

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM

W.P.Nos.12828 of 2012 and 3434 of 2016

&

WMP/Nos.2802 & 2803 of 2016

W.P.No.12828 of 2012

G.Natarajan

..Petitioner

Vs

1. The Deputy Commissioner of Labour (Minimum Wages), Labour Department, D.M.S.Complex, Teynampet, Chennai 600 006.
 2. The Special Officer/Management, Kancheepuram District Consumer Co-operative Whole Sale Stores Ltd., Chennai 600 108.
 3. The Registrar of Co-operative Societies, N.V.Natarajan Maligai, 170, Periyar High Road, Kilpauk, Chennai 600 010.
- ..Respondents

W.P.No.3434 of 2016

The Management,
The Kancheepuram District Co-operative Wholesale Stores Ltd.,
represented by its Managing Director,
Chennai-108.

..Petitioner

vs

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1. G.Natarajan
 2. The Deputy Commissioner of Labour, (Minimum Wage), Labour Department, Chennai-6.
- ..Respondents

Prayer in W.P.No.12828 of 2012 : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent to comply with the order of the first respondent's order vide TSE II 2/2008 dated 10.09.2009.

Prayer in W.P.No.3434 of 2016: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the passing of the order in TSE-II-2/2008 dated 10.09.2009 on the file of the Deputy Commissioner of Labour (Minimum Wages), Labour Department, D.M.S. Complex, Teynampet, Chennai 600 006 and quash the same .

For Petitioner : Mr.P.Solomon
(W.P.12828 of 2012)
Mr. L.P.Shanmugasundaram
(W.P.No.3434 of 2016)

For Respondents : Mr.R.Rajeswaran Spl Govt. Pleader
for R1 (W.P.No.12828 of 2012)
: Mrs.T.P.Savitha, Govt. Advocate
for R2 and R3 in W.P.No.12828 of
2012
: Mr. P.Solomon for R1
(W.P.No.3434 of 2016)
Mr.R.Rajeswaran Spl. Govt. Pleader,
for R2 (W.P.No.3434 of 2016)

COMMON ORDER

With the consent of both parties, these Writ Petitions are taken up for final disposal.

2. Heard Mr.P.Solomon and Mr.L.P.Shanmugasundaram, learned counsel appearing for petitioner in W.P.No.12828 of 2012 and W.P.No.3434 of 2016 respectively and Mr.R.Rajeswaran, learned Special Govt. Pleader appearing for 1st respondent in W.P.No.12828 of 2012 and for 2nd respondent in W.P.No.3434 of 2016 and Mrs.T.P.Savitha, learned Government Advocate, appearing for respondents 2 and 3 in W.P.No.12828 of 2012.

3. The Management of Kancheepuram District Cooperative Whole Sale Stores Limited has filed W.P.No.3434 of 2016 challenging the order passed by the Deputy Commissioner of Labour, dated 10.9.2009, exercising jurisdiction under the provisions of the Tamilnadu Shops and Establishments Act 1947 (hereinafter referred to as "Act"). The 1st respondent in

W.P.No.3434 of 2016 is the petitioner in W.P.No.12828 of 2012, wherein, he seeks for implementation of the said order passed by the Deputy Commissioner of Labour (Minimum Wages). In the light of the same, both the Writ Petitions were heard together and disposed of by a common order.

4. The only ground on which the impugned order has been challenged by the petitioner Society is by contending that the 1st respondent viz., Deputy Commissioner of Labour cannot entertain the petition, because there is an alternative remedy provided under Section 153 of the Tamilnadu Cooperative Societies Act. The same ground has been reiterated in the affidavit in different forms and that appears to be the only ground of challenge. Therefore, the petitioner Society would contend that there is no jurisdiction for the Deputy Commissioner of Labour (Minimum Wage) to entertain the appeal petition filed by the 1st respondent workmen viz., G.Natarajan.

5. The 1st respondent workmen was appointed as a Salesman in the petitioner's store on 31.12.1985. While in service, there was a deficit of stock and this led to the 1st respondent G.Natarajan being placed under suspension on 30.5.2008. It is the further case of the petitioner Society, in (W.P.No.3434 of 2016), that domestic enquiry was conducted and after following due procedure, the 1st respondent was dismissed from service on 11.8.2008, which was challenged by the 1st respondent by filing an appeal under section 41 of the Act before the 2nd respondent Deputy Commissioner of Labour under the provisions of the Act. The 2nd respondent, by the impugned order dated 10.09.2009 went into all aspects including the validity of the domestic enquiry and recorded factual findings that the 1st respondent has been denied reasonable opportunity by the Enquiry Officer and there has been a breach of principles of natural justice. In the affidavit filed in support of the Writ Petition W.P.No.3434 of 2016, no grounds have been raised challenging this factual finding.

6. In any event, unless and until there is perversity in the finding recorded by the 2nd respondent, this Court will not examine the order of the 2nd respondent as if it is a second Appellate Authority. Perusal of the impugned order clearly shows that the authority applied the proper legal principles to the facts in issue and then rendered a finding that the order of dismissal was not sustainable. That apart, it is seen that in the counter statement filed by the petitioner Management before the 2nd respondent, they did not specifically raise the question as regards the jurisdiction of the 2nd respondent to entertain the matter under the Act. Having failed to raise such a plea before the 1st respondent, it would not be permissible for the petitioner Management to raise it for the first time in this Writ Petition. Even assuming it is argued

that the plea is a legal plea and could be raised at any point of time, such a plea has to be definitely held be thoroughly misconceived and without any basis.

7. In fact, the notification issued by the Government in No.II(2)/LE/5671/79 in exercise of the powers conferred under Section 6 of the Act and in supersession of the earlier notifications exempts permanently all the societies registered or deemed to be registered under the provisions of the Tamilnadu Cooperative Societies Act, 1961 from the provisions of the Tamilnadu Shops and Establishments Act, 1947 except Sections 31, 41, 43, 50 and 51. In the instant case, the power exercised by the 2nd respondent is under section 41 of the Act. Therefore the 2nd respondent Deputy Commissioner of Labour has jurisdiction to entertain the matter and examine as to whether the order of dismissal was validly passed. As rightly pointed out, the 2nd respondent Deputy Commissioner of Labour has threadbare analysed the factual aspects, examined the documents marked by either side and then rendered factual findings and the same does not call for any interference as the reasoning given is cogent and legally tenable. Therefore the challenge in the impugned proceedings by the petitioner Co-operative Society has to necessarily fail. One more reason as rightly pointed out by the learned counsel for the 1st respondent that the delay in filing writ petition has not been explained by the petitioner society.

8. The order was passed by the 2nd respondent on 10.9.2009 and the order was not implemented by the petitioner Society inspite of repeated representations and therefore the 1st respondent was compelled to approach this Court by filing a Writ Petition in W.P.No.12828 of 2012 to direct the Co-operative Society to implement the order and the Writ Petition was admitted and notice was issued on 8.3.2013. In spite of having been served with the notice in the said Writ Petition in 2013 itself, the petitioner Society has come forward with this Writ Petition viz., W.P.No.3434 of 2016 only during January 2016 as it was filed only on 28.1.2016. The inordinate delay and latches in filing the writ petition has not been explained by the Co-operative Society. Hence, for all the above reasons, the order passed by the 2nd respondent Deputy Commissioner of Labour dated 10.09.2001 is confirmed and W.P.No.3434 of 2016 is dismissed and there will be a direction to the Management of the Cooperative Society to implement the order within a period of eight weeks from the date of receipt of a copy of this order and accordingly the W.P.No.12828 of 2012 is disposed of .

9. In the result, W.P.No.3434 of 2016 is dismissed and W.P.No.12828 of 2012 is disposed of in the above terms. No costs. Consequently, the connected W.M.P.Nos.2802 & 2803 of 2016 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msr
To

1. The Deputy Commissioner of Labour (Minimum Wages), Labour Department, D.M.S.Complex, Teynampet, Chennai 600 006.
2. The Special Officer/Management, Kancheepuram District Consumer Co-operative Whole Sale Stores Ltd., Chennai 600 108.
3. The Registrar of Co-operative Societies, N.V.Natarajan Maligai, 170, Periyar High Road, Kilpauk,.

+1cc to Mr.P. Soloman , Advocate, S.R.No.15998
+2ccs to Mr.L.P. Shanmuga Sundaram, Advocate, S.R.No.15903, 15902
+1cc to the Government Pleader, S.R.No.16341

RSY(CO)
EU(04/04/2016)

W.P.Nos.12828 of 2012
and 3434 of 2016

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