



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)No.108 of 2018
and
C.M.P(MD)No.538 of 2018

Judgment reserved on 05.03.2018	Judgment pronounced on 14.03.2018
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The Managing Director,
Nazareth Urban Co-op Bank Ltd.,
Nazareth.

.. Appellant/Petitioner

Vs.

1. The Deputy Commissioner of Labour,
(Appellate Authority under the Tamil Nadu
Shops and Establishment Act),
Trivandrum Road, Tirunelveli - 2.

2. C.Deva Anbu
[Cause Title accepted vide order
dated 17.08.2015, made in
M.P(MD)No.1 of 2015]

.. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order, dated 12.11.2014, made in W.P(MD)No.5400 of 2007, by the learned Single Judge.

Prayer in WP(MD)No.5400/2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI, call for the records in TNSE 5/05 on the file of the 1st respondent and quash the order in TNSE 5/2005 dated 09/04/2007 and pass such other order as this Honourable Court may be pleased to deem fit.

For Appellant : Mr.R.Maheswaran
For Respondent No.1 : Mr.S.Dayalan,
Government Advocate.
For Respondent No.2 : Mr.M.Elango

**J U D G M E N T**

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This writ appeal is directed against the order, dated 12.11.2014, made in W.P(MD)No.5400 of 2007.

2.The said writ petition filed by the appellant society was heard along with four other writ petitions, in which, the orders passed by the Deputy Commissioner of Labour [Appellate Authority under the Tamil Nadu Shops and Establishment Act] [hereinafter referred to as "Shop Act Authority"], were put to challenge. All the writ petitions filed by the appellant were dismissed by the common order, dated 12.11.2014. The appellant society has filed this writ appeal only against the order passed in W.P(MD)No.5400 of 2007.

3.The said writ petition was filed by the appellant challenging the order passed by the Shop Act Authority in TNSE 5/2015, dated 09.04.2007. The said order was passed on an appeal petition filed by the second respondent herein, who was employed as a Manager in the appellant society, which is a cooperative bank. The second respondent challenged the order of dismissal, dated 22.02.2005, passed by the appellant society, dismissing him from service of the society. The Shop Act Authority, by the order, dated 09.04.2007, set aside the order of dismissal and directed the second respondent to be reinstated in service in the position prior to he being placed under suspension pending disposal of the charge memo issued to him, dated 13.08.2002.

4.The appellant filed the writ petition contending that the second respondent, who was employed as Manager, committed irregularities along with the cashier of the appellant society, namely, one Mr.Muthu Chandrasekar, for which, a charge memo, dated 13.08.2002, was issued. The allegations in the charge memo being that the second respondent and the cashier had committed fraud in the auction conducted for the jewels, which were pledged with the appellant by the borrower. The appellant contended that in respect of Sathankulam Branch of the appellant society, the jewels which were pledged for five jewel loans, were taken out from the safe custody, however the jewels in respect of only three loans were sent for auction to the head office and amounts were received and in respect of two other jewel loans, the amounts were remitted on 31.07.2002 in the day book, as if it was remitted on 30.07.2002. The day book for 30.07.2002, was closed by the Senior Assistant Mr.Balasubramanian, after which, the second respondent made entries in the day book and closed the account. It is stated that as per the established practice, the jewels will be auctioned only in the head office and the amount paid by the auction purchaser, will be remitted in the head office and challen will be issued to the branch of the appellant society.

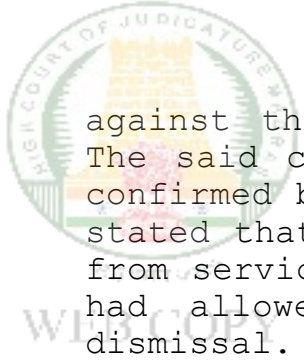


5.The further allegation was that the second respondent misused his official position, while working as Manager and directed the Senior Assistant, Mr.Balasubramanian, to include six challenges in the auction dated 30.07.2002 and despite the fact that the ledger and day book for 30.07.2002 were already closed and informed to him by the staff, the second respondent himself entered the sale proceeds in respect of those two jewel loan amounts and closed the account on 31.07.2002. Further, it was alleged that in the jewel responsibility register, the signature of one Balasingh was obtained for those two jewel loan accounts, which is against the settled auction practice. The further allegation was being reliable to the first two charges that the second respondent indulged in unlawful activities and brought disrespect to the name of the appellant society and failed in his duties and responsibilities.

6.The second respondent submitted his explanation, dated 12.10.2002 and a domestic enquiry was conducted by appointing one Mr.S.Sekar as the Enquiry Officer. The second respondent filed O.S.No.2 of 2003 on the file of the District Munsif Court, Srivaikuntam, challenging the appointment of the Enquiry Officer and obtained an order of *ex parte* interim injunction. The appellant society, therefore, changed the Enquiry Officer and another Enquiry Officer was appointed and such appointment was intimated to the second respondent. In spite of several adjournments, as requested by the second respondent, which was granted by the Enquiry Officer, the second respondent failed to attend the domestic enquiry and therefore the Enquiry Officer, had no other alternative, except to set the second respondent *ex parte* and proceeded with the enquiry.

7.The Enquiry Officer submitted his report dated 19.02.2003, holding that the charges were proved against the second respondent. The appellant society accepted the findings of the Enquiry Officer and issued second show cause notice to the second respondent, vide notice, dated 10.03.2003. Once again, the second respondent filed a suit in O.S.No.57 of 2003, on the file of the District Munsif Court, Srivakuntam for declaring the second show cause notice dated 10.03.2003, is illegal and void and also for consequential injunction, to restrain the appellant society from taking further action. The suit was dismissed by the Trial Court by Judgment and decree dated 13.12.2004, after which, the second respondent submitted his explanation, dated 16.12.2004 for the second show cause notice, dated 10.03.2003. The explanation offered by the second respondent was considered and the appellant society passed resolution on 21.02.2005, dismissing the second respondent from service and accordingly, the Special Officer, vide his proceedings, dated 22.02.2005, intimated the decision of the appellant society to the second respondent.

8.With regard to misappropriation of the jewels, a criminal case was registered on the file of Sathankulam Police Station in Crime No.251 of 2003, for an offence under Section 409 I.P.C.,



against the second respondent and Cashier, Mr.Muthu Chandrasekar. The said cashier was also dismissed from service, which order was confirmed by the Registrar of Cooperative Societies. It is further stated that the second respondent challenged the order of dismissal from service by filing an appeal before the Shop Act Authority, who had allowed the appeal petition and set aside the order of dismissal.

9.The appellant society challenged the order passed by the Shop Act Authority, by filing the writ petition contending that the authority failed to appreciate the evidence, which was placed by the Management and erred in holding that the charges are not proved. It is further submitted that out of the five jewel loans, the jewels which were pledged in respect of three loans alone, were taken to the head office and the jewels which were pledged in respect of the two other jewel loans, were retained by the second respondent in collusion with the cashier Mr.Muthu Chandrasekar, which is evidenced by Ex.M.9. Further, it is submitted that the Shop Act Authority failed to appreciate the evidence of the Assistant Mr.Devadoss, but proceeded to make a piecemeal analysis and came to the conclusion that the second respondent cannot be found fault with. The Shop Act Authority failed to appreciate the established practice that has been followed in the society, whereby the auction of the jewels pledged by the defaulters will be conducted only at the head office and this vital factor was not taken note of by the authority.

10.Further, it is submitted that in respect of three jewel loans, where the jewels were taken to the head office for being auctioned, challans were received from the head office, whereas in respect of the two other jewel loans, the jewels were shown as if the same were auctioned and the cash amounts remitted, which is sufficient to hold that the charge has been proved by the appellant society. The evidence of Mr.M.Devadass was ignored by the authority, who had clearly stated that only three jewels were given to him by the cashier, Mr.Muthu Chandrasekar, to be taken to the head office, from which, the Shop Act Authority erroneously presumed that the second respondent had no hand in the dealing. On the above grounds, the appellant society contended that the order passed by the Shop Act Authority setting aside the order of dismissal, calls for interference.

11.The Writ Court held that the Shop Act Authority after due appreciation of evidence available and after a detailed discussion arrived at a conclusion that the second respondent has taken note of the five jewels covered under the five jewel loans and handed over the same to the Cashier Mr.Muthu Chandrasekar and the same was duly entered by the Accountant Mr.Balasubramanian in the register and after duly entrusting the jewels to the Cashier to be taken to Head Office for auction, the second respondent left the bank on official visit to the Sub Registrar's Office at Kommadi Kottai and returned to the bank only at 05.00 p.m. and by the time, the Accountant Mr.Balasubramanian left the office without any intimation and at the



same time, the Cashier and the Office Assistant were present along with chalan for the jewels covered under three jewel loans and cash amount for jewels covered under two jewel loans and the the second respondent received the same and duly entered it in the relevant register and there is no act of fraud committed by the second respondent amounting to misconduct in the manner of sending the jewels for auction to the Head Office.

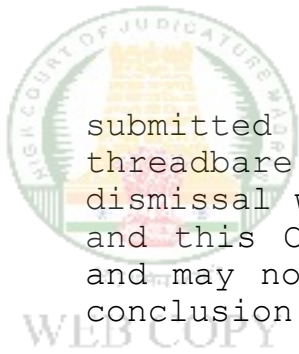
12. With regard to the contention advanced by the appellant society that the auction amount would not be sent back to the Branch by way of cash and when it was brought by way of cash, the Manager ought to have questioned the Cashier and the Office Assistant in this regard and if it had been done, it would have been brought to the light that no auction was conducted in respect of the jewels relating to the two jewel loans. Therefore, it is a serious negligence or dereliction of duty on the part of the second respondent.

13. The second respondent contended that it is the usual practice to bring back the chalan for the auction amount and the cash amount of the jewels, which were auctioned and therefore, no doubt occurred in his mind to question the conduct of the Cashier and the Office Assistant and there is no dereliction or negligence of duty on the part of the second respondent.

14. The Writ Court while accepting the finding of the Shop Act authority, held that it was based on facts about the non-involvement of the Manager in the act of fraud allegedly committed by the Cashier. Further, it held that the finding rendered is based on appreciation of oral and documentary evidence produced on the side of the Management and the finding is supported by reasons. Further, it was pointed out that the appellant society has not shown before the Court that the finding of the Shop Act Authority is in any way lacking in evidence or particulars so as to construe the same as a perverse finding, warranting interference by the Court in a writ petition. Thus, it was observed that considering the nature of materials, based on which the finding is rendered, the Court is not inclined to interfere with the same. The Court concluded that the appellant is unable to make out any valid ground to not to sustain the impugned order of the Shop Act Authority, setting aside the order of dismissal and directing reinstatement of the second respondent.

15. The learned counsel appearing for the appellant strenuously contended that the order passed by the Writ Court calls for interference as there was voluminous evidence to show that the second respondent is guilty of negligence and dereliction of duty and the order of dismissal ought not to have been interfered with.

16. Mr. M. Elango, learned counsel appearing for the second respondent has drawn the attention of this Court to certain paragraphs of the order passed by the Shop Act Authority and



submitted that the authority has considered the entire matter in a threadbare manner and on facts has concluded that the order of dismissal was not sustainable, which was confirmed by the Writ Court and this Court examined the correctness of the concurrent findings and may not re-appreciate the evidence for coming to a different a conclusion.

17. We have elaborately heard the learned counsel appearing for the parties and carefully perused the materials placed on record.

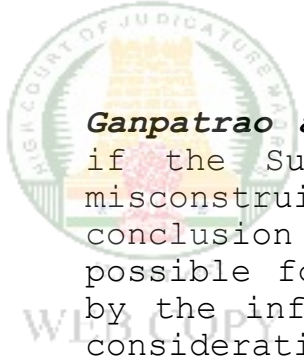
18. As could be seen from the memorandum of grounds of appeal as well as from the arguments advanced by the learned counsel appearing for the appellant society, the present attempt of the appellant before this Court is to re-appreciate the evidence, which was placed before the Shop Act Authority and come to a different conclusion than what was arrived at by the authority.

19. The first aspect to be considered is whether such exercise could be done by us, especially, when we are examining the correctness of the order passed by the Writ Court which affirmed the findings of the Shop Act Authority. In a long line of decisions, the Hon'ble Supreme Court has laid down the parameters, which are required to be taken note of when there is a challenge to an Award passed by a Labour Court or an Industrial Tribunal. Though, in the instant case, the order was passed by the Shop Act Authority, the procedure akin to any industrial adjudication has been adopted by the said authority and therefore the parameters, by which, an Award of the Labour Court or Industrial Tribunal could be decided would apply with full force, while deciding the correctness of the Shop Act Authority.

20. The parameter laid down is that normally such orders passed by the adjudicating authorities under Labour Welfare Legislations should not be interfered with, unless it is established that the order/award was perverse. To hold that the order is perverse, what is required to be seen is whether the authority committed an error of law, which is apparent on the face of the order or has rendered a finding, which would not be rendered by any normal person, especially, while adjudicating the correctness of an order of dismissal from service or if the authority has failed to take note of valid evidence placed before it, brush aside the same, did not assign any reasons for its conclusion, then such orders could be termed as perverse. As noticed above, the Writ Court tested the order passed by the Shop Act authority on the anvil of the parameters laid down by the Courts. The Writ Court noticed that the order passed by the Shop Act authority was a reasoned order, the evidence which was placed before it, was re-appreciated and it was held that the second respondent cannot be held guilty of the charge of negligence or dereliction of duty.

<https://hcservices.ecourts.gov.in/hcservices/>

21. The **Hon'ble Supreme Court** in **Shama Prashant Raje v.**

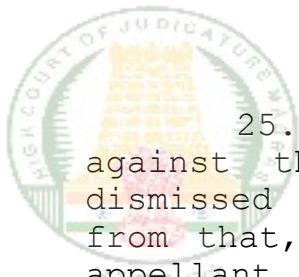


Ganpatrao and Others reported in (2000) 7 SCC 522, pointed out that if the Subordinate Tribunal had committed a manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials placed before the Court, it was not possible for a reasonable man to come to the conclusion arrived at by the inferior Tribunal or the inferior Tribunal had taken into consideration certain relevant materials which are not admissible, then only the High Court would be justified in interfering with the findings of the inferior Tribunal. Thus, the scope of judicial review over the decision of the Shop Act Authority is restricted and clearly circumscribed and the Court cannot convert itself as a second appellate authority over the findings rendered by the Tribunal.

22. Before the Shop Act Authority, the management has let in evidence and the witnesses have been extensively cross-examined and subsequently they were recalled and re-examined and further cross-examined and after deciding the evidence, the Shop Act Authority has come to the conclusion that the second respondent cannot be held guilty of dereliction of duty. In this regard, the learned counsel appearing for the second respondent pointed out that he has been dragged into several litigations on account of the appellant society not allowing the matter to attain finality and the present appeal is one such attempt by the appellant society to re-agitate the matter after the Writ Court having rendered a clear finding that there is no error in the order passed by the authority.

23. As pointed out earlier, we cannot exercise power as an appellate Court over the factual findings rendered by the authority nor can re-appreciate the evidence, which was appreciated by the authority and a factual finding has been recorded. Bearing in mind these legal principles, if the order passed by the Shop Act Authority is to be decided, the only conclusion can be arrived at is to hold that there are no grounds made out for interference with the order passed by the Shop Act Authority.

24. It is submitted by the learned counsel appearing for the second respondent that the surcharge proceedings initiated against the second respondent was also set aside and during the pendency of the domestic enquiry, the second respondent was not paid subsistence allowance and the second respondent was compelled to approach the Assistant Commissioner of Labour by filing an application under the Provisions of the Payment of Subsistence Allowance Act and the Assistant Commissioner of Labour allowed the petition as against which, the appellant society preferred an appeal before the Deputy Commissioner of Labour, Madurai and the appeal petition was dismissed by order dated 30.09.2010, which was challenged by the appellant society in W.P(MD)No.13738 of 2010 and the same was dismissed by the Writ Court by the common order, dated 12.11.2014, holding that the second respondent was entitled to 100% subsistence allowance.



25.The appellant society has not filed any writ appeal against the order in W.P(MD)No.13738 of 2010, though it was dismissed by the impugned common order, dated 12.11.2014. Apart from that, the surcharge proceedings, which were initiated by the appellant society was set aside by the Principal District Court, Tuticorin in C.M.A(CS)No.7 of 2004, which was challenged by the appellant society in W.P(MD)No.4608 of 2011 and the said writ petition was also dismissed by the impugned common order, dated 12.11.2014 and the appellant society has not filed any writ appeal against the said order. The Writ Court while deciding the correctness of the order passed by the Principal District Court, Tuticorin, in C.M.A(CS)No.7 of 2004, pointed out that there is no material to show that with regard to discrepancy of the market price of the old jewels and the second respondent was found not guilty of any misconduct and he was found to have duly handed over the jewels covered under the five jewel loans by the Cashier and the Office Assistant and no entrustment of the property was given to the second respondent so as to holding liable for any act of misappropriation or any act of loss caused to the appellant society.

26.In the light of the above discussion, we hold that there are no grounds made out by the appellant society to interfere with the order passed in the writ petition. Accordingly, the writ appeal fails and it is dismissed, confirming the order, dated 12.11.2014, made in W.P(MD)No.5400 of 2007. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Deputy Commissioner of Labour,
(Appellate Authority under the Tamil Nadu
Shops and Establishment Act),
Trivandrum Road, Tirunelveli - 2.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 55565
+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 55380
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 55546

SMN

TE/SKN-RSK/SAR-1 : 26/03/2018 : 8P/5C

JUDGMENT MADE IN
W.A(MD)No.108 of 2018 and
C.M.P(MD)No.538 of 2018
14.03.2018