



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017

C O R A M

WEB COPY

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

W.P.(MD)No.7757 of 2011

and

W.M.P.(MD)No. 2 of 2011

1. The Management,
MM 302 Pudukottai Co-operative Housing Society Ltd.,
Represented by its Special Officer.

2. The Management of
MM 302 Pudukottai Co-operative Housing Society Ltd.,
Represented by its Secretary,
Keela Raja Veedhi,
Pudukottai.

... Petitioners

Vs.

1. S.K.Periyasamy,

2. The Deputy Commissioner of Labour / Appellate Authority,
Tamil Nadu Shops and Establishments,
Trichirappalli.

...Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of certiorari, calling for the records relating to the impugned order made in TNSEC No.1/07 dated 15.08.2010 issued by the 2nd respondent and quash the same.

For Petitioners : Mr.I.Irulappan

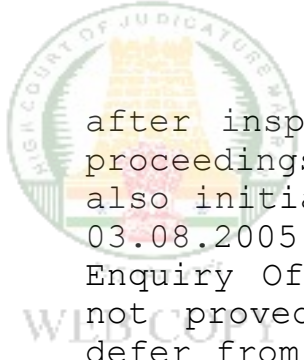
For R1 : Mr.R.Sundar

For R2 : Mr.V.Muruganantham, AGP.

O R D E R

This Writ Petition has been filed by the petitioners to quash the impugned order made in TNSEC No.1/07 dated 15.08.2010 issued by the second respondent.

2.In the affidavit filed in support of the petition, it is stated that the first respondent was employed as a secretary of the Pudukottai Co-operative Housing Society. On account of his acts, a huge loss to the tune of more than Rs.40,00,000/- to the society has been caused. Hence, an enquiry was initiated under Section 81 of Tamil Nadu Co-operative Societies Act, 1983 and



after inspection by the Vigilance and Anti Corruption, surcharge proceedings were initiated. Parallely, disciplinary action was also initiated against the first respondent and charge memo, dated 03.08.2005 was issued. After conducting domestic enquiry, the Enquiry Officer submitted a report holding that the charges were not proved. However, the Disciplinary Authority has chosen to defer from the enquiry report. After giving sufficient opportunity to the first respondent, he was dismissed by order, dated 10.03.2007. Aggrieved by the same, the 1st respondent filed an appeal under Section 41 of Tamil Nadu Shops and Establishment Act, 1947.

3. In the said appeal, the petitioners/Management has submitted that the appeal under Section 41 of the Tamil Nadu Shops and Establishment Act, 1947, was not maintainable. The Appellate Authority holding that there is no exemption for Co-operative Societies from invoking Section 41(2) of the TNSE Act and thereby, allowed the appeal. As against which, this Writ Petition is filed by the petitioners/Management.

4. The learned counsel for the petitioners argued that the Tamil Nadu Shops and Establishment Act was enacted only for the welfare of the persons, who are working in the unorganized sector and the writ petitioner management comes under Co-operative Societies Act and the first respondent, who was the Secretary of the petitioners' Co-operative Society is an officer of the Pudukkottai Co-operative Housing Society and is not a workman under the Tamil Nadu Shops and Establishment Act and therefore, the first respondent is not entitled to invoke Section 41 of the Tamil Nadu Shops and Establishment Act, 1947. It is the duty of the first respondent to act diligently and he is liable for all the consequences regarding the sanctioning of loan to other persons and he has to recover the same. Only after there was a complaint, proper enquiry was conducted and then charges were framed and an explanation was asked for from the first respondent. As there is no satisfactory explanation, he was removed from service and there is no vendata against the first respondent. After giving opportunity and as per the principles of natural justice, he was heard and after valid enquiry, the first respondent was dismissed from service. Hence, the learned counsel for the petitioner submitted that the dismissal order of the petitioner management requires no interference.

5. Countering the aforesaid submissions of the learned counsel for the petitioners' society, the learned counsel for the first respondent submitted that charges were not proved in the domestic enquiry, which has been also accepted by the Management and the report of the domestic enquiry was not at all produced before the Deputy Commissioner of Labour and also before this Court. The learned counsel for the first respondent also submitted that the learned Deputy Commissioner of Labour, second respondent herein, after



considering all the aspects, correctly allowed the appeal and set aside the dismissal order passed by the petitioners Management and hence, prayed to dismiss the writ petition.

6. Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent and also perused the materials available on record.

7. Findings of the Appellate Authority is that under Section 41 (2) of the Tamil Nadu Shops and Establishment Act, there was no exemption given for the Co-operative Societies. Hence, the Appellate Authority held that under Section 41(2) of the Tamil Nadu Shops and Establishment Act, the petition filed by the first respondent is maintainable. In case, the petitioners Management felt that the Enquiry Officer has not properly conducted the said domestic enquiry, they could appoint another Enquiry Officer for fresh enquiry, which they have not done so. The petitioners-management has also not submitted that there is an error in the domestic enquiry proceedings. Hence, the Labour Court has found that when the charges have not been proved by the Management, the said punishment was wrong and the first respondent should be relieved from the said charges and the award of dismissal from service cannot be accepted. Therefore, there is no error or illegality in the order passed by the second respondent.

8. In view of the above, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl side)

/True Copy/

Sub Assistant Registrar

To

The Deputy Commissioner of Labour / Appellate Authority,
Tamil Nadu Shops and Establishments,
Trichirappalli.

+ 1 cc TO Mr.R.Sundar, Advocate in SR No. 90736

Smi

AE/RSK/SAR4/03.05.2018/3P/3C

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