

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Appeal No.310 of 2012
and M.P.No.1 of 2012

The Management of
Chithode Farmers Service
Cooperative Society Ltd.
Rep. By its Special Officer
Chithode-638 102
Erode District

..Appellant

Vs.

1.The Labour Court
Salem

2.K.Subramaniam

..Respondents

Writ Appeal filed against the order dated 14.09.2011 made in

W.P.No.11275 of 2009.

For appellant : Mr.T.Murugamanikkam

For respondents : Mr.N.Manokaran for R2.

ORDER

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel for the appellant/Society and the
learned counsel representing the 2nd respondent/workman.

2. The order of the learned Single Judge passed in W.P.No.11275 of 2009 dated 14.09.2011 is challenged in this writ appeal by the appellant/petitioner/Society, wherein, the appellant sought to quash the order of the Labour Court dated 12.01.2009 made in I.D.No.406 of 2004.

3. It is seen from the records that the second respondent/workman, while working as Accountant in the appellant/society, on the allegation that he had falsified loan accounts for a total sum of Rs.6,92,000/- without the knowledge of the respective deposit holders, was issued with a charge memo by the President of the Society and a domestic enquiry was conducted against him. The Enquiry Officer gave his findings on 01.02.2000 and on its basis, the 2nd respondent herein was dismissed from service on 28.02.2001. Aggrieved by the said dismissal order, the second respondent/workman filed a Revision Petition under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. The Revisional Authority, by his order dated 18.06.2002, allowed the revision on the ground that since major penalty was imposed, it must be consistent with the principles of natural justice and since principles of natural justice was not adhered to, the order of dismissal was set aside and direction was issued to the management/society to proceed from the

stage in which the defect had crept in.

4. Subsequently, after affording opportunity of personal hearing to the workman, the Special Officer of the Society by order dated 19.08.2002, dismissed the second respondent/workman. The second respondent once again filed revision and the Revisional Authority pointed out that punishment was excessive. He also noted that for the loss caused at the time when the second respondent was employed as a Cashier, he has admitted his mistake and made good the loss to the society by paying the amount to the credit of the society and he was also imposed with several punishments for different misconducts. It was also observed that while others were let off with minor penalty, the petitioner alone has been given major penalty, which factor also will have to be considered by the Special Officer. On remand, the Special Officer once again by order dated 24.06.2003 dismissed the second respondent/workman.

5. The second respondent/workman raised an industrial dispute and after following the procedures contemplated under the Industrial Disputes Act, the matter was taken up by the Labour Court. The Labour Court, pointed out that the President himself has framed charges, given evidence, issued show cause notice as well as the

dismissal order and hence, enquiry was liable to be set aside. The Labour Court also held that the dismissal of the second respondent for the alleged malpractice was clearly disproportionate. Thus, the Labour Court set aside the dismissal dated 28.02.2001 and directed his reinstatement with continuity of service but without backwages against which the petitioner/society filed writ petition.

6. The learned Single Judge, on going through the award of the Labour Court, held that in the absence of the petitioner/society making an alternative plea for conducting a fresh enquiry before the Labour Court in case of the enquiry being held vitiated, there is no further obligation on the part of the Labour Court to give a fresh opportunity to the management and in that view of the matter, the award of the Labour Court does not suffer from any infirmity. The learned Single Judge, thus, dismissed the writ petition filed by the Management. Aggrieved by the said order, this Writ Appeal is filed.

7. On a perusal of the typed set of papers filed before this court, it is seen that the dismissal order dated 24.06.2003 issued by the Special Officer came to be passed subsequent to the dismissal order dated 28.02.2001 issued by the President of the Society and also dated 19.08.2002 issued by the Special Officer. However, the

dismissal order dated 24.06.2003, which was passed after remand, has not been challenged by the 2nd respondent/workman either before the Labour court or before the Statutory Revisional Authority. The only order which was put to challenge before the Labour Court was the order dated 28.02.2001 passed by the President of the Society. The Labour Court also gave its findings in that regard and dismissed the petition filed by the Management and directed the second respondent's reinstatement with continuity of service, but without backwages. The Management filed Writ Petition against the order of the Labour Court and the learned Single Judge, after considering the issues raised before him, dismissed the writ petition on the ground that the management was not ready to conduct fresh enquiry, in case of the enquiry being held vitiated and there is no further obligation on the part of the Labour court to give a fresh opportunity to the management.

8. It is the contention of the learned counsel for the appellant/society that the learned Single Judge has not taken note of the order of dismissal dated 24.06.2003, which was not challenged before the Labour court and hence the order of learned Single Judge is vitiated.

9. Initially the matter was disposed of on 11.04.2016 and since the matter required some clarification, the matter is reposted today i.e., 18.04.2016 under the caption "Being Spoken to" and accordingly, we heard the counsel for the respective parties.

10. We have gone through the orders passed by the appellant/society against the second respondent/workman, the order of the Labour court and the order of the learned Single Judge. It is seen that the learned Single Judge while passing orders in W.P.No.11275 of 2009, discussed elaborately regarding the dismissal orders passed against the second respondent/workman in paragraph Nos.3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and thereafter in paragraph 6 gave a finding that the impugned award does not suffer from any infirmity. It is also relevant to note that in paragraph 3.3, it is observed by the learned Single Judge as under:-

".....for the loss caused at the time when the second respondent was employed as a Cashier, he has admitted his mistake and made good the loss to the society by paying the amount to the credit of the society and he was also imposed with several punishments for different misconducts."

11. On a consideration of the entire matter, this Court is of the opinion that there is no merit in this appeal and it is liable to be dismissed. Accordingly, the Writ Appeal is dismissed confirming the order passed by the learned Single Judge in W.P.No.11275 of 2009. No costs. Consequently, connected MP is closed.

(H.G.R.,J.)

(K.R.C.B.,J.)

18.04.2016

Index:Yes/No
nvsri

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