



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2016

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.329 of 2011
and
M.P. (MD) .No.1 of 2011

K.Krishnaveni

... Appellant/Petitioner

Vs

1.The Joint Registrar of Co-operative Societies/
Revisioning Authority,
Collectorate Campus, Ramanathapuram.

2.The Special Officer,
Ramnad District Consumers Co-operative
Wholesale Stores Ltd.,
Vandikaran Street,
Ramanathapuram.

... Respondents /Respondents

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 03.12.2010 made in W.P.(MD).No.9760 of 2007.

Prayer in WP(MD). 9760/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the second respondent made in his proceedings in Na.ka.No.2299/2007/Int Audit Sec dated 26.10.2007 and quash the same.

For Appellant :Mr.S.Karthik

For R.1 :Mr.D.Muruganandham
Additional Government Pleader

For R.2 :Mr.S.Seenivasagam

JUDGMENT

[Judgment of the Court was delivered by

M. SATHYANARAYANAN, J.]

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The Writ Petitioner is the appellant. She joined the services of the second respondent as a temporary helper in the year 1989 through employment exchange and subsequently, she was made permanent and posted as Sales Assistant and worked in various places.

2. According to the appellant, she retired from her service, on 17.09.2007. It is the case of the appellant that while she was working as Sales Assistant-cum-Cashier at Self Service RDCCWS Stores Limited between the year 2002 and 2004, she along with other salesmen were found to be making excess billing and the share of her liability was fixed at Rs.2,00,525/- by the second respondent. Accordingly, an order, dated 19.05.2004, was issued by the second respondent calling upon her to explain as to why the said amount should not be recovered and subsequently, vide order, dated 02.08.2004, an order of recovery came to be passed by the second respondent. The appellant/writ petitioner made a challenge to the said order by filing W.P.No.2565 of 2004 and the same was dismissed by this Court on 15.02.2005 granting liberty to the petitioner to invoke the provisions of Section 153 of the Tamil Nadu Co-operative Societies Act (in short 'the Act') and the appellant made a challenge to the said order by filing W.A.No.282 of 2005 and it was disposed of, by the Hon'ble Division Bench of this Court, on 27.06.2005, granting the very same liberty to the appellant/writ petitioner to file a petition under Section 153 of the said Act. The appellant/writ petitioner preferred a Revision Petition before the Joint Registrar of Co-operative Societies, on 05.08.2005 and the first respondent granted stay of the recovery proceedings passed by the second respondent. Subsequently, the revision came to be dismissed by the Joint Registrar of Co-operative Societies, on 29.05.2006. The appellant/writ petitioner aggrieved by the dismissal of the revision petition, filed W.P. (MD).No.4897 of 2006 and the same was entertained and an order of interim stay was granted by this Court. During the pendency of the Writ Petition, two other employees, namely, one Shanmugaraj and N.Paulraj had filed W.P.Nos.1060 and 1061 of 2004 before this Court challenging the very same impugned order of recovery, like that of the appellant/writ petitioner and the same came to be allowed on 10.04.2006 with costs of Rs.2,500/- each to be paid by the respondents therein.

2.1. The second respondent subsequent to the said order <https://hccases.ecourt.gov.in/cases/> the recovery proceedings and in view of the subsequent development, W.P.No.4897 of 2006 filed by this appellant has been dismissed as infructuous. Subsequently, she

appellant
question

2.3. The learned Judge, after taking note of the rival submissions, though found that there was no basis on which the respondents were seeking recovery of the amount in question from the appellant and having taken note of the stand of the respondents in the counter affidavit that the appellant admitted guilt, sustained the order of recovery and dismissed the Writ Petition and challenging the legality of the same, the appellant/writ petitioner has filed this Writ Appeal.

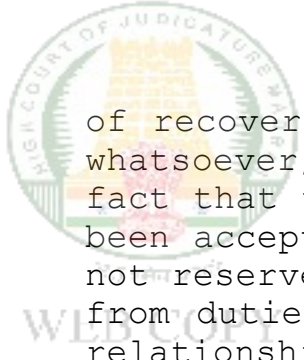
4. *Per contra*, learned counsel appearing on behalf of the second respondent would submit that since the appellant/writ petitioner violated the Special Bye-laws relating to service conditions and she is liable to pay the amount in question and there is no need on the part of the second respondent to conduct an enquiry under Section 81 of the Act and despite her resignation, the second respondent Society is entitled to recover the same and she is liable to pay for dismissal of the Writ Appeal.



5. This Court has carefully considered the rival submissions and perused the materials available on record.

6. A perusal of the typed set of papers would disclose that on an earlier occasion, the order of recovery came to be passed against this appellant and other employees including the said Shanmugaraj and N.Paulraj. The said Shanmugaraj and N.Paulraj filed W.P.Nos.1060 and 1061 of 2004 before this Court and both the Writ Petitions came to be allowed by this Court vide common order dated 10.04.2006 with costs of Rs.2,500/- to be paid by the respondents. Based on the said order, the earlier order of recovery was withdrawn vide memo dated 19.09.2006. In view of the subsequent development, the Writ Petition in W.P.(MD).No.4897 of 2006 filed by this appellant, challenging the very same order of recovery as that of Shanmugaraj and N.Paulraj, came to be dismissed as infructuous by this Court. The appellant/writ petitioner subsequently submitted her resignation citing her family reasons and the Special Officer vide proceedings dated 19.09.2007 has accepted the letter of resignation and also relieved her from duty with effect from 17.09.2007. Since then, there is cessation of master and servant relationship. However, the second respondent vide impugned order dated 26.10.2007 sought to recover the amounts from the appellant/writ petitioner and also from the other employees excepting the said Shanmugaraj and N.Paulraj. The learned Judge, though *prima facie* found that there was no basis of recovery, he had taken note of the averments made in the counter affidavit that the appellant had admitted the guilt and based on which, dismissed the Writ Petition.

7. It is pertinent to point out that though the respondents reiterated that the order of recovery was effected from the appellant's salary since 2005, the appellant/ Writ Petitioner stoutly denied the said statement by stating that the very same amount came to be demanded by the respondents vide impugned memo dated 26.10.2007, even after the retirement from the service of the second respondent. That apart, it is the categorical stand of the appellant/writ petitioner that before passing the order of recovery, no opportunity, whatsoever, has been provided to her. As per the stand of the second respondent in paragraph Nos.16 and 17 of the counter affidavit, they did not invoke Section 81 of the Act and it is the submission of the learned Standing Counsel for the second respondent, on instructions, that Special Bye-laws relating to service conditions have been invoked to effect recovery. When this Court posed a question as to whether any provision is available in the Special Bye-laws to effect recovery without affording any opportunity to the party concerned, the learned Standing Counsel appearing for the second respondent is unable to give any plausible explanation ~~on this point~~. Therefore, the fact remains that the order of recovery came to be passed, based on the Special Bye-laws relating to service conditions and admittedly, the impugned order



of recovery came to be passed, without affording any opportunity, whatsoever, to the appellant/writ petitioner. In the light of the fact that the letter of resignation submitted by the appellant has been accepted by the second respondent, where the respondents have not reserved their right and admittedly, she has been relieved her from duties from 17.09.2007, there is cessation of master-servant relationship since the date of her resignation and by invoking the Special Bye-laws, the second respondent cannot order recovery. Therefore, this Court is of the view that the order impugned in this Writ Appeal is liable to be set aside.

8. In the result, this Writ Petition is allowed and the impugned order dismissing the Writ Petition in W.P.(MD).No.9760 of 2007, dated 03.12.2010 and also the proceedings of the second respondent, dated 26.10.2007, are set aside. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To:

1.The Joint Registrar of Co-operative Societies/
Revisioning Authority,
Collectorate Campus, Ramanathapuram.

2.The Special Officer,
Ramnad District Consumers Co-operative
Wholesale Stores Ltd.,
Vandikaran Street, Ramanathapuram.

+1 cc to M/s.S.Karthik, Advocate in SR.No. 61101
+1 cc to M/s.S.Seenivasagam, Advocate in SR.No. 61796
+1 cc to The Special Government Pleader in SR.No. 61419

ssm

CSL/SS-2/04.11.2016: 5p/6c

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