

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

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THE HONOURABLE MR.JUSTICE M.DURAIWAMY

Writ Petition No.32846 of 2013
and
M.P.Nos. 1 of 2013 & 1 of 2014

The President
G.S.43, Kadavoor Primary Agricultural
Co-operative Bank Limited
Velachery Village
Morai Post
Avadi, Chennai-600 055. ..Petitioner

-Vs-

1.P.Lakshmi
2.The Joint Registrar of Co-operative Societies
Tiruvallur Region
Tiruvallur District.
3.The Principal Judge
Hon'ble Labour Court
Chennai-600 104. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the entire records pertaining to the impugned order, dated 31.07.2013, made in C.P.No. 23 of 2006 on the file of the third respondent and quash the same.

For petitioner : Mr.S.Muthukumar

For respondents : Mr.K.Bharathi for R.1
Mr.L.P.Shanmugha Sundaram
Special Government Pleader
for R.2

ORDER

The Management has filed the Writ Petition to issue a Writ of Certiorari, to call for the records pertaining to the impugned order, dated 31.07.2013, made in C.P.No. 23 of 2006 on the file of the third respondent and quash the same.

2. It is the case of the petitioner Management that the first respondent was working as an Attender in the petitioner Bank and during the course of her service, she had committed misappropriation of funds, therefore, she was placed under suspension by the proceedings of the petitioner Management on 10.11.1997. The petitioner Management issued a charge memo to the first respondent and the domestic enquiry ended with findings of the Enquiry Officer that the charges levelled against the first respondent were proved. Therefore, the petitioner Management dismissed the first respondent from service on 28.03.1998. According to the petitioner Management, as per the order of the Assistant Commissioner of Labour, the subsistence allowance for the first respondent was fixed at Rs.9,796/- and her salary was fixed at Rs.1,437/- for 15 days.

3. According to the petitioner Management, the first respondent has filed a Claim Petition in C.P.No. 23 of 2006 on the file of the Principal Labour Court, Chennai, under Section 33(C) (2) of the Industrial Disputes Act, claiming monetary benefit of Rs.2,95,303.50 with interest at 12% per annum. When the matter was posted for arguments in C.P.No.23 of 2006, there was no representation on the side of the first respondent and therefore, the Claim Petition was dismissed for non-prosecution on 17.10.2012. Thereafter, the first respondent filed an application in I.A.No. 12 of 2013 to restore C.P.No. 23 of 2006 and the Labour Court, by order dated 08.07.2013, allowed the application.

4. According to the petitioner Management, on 31.07.2013, the Labour Court allowed C.P.No.23 of 2006, without hearing the counsel appearing for the petitioner. In paragraph No.10 of the affidavit filed in support of the Writ Petition, the petitioner has specifically stated that the findings of the Labour Court that the counsel for the petitioner Management argued the matter before the Labour Court is not correct. On a perusal of the counter affidavit filed by the first respondent/employee, it is seen that she has not stated anything with regard to the averment made in paragraph No.10 of the affidavit filed in support of the Writ Petition.

5. Mr.S.Muthukumar, learned counsel appearing for the petitioner submitted that the petitioner's counsel did not appear before the Labour Court and argued the matter, inspite of the same, the Labour Court has given a finding, as though, the petitioner's counsel argued the matter before the Labour Court. In these circumstances, I am of the view that the Labour Court should have given an opportunity to the counsel appearing for the petitioner Management for arguing the matter, instead of giving an opportunity to the counsel for the petitioner, the Labour Court had decided the matter, as though, it heard the arguments of the

learned counsel for the petitioner Management, in my considered opinion, the said finding given by the Labour Court is not correct.

6. In the above circumstances, without going into the merits of the case, I set aside the order passed by the Labour Court in C.P.No.23 of 2006 solely on the ground of not giving an opportunity of hearing to the petitioner Management and I remit the matter back to the Labour Court for fresh consideration, on merits and in accordance with law. It is brought to the notice of this Court that this Court while admitting the Writ Petition had granted an order of interim stay in M.P.No. 1 of 2013, dated 03.12.2013, on condition that the petitioner Management deposits 50% of the subsistence allowance to the credit of C.P.No.23 of 2006, within a time frame. The learned counsel appearing on either side submitted that the petitioner Management had complied with the conditional order dated 03.12.2013 and deposited the amount to the credit of C.P.No.23 of 2006. It is also brought to the notice of this Court that the first respondent had already attained superannuation on 27.08.2009.

7. Having regard to the above submissions made by the learned counsel on either side, the following order is passed in the Writ Petition:-

- a) The order passed in C.P.No.23 of 2006, dated 31.07.2013, is set aside and the matter is remanded back to the learned Principal Judge, Labour Court, Chennai, for fresh disposal.
- b) On receipt of the papers, the learned Principal Judge, Labour Court, Chennai, shall give an opportunity of hearing to the learned counsel appearing on either side and after taking into consideration the written arguments to be filed by the petitioner Management and the first respondent/employee, shall decide the Claim Petition in C.P.No.23 of 2006 and pass appropriate orders, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.
- c) The first respondent/employee is permitted to withdraw 50% of the subsistence allowance, already deposited by the petitioner Management, pursuant to the order passed by this Court in M.P.No. 1 of 2013, dated 03.12.2013, which is lying to the credit of C.P.No.23 of 2006 on the file of the Principal Labour Court, Chennai, on production of a copy of this order, without prejudice to the result of C.P.No. 23 of 2006.

8. With the above observations, the Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

paa

To

1.The Joint Registrar of Co-operative Societies
Tiruvallur Region, Tiruvallur District.

2.The Principal Judge
Labour Court
Chennai-600 104.

1 cc to Mr.S. Muthukumar, Advocate, sr. 13123

1 cc to Mr.K.M. Ramesh, Advocate sr. 13664

1 cc to Government Pleader, Sr. 13267

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BVR (CO)
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