Cooperative Societies Act was pending.

5. On the face of it, when it is clear, as it is seen in the Division Bench judgment, that the petitioner was reinstated on 9.2.2002 as per the recommendation of the Board of Directors by recalling the earlier order of dismissal, the revisional authority, under Section 153 of the Act, in all fairness should have dismissed the revision as infructuous. On the other hand, the revisional authority has confirmed the original order of dismissal and that came to be set aside by the learned Single Judge of this Court. The Division Bench, while construing the issue, has made it very clear that after reinstatement of the petitioner on 9.2.2002, there was no occasion for the revisional authority to pass any order on merits and it was in that view of the matter, the Division Bench has confirmed the order of the learned Single Judge. Therefore, the observation made by the Division Bench permitting the first respondent to pass order in accordance with law is not for the purpose of imposing the punishment of withholding the salary from 2002 to 2007 and it is only to the effect that in case it is found that the petitioner has committed grave illegality, it is for the first respondent to take appropriate action by framing charges and thereafter proceed in accordance with law. Therefore, the contention of the learned counsel for the respondents that the impugned order has been passed pursuant to the order passed by the Division Bench has no meaning.

6. The principle of "no work no pay" will not apply in cases where the workman was willing to work. That was also the view of a Division Bench of this Court in *The Special Officer, The Nazarath Urban Co-operative Bank Ltd., v. C.Deva Anbu and another*, 2007 [3] CTC 17. The Division Bench, after referring to the judgment of the Supreme Court in *Union of India v. Braj Nandan Singh*, [2005] 8 SCC 314, has held as follows: "18. We have heard the contra submissions of Mr.Ajmal Khan, the learned counsel for the first respondent. The learned counsel in his reply submissions relied upon the case, *Union of India v. Braj Nandan Singh*, [2005] 8 SCC 314, specifically paras 28 and 29 at page 324 in which the Honourable Supreme Court clearly ruled that the principles of "no work no pay" would not be accepted on the facts of the said case on the terms that when the workmen is

willing to work but the employer did not allowing him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties and the learned counsel for the first respondent further contended that the order of suspension by the employer only prevented him from working and when the same was quashed, he was allowed to work on 20.12.2004 and thus it should be construed that the first respondent continued as a workmen and ought to have given the arrears of salary which is natural consequence. We find force in the submission and it is also necessary to consider the fact that the first respondent had "locus standi" to claim the arrears of salary since "vinculum juris" continued with employer after suspension. The learned counsel for the first respondent also drew our attention to the Tamil Nadu Co-operative Society Rules in Rule 19, sub-clause (c) which is reproduced below:

"19(c) No employee shall in any case be kept under suspension for a period exceeding one year without the approval of the Registrar."

The learned counsel for the first respondent argued that the above said Rule is having the force of law and when the said Rule is not followed it amounts to procedural infraction especially the said old Rule is still enforceable so long as new rules replace it."

7. In view of the above said circumstances, the stand taken by the respondents, as it is seen in the counter affidavit, that the impugned order has been passed only in conformity with the judgment of the Division Bench is unsustainable. In the result, this writ petition is allowed and the impugned order stands set aside with a direction to the respondents to confer the salary due to the petitioner from the date of reinstatement, viz., 9.2.2002, till the date of passing of the impugned order and such amount shall be paid within twelve weeks from the date of receipt of a copy of this order. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com