

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4357 OF 2010
(@SPECIAL LEAVE PETITION(C) No.18834 OF 2007)

Kallakurichi Taluk Co-op.
Housing Society Ltd. ... Appellant

Vs.

M. Maria Soosai & Ors. ... Respondents

J U D G M E N T

JUDGMENT

ALTAMAS KABIR, J.

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the Division Bench of the Madras High Court on 27th June, 2007, in Writ Appeal No.3748 of 2004, arising out of the judgment and order dated 9th January, 2003, in Writ Petition No.17237 of 2000. By the said order the Respondents in the Writ Petition were directed to reinstate the Respondent No.1 herein in service with back wages from the date of his dismissal from service till the date of reinstatement together with all attendant benefits, within eight weeks from the date of receipt of a copy of the order.

3. In order to appreciate the submissions made on behalf of the respective parties and the relief prayed for in the appeal, it is necessary to briefly set out the facts leading to the filing of the writ petition before the High Court.

4. There is no dispute that the Respondent No.1, M. Maria Soosai, was appointed as an Accountant in the Appellant Society on 9th March, 1984. From 22nd July, 1990, the Respondent No.1 failed to report for duty without permission and without submitting any leave application. Consequently, the said Respondent was treated to have resigned from service as per the Bye-laws of the Appellant Society and in accordance with Rule 149(10)(1) of the Tamil Nadu Co-operative Societies' Rules, 1988, hereinafter referred to as 'the 1988 Rules'. On 29th March, 1995, after a lapse of about 5 years, the Respondent No.1 raised a dispute before the Labour Court at Cuddalore, being I.D. No.44 of 1995, questioning the decision of the Appellant Society to treat him as having resigned from service since 1990.

5. While the proceedings were pending before the Labour Court, the Society sought permission of the Registrar (Housing) and the Deputy Registrar (Housing), Respondent Nos.2 and 3 herein, to re-appoint the Respondent No.1 on compassionate grounds. Accordingly, on 27th July, 1995, the Respondent No.2 permitted the Appellant Society to re-appoint the Respondent No.1 upon certain conditions, which are as follows :-

"1. He will not be paid from 22.7.90 till he joins duty and this period be treated as leave without pay.

2. The employee should withdraw the case pending before the Labour Court.

3. The employee shall be transferred to Sankarapuram Co-operative Housing Society as soon as the said Society is started.

4. He should join duty in the place appointed by the Special Officer and he should not claim seniority."

Certain other conditions were suggested by the Respondent No.3 for re-appointing the Respondent No.1, which are as under :-

"1. The period between 22.7.1990 and 7.5.95 shall be treated as leave without pay.

2. He should involve in society work and collect all the pending loans.

3. As soon as Sankarapuram Taluk Co-op Hsg. Society is started, he should go and work there."

6. On being reinstated in service by the order of the Respondent No.3 dated 7th September, 1995, the Respondent No.1 was relieved from his duties under the Appellant Society and was asked to join in the Vijayapuram Co-operative House Building Society. The Respondent No.1 thereupon joined the services of the Vijayapuram Co-operative House Building Society on 11th September, 1995, and worked there till 7th January, 1996. From 8th January, 1996, after having barely worked for about four months, the Respondent No.1 again failed to report for work with the Vijayapuram Co-operative House Building Society. Thereafter, on 24th February, 1997, a Resolution was adopted by the Board of Directors of the Vijayapuram Co-operative House Building Society, Chinna Salem, and by Resolution 7 it was resolved that the Respondent No.1 be sent back to his parent society on account of his failure to report for work from 8th January, 1996 to 24th February, 1997, without any prior intimation and

without applying for leave. It was also noted that within a short tenure of four months service, the Respondent No.1 had obtained consumer loan of Rs.20,990/- in respect whereof there were outstanding dues of Rs.19,900/-. Furthermore, he had also obtained Rs.1,500/- towards festival advance. The said Resolution was duly confirmed by the President of the Vijayapuram Co-operative House Building Society on 24th February, 1997.

7. On 30th September, 2000, the Respondent No.1 filed Writ Petition No.17237 of 2000 for a direction upon the Respondents therein to issue an order of appointment to him to a suitable post in the Appellant Society or Sankarapuram Taluk Co-operative Housing Society, pursuant to the order passed by the Registrar (Housing) on 27th September, 1995, and also the order of the Respondent No.3 dated 11th August, 1995, and for providing all salaries and other benefits from 2nd November, 1990. The said writ petition came to be dismissed on 9th January, 2003, on the ground that the Respondent No.1 in his writ petition suppressed the fact that he had joined his duties under the Vijayapuram Cooperative House Building Society pursuant to the order passed by the Respondent No.3 on 7th September, 1995.

8. Writ Appeal No.3748 of 2004 was filed by the Respondent No.1 against the order of the learned Single Judge dismissing his Writ Petition. On 18th August, 2003, the said Writ Appeal was allowed with a direction to reinstate the Respondent No.1 in service with back wages from the date of his dismissal till the date of reinstatement, together with all other attendant benefits, within 8 weeks from the date of receipt of a copy of the order.

9. It is the said order which has been challenged in the present proceedings.

10. Appearing on behalf of the Appellant Society, Ms. N. Shobha, learned Advocate, submitted that having regard to the conduct of the Respondent No.1 from 1995 onwards, the learned Single Judge had quite rightly dismissed the writ petition filed by the Respondent No.1, *inter alia*, for issuance of a writ in the nature of Mandamus to direct the Respondents to issue an order of appointment to a suitable post either in the Appellant Society or in the Sankarapuram Taluk Co-operative Housing Society which had since come into existence and was made Respondent No.4 in the writ petition and for a further direction to pay all his arrears and other benefits alleged to be due from 2nd November, 1990. Ms. Shobha submitted that in his order dated 9th January, 2003, the learned Single Judge, while dismissing Writ Petition No.17237 of 2000, noted the fact that after the Respondent No.1 was deemed to have resigned from service, he was re-appointed on 7th September, 1995, and that he joined his

duties on 11th September, 1995, which meant that the Appellant had given due effect to the orders which were alleged not to have been given effect to in the writ petition. Without taking into consideration the said fact and the other facts as indicated hereinabove, including the fact that the Respondent No.1 had once again failed to report for work from 8th January, 1996 to 24th February, 1997, the Division Bench quite erroneously came to a finding that the Appellant Society had not passed orders appointing the Respondent No.1 despite the orders passed by the Deputy Registrar (Housing) on 10th March, 1997, directing the Appellant Society to do so.

11. Ms. Shobha submitted that it is soon thereafter on 10th March, 1997, that the Deputy Registrar (Housing) wrote to the Society requesting it to compassionately consider the request that the Respondent No.1 could be appointed in the Appellant Society, subject to the order of the Registrar (Housing).

12. Ms. Shobha indicated that the said order of the Deputy Registrar (Housing) was only a request and the fact remains that on his failure to report for duties for more than one year from 8th January, 1996, in addition to his earlier absence from duties between 1990 and 1995, the Vijayapuram Cooperative House Building Society resolved that Respondent No.1 be sent back to his parent Society, the Appellant herein. Ms. Shobha frankly stated that in view of his conduct, the Appellant had rightly not passed any order of reinstatement pursuant to the impugned order of the Division Bench of the High Court since the Respondent No.1 was, once again, deemed to have resigned from service under Rule 149(10)(1) of the 1988 Rules. Ms. Shobha urged that the question of reinstatement with full back wages from the date of dismissal, namely, 10th October, 1990, till the date of his reinstatement, which would mean a period of about 20 years, despite the fact that the Respondent No.1

had been re-appointed in July, 1995, on certain terms and conditions and had himself stayed away from his duties, even thereafter, was unjust and inequitable, besides being erroneous, and could not be sustained.

13. Ms. Shobha submitted that one of the conditions for the re-appointment of the Respondent No.1 was that he would not be paid from 22nd July, 1990, till he rejoined service and the said period would be treated as leave without pay, but if the order of the Division Bench in the Writ Appeal No.3749 of 2004, is to be accepted as it is, it would mean that payment of salaries and other emoluments would have to be made for the said period as well.

14. Ms. Shobha submitted that during the pendency of the Special Leave Petition, one G. Anbalagan was appointed as Special Officer of the Appellant Society. By his letter dated 24th November, 2007, the Special Officer reinstated the Respondent No.1 in the service of the Society without prejudice to its rights and contentions in the pending Special Leave Petition. Pursuant thereto, the Respondent No.1 rejoined duty on 6th December, 2007, but, once again, he failed to report for work from 16th February, 2009 and committed other acts of misconduct. As a result, the Respondent No.1 was again placed under suspension on 4th March, 2009, and a charge memo dated 13th April, 2009, was issued to him. Thereafter, a domestic inquiry was conducted by the Appellant Society in respect of the charge memo and by his report dated 19th October, 2009, the Inquiry Officer held that the charges against the Respondent No.1 had been duly proved. In the affidavit filed by the Special

Officer, it has also been indicated that the copy of the Inquiry Report had been duly sent to the Respondent No.1 seeking his comments and that on receipt of the same, the proceedings would be conducted against the Respondent No.1 in accordance with law. Ms. Shobha submitted that during this period, the Respondent No.1 was being paid subsistence allowance as per the rules and in the said circumstances, the direction to reinstate the Respondent No.1 in service with back wages during the pendency of the inquiry, was not only wrong, but improper and the same was liable to be quashed.

15. On the other hand, Ms. Anitha Shenoy, learned Advocate appearing for the Respondent No.1, submitted that although an attempt has been made on behalf of the Appellant Society to blame the Respondent No.1 for his alleged lapses, it was the Appellant Society which had not acted in terms of the conditions imposed by the Registrar (Housing) in his order dated 27th July, 1995, indicating that the Respondent No.1 would be transferred to the Sankarapuram Taluk Co-operative Housing Society as soon as the said Society was started. Ms. Shenoy urged that the Sankarapuram Taluk Co-operative Housing Society was started on 26th June, 1998, but pursuant to the order passed by the Division Bench of the Madras High Court on 27th June, 2007, the Respondent No.1 was reinstated in service not in the Sankarapuram Housing Society as agreed upon, but in the Appellant Society.

16. Countering the submission made on behalf of the Appellant society that the Respondent No.1 must be deemed to have resigned from service as per the bye-laws of the Appellant Society and Rule 149(10)(i) of the 1986 Rules, Ms. Shenoy submitted that even when an employee is deemed to have abandoned his service, the employer was under a duty to conduct a departmental enquiry before dispensing with his services. In this regard reference was made to the decision of this Court in Novartis India Limited vs. State of West Bengal, [(2009) 3 SCC 124], wherein the dismissal of an employee for not joining the place to which he had been transferred, fell for consideration and it was held that the same was hit by the principles of natural justice and such dismissal could only be effected after holding a domestic enquiry/disciplinary proceeding. Mr. Shenoy urged that if not from 1990, the respondent No.1 was certainly entitled to back wages from February, 1997, when he

was sent back from the Vijayapuram Co-operative House Building Society to the Appellant Society.

17. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to agree with Ms. Shobha that the decision of the Division Bench of the High Court in Writ Appeal No.3748 of 2004, impugned in the instant appeal, cannot be sustained at least as far as payment of back wages and other benefits are concerned. The conduct of the Respondent No.1 does not justify the relief given to him by virtue of the impugned order. Despite the fact that the learned Single Judge pointed out that the prayer made in the Writ Petition could not be granted on account of suppression of material facts which ran counter to such prayer, the Division Bench appears to have lost sight of the same. As the facts reveal, the Respondent No.1 unilaterally stopped coming to work without submitting any leave application or prior intimation and that too not for a day or two, but for months on end. It is, in fact, surprising as to why a decision was taken to

consider his case on a compassionate basis, despite laches of his own making. The decision of the Appellant Society to re-appoint the Respondent No.1 on compassionate grounds leading to the order of the Registrar (Housing) dated 27th July, 1995, permitting the Appellant Society to re-appoint him, was in itself a concession made to the Respondent No.1 which he misused subsequently.

18. Even after he was released from the Vijayapuram Society on 24th February, 1997, the Respondent No.1 remained silent till 30th September, 2000, when he filed Writ Petition No.17237 of 2000 for a direction upon the Respondents therein to appoint him to a suitable post in the Appellant Society or the Sankarapuram Taluk Co-operative Housing Society pursuant to the order passed by the Registrar (Housing) on 27th September, 1995. Despite the maximum latitude shown to him by allowing him to rejoin his duties in the Appellant Society on 6th December, 2007, the Respondent No.1 again failed to report for work from 16th February, 2009, as a result he was placed under suspension and a domestic enquiry was conducted in which he was found to be guilty of the charges brought against him.

19. The Division Bench of the High Court does not appear to have considered the events which occurred after the Respondent No.1 was reinstated in service on 7th September, 1995, to the effect that the Respondent No.1 had again failed to report for work from 8th January, 1996 till 24th February, 1997, when a direction was given by the Division Bench to the Registrar (Housing) to consider the appointment of the Respondent No.1 in the Appellant Society. The fact that thereafter, on account of his failure to report for duties for more than one year from 8th January, 1996, the Respondent No.1 was once again deemed to have resigned from the services of the Society under Rule 149(10)(1) of the 1988 Rules, appears to have been overlooked by the High Court. The Division Bench of the High Court does not also appear to have taken into consideration the fact that the Respondent No.1 remained silent till 30th September, 2000, when he filed Writ Petition No.17237 of 2000 for a direction for his

appointment and that despite being allowed to rejoin his duties in the Appellant Society on 6th December, 2007, the Respondent No.1 again failed to report for work from 16th February, 2009, as a result of which he was placed under suspension and a domestic inquiry was conducted.

20. The events, prior to 11th September, 1995, and thereafter, were not seriously considered by the Division Bench of the High Court which proceeded on the basis that despite the order passed by the Deputy Registrar (Housing) on 27th September, 1995, the Respondent No.1 had not been given appointment, which fact was entirely erroneous, as would be evident from what has been mentioned hereinbefore. The decision of this Court in Novartis India Limited's case (supra) cited by Ms. Shenoy is not of any help to the case of the Respondent No.1 since in the said case the order of dismissal of the employee was passed as he did not join the post

to which he had been transferred. In the instant case, the Respondent No.1 joined the post to which he had been transferred, but, thereafter, stopped reporting for work without any application for leave or prior intimation.

21. In such circumstances, the judgment and order of the Division Bench of the High Court impugned in this appeal cannot be sustained and must necessarily be set aside. However, having regard to the fact that a domestic inquiry was conducted against the Respondent No.1, in which he was found guilty, we do not propose to interfere with that part of the order impugned directing reinstatement, but we are not inclined to maintain the order of the Division Bench of the High Court regarding payment of back wages. Ever since his appointment on 9th March, 1984, as an Accountant in the Appellant Society, the Respondent No.1 has shown lack of interest in his duties under the Appellant

Society and stopped attending his duties as and when he felt like without permission and without submitting any leave application. This habit did not show any signs of improvement on his re-appointment in service on 27th July, 1995, or the subsequent order by which he was allowed to rejoin his duties in the Appellant Society on 6th December, 2007.

22. In these circumstances, while not interfering with the order of reinstatement passed by the Division Bench of the High Court, which was duly acted upon, we are inclined to modify that part of the said order directing payment of back wages.

23. In the circumstances, we allow the appeal in part and modify the order of the Division Bench of the High Court in Writ Appeal No.3748 of 2004, by directing that the Respondent No.1 will be entitled to full wages only for the period between 6th December, 2007 and 15th February, 2009, and other

connected benefits, if any. As far as payment of full salary for the period under suspension undergone by the Respondent No.1 during which period he was being paid subsistence allowance is concerned, the same will depend on the final order to be passed in the disciplinary proceedings already initiated against the Respondent No.1.

24. The appeal is disposed of in the above terms. There will, however, be no order as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi
Dated: 6th May, 2010.