

**The Manager Vs. R.Bojan**

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**SooperKanoon Citation :** [sooperkanoon.com/925952](http://sooperkanoon.com/925952)

**Court :** Chennai

**Decided On :** Apr-16-2012

**Judge :** K.Chandru, J.

**Appeal No. :** W.P.(MD)No.3362 of 2008 and M.P.(MD)No.1 of 2008

**Appellant :** The Manager

**Respondent :** R.Bojan.

**Advocate for Def. :** Mr.V.O.C.Kalaiselvam, Adv.

**Advocate for Pet/Ap. :** Mr.Sanjay Mohan, Adv.

**Judgement :**

## **ORDER**

1. The writ petition was filed by the Management, seeking to challenge an Award passed by the second respondent Labour Court in I.D.No.92 of 2000 dated 19.03.2008. By the impugned Award, the Labour Court set aside the punishment imposed on the first respondent and directed payment of 25% of backwages from the date of his removal till the date of his attaining the age of superannuation.

2. When the writ petition came up on 10.04.2008, this Court ordered notice on admission and granted interim stay for a limited period. Subsequently, the interim stay was extended from time to time.

3. It is the case of the first respondent that he was employed by the petitioner Management as a Clerk with effect from 03.05.1971 and was promoted as Senior Clerk Grade I on 29.12.1993 with effect from 01.01.1994. He worked in the personnel department for over 18 years and was promoted as Senior Clerk Grade I during his service in the department. A Senior Executive Personnel of the Department did not like him and with the connivance of the Director and General Manager, he was harassed. In May 1996, the first respondent was transferred to Sales Department and false charges were levelled against him. He was suspended for 30 days as a specific punishment. He was not familiar with the work of the said department and no training was given to him. Even before he could learn the work of the department, within one month, he was transferred to Madurai Office with a direction that he should join duty on 10.06.1996. The first respondent was a resident of Kerkandy village, Ketti Post in Nilgiris District. He was a family man with children who were studying school and college. Therefore, he appealed to the Managing Director explaining his family circumstances and to reconsider his transfer order dated 13.06.1996. Even when his appeal was pending, the he was charge sheeted for insubordination of lawful and reasonable order of the superior and absence without leave for more than 10 consecutive days.

4. In the meanwhile, by a letter dated 27.06.1996, his appeal was disposed of with a direction to join duty at Madurai Office forthwith and failure to join duty will result in necessary action being taken against him. While so, the Management had charge sheeted the first respondent on 27.06.1996. He was once again directed to report to Madurai on 12.10.1996. He reported duty at Madurai Office on 30.10.1996 but he was not given any responsibility. A charge memo was given to him on 13.11.1996 stating that he was absent from 10.06.1996 to 29.10.1996 and that he had undertaken an employment under any other company without the permission of the Management and he was granted permission to collect tolls for the year 1996-97 in respect of Burliar and Kunjapannai Toll Station. The chargesheet also stated that the enquiry had been ordered and would commence on 18.11.1996 at Madurai. While he was in Madurai, he fell sick and was taking treatment at Devi Hospital, Madurai and the Doctor who treated him advised medical rest. He thereafter proceeded to his native place after applying leave for 28 days. Once again he was charge sheeted that during his leave period, he had

attended the marriage function of his nephew at Kerkandy Village and the marriage of the Senior Manager Personnel's son. On the basis of the findings of the enquiry dated 05.05.1997, a second show cause notice was issued to him on 16.05.1997. The first respondent requested time to submit his explanation. Notwithstanding the same, he was dismissed from service on 04.06.1997.

5. Thereafter, the first respondent raised a dispute before the Labour Officer at Coonoor. However, the Labour Officer held that he should raise the issue of non-employment before the authorities at Madurai. The petitioner had filed an appeal against the same to the Joint Commissioner of Labour, Coimbatore. He further raised a dispute before the Labour officer at Madurai on 07.08.1998. The Labour Officer as he could not bring about mediation gave a failure report on 25.03.1999. On the strength of the failure report, the first respondent filed a claim statement dated 06.04.1999. The said dispute was taken on file as I.D.No.92 of 2000 by the second respondent Labour Court and notice was issued to the Management. The Management filed a counter statement dated 10.03.2001.

6. Before the Labour Court, the issue regarding the validity of the enquiry was tried as a preliminary issue. The Labour Court by its Award dated 23.03.2006 held that the enquiry conducted against the first respondent was fair and proper and the principles of natural justice was not violated. The first respondent filed a writ petition before this Court being W.P.No.5122 of 2006 challenging the preliminary award. However, this Court by an order dated 11.10.2006 dismissed the writ petition stating that it can be challenged only after final Award was passed.

7. Before the Labour Court, on behalf of the writ petitioner, 30 documents were filed and marked as Exs.M1 to M30. The Labour Court found that the findings rendered by the Enquiry Officer was not valid and the workman because of his illness absented himself after giving appropriate leave letter. Even by the time the Labour Court passed the impugned Award dated 19.03.2008, the workman had reached the age of superannuation namely on 09.01.2006. The Labour Court held that it was not possible to grant reinstatement as the workman had attained the age of superannuation. As far as backwages is concerned, the Labour Court restricted the payment of backwages to 25% since the workman did not allege that

he was not employed elsewhere and there was possibility of earning income.

8. Therefore, the only question to be decided is the monetary compensation that should be paid in case the workman is entitled for the relief. This Court suggested both sides to arrive at a compromise. While the Management was willing to give 50% of the 25% backwages awarded by the Labour Court and also to pay gratuity till 09.01.2006 and the period shall also be treated for Provident Fund contribution etc, the workman was not agreeable for the same and he wanted a lump sum amount of compensation.

9. Therefore, this Court has to decide whether the impugned Award is valid and if so what relief the workman is entitled for. In so far as the Award passed by the Labour Court is concerned, this Court is not inclined to interfere with the same for more than one reason. The charges of unauthorised absence was disbelieved by the Labour Court and that he had taken toll collection has got no relevance to the work on hand and on that score, the workman cannot be dismissed unless there was a specific act of misconduct involved in accepting any such business. Even before the Labour Court, no satisfactory evidence was let on this ground.

10. Under the said circumstances, taking into account the fact that the workman had reached the age of superannuation, the petitioner Management is directed to pay Rs.2,00,000/- (Rupees Two lakhs only) towards backwages in lieu of reinstatement and arrears of salary. In so far as provident fund is concerned, it will be deemed that the workman is in service as if he had retired only on 09.01.2006. Therefore the Management will credit the Provident Fund arrears to the department for the aforesaid period. The first respondent is entitled to collect the provident fund dues from the department as if he had retired only on 09.01.2006 with all consequential benefits.

11. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.