



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2018

Pronounced on : 04.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.7129 and 11081 of 2014

and

M.P.(MD)Nos.2 &3 of 2014

in

W.P.(MD) No.11081 of 2014

M.P.(MD) No.1 of 2014 in W.P.(MD)No.7129/2014

The Management,
N.N.627, K.Pethaanenthal Primary,
Agricultural Co-operative Bank,
K.Pethaanenthal at Theli,
Sivagangai District.

... Petitioner in both W.Ps.

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. K.Muniasamy

... Respondents in both W.Ps.

PRAYER in W.P.(MD)No.7129 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the fair and decreetal order dated 05.12.2013 made in I.A.No.375/2012 in I.D.No.267/1996 on the file of the first respondent and quash the same.

PRAYER in W.P.(MD)No.11081 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to order made in C.P.No.12/2006, dated 26.09.2012 passed by the first respondent and quash the same.

For Petitioner :Mr.D.S.Sadiq Raja
(in both W.Ps.)

For R2 :Mr.T.Ravichandran

R1 :Labour Court
(in both W.Ps.)

COMMON ORDER

The petitioner in both these writ petitions is the Management of a Registered Co-operative Society. The second respondent Thiru.K.Muniasamy was employed as Cashier in the said society. It was alleged that he indulged in misappropriation.



Therefore, charge memo was issued, enquiry was conducted. Thereafter, he was dismissed from service by order dated 04.03.1994.

2.Questioning the same, he preferred a revision petition before the Joint Registrar of Co-operative Societies by invoking Section 153 of the Act. The revision petition was dismissed on 03.06.1996. Thereafter, he raised an industrial dispute by filing I.D.No.267 of 1996 before the Labour Court, Madurai. An exparte award was passed in his favour on 18.10.2004. To enforce the same, he filed C.P.No.12 of 1996. The same was allowed and the society was directed to pay an amount of Rs.7,15,000/-. This order was passed on 26.09.2012.

3.Realizing that this was on account of having suffered an exparte award, the Management of the Society at last woke up and filed I.A.No.375 of 2012 for setting aside the same. Since the delay occasioned in filing the set aside petition was inordinate, the Labour Court dismissed the said application on 05.12.2013. Questioning the dismissal of the set aside petition, the Management of the Society filed W.P.(MD)No.7129 of 2014. Questioning the order made in the claim petition, W.P.(MD)No.11081 of 2014 has been filed.

4.Since both the writ petitions are interlinked, they were taken up together.

5.Heard the learned counsel on either side.

6.Though the orders impugned in both the writ petitions are technically sound, what cannot be disputed is that the exparte award dated 18.10.2004, passed in favour of the second respondent herein is the foundation for grant of relief to the workman. It is this award that has been enforced in C.P.No.12 of 2006, which was allowed by the Labour Court on 26.09.2012. It is to set aside this award, the Management filed an I.A. and since almost eight years had lapsed, the Labour Court took the view that sufficient cause was not shown and therefore, it dismissed the set aside application.

7.It is the case of both parties that an allegation of misappropriation was made against the second respondent herein who was employed as a Cashier. The order of dismissal was passed on 04.03.1994. The said order was confirmed by the Joint Registrar of Co-operative Society.

8.The learned counsel appearing for the Management contended that after availing the revisional remedy under Tamil Nadu Co-operative Societies Act, it is not open to the workman to move the Labour Court and that this amounts to forum shopping.

9.In view of the nature of the order that is to be passed in the writ petition, this Court does not propose to go into the validity of the said contention. This point is left open, What



disturbs the mind of this Court is the nature of the exparte award passed by the Labour Court on 18.10.2004. The award is shown as short and cryptic. It is extracted as under:

"This dispute has been raised by the petitioner above mentioned under Section 2-A(2) of the Industrial Disputes Act, 1947 against the Management praying to this Court to set aside the order of dismissal passed against him by the Management and to reinstate him in service with backwages, continuity of service and other attendant benefits.

2.The respondent filed counter statement.

3.Today, the dispute is taken up for enquiry. W.W.1 examined. Ex.W.1 to W.16 marked. Claim proved. Petition is allowed. The respondent is directed to reinstate the petitioner with continuity of service and backwages with costs."

10.It is well settled that merely because the opposite party is not present, the Labour Court cannot straight away allow the petition. After noting that the workman examined himself and marked some documents, the Labour Court straight away came to the conclusion that the claim stood proved and consequently, allowed the petition. The worker was directed to be reinstated with continuity of service and backwages. Even when reinstatement is ordered, backwages is not allowed as a matter of course. The Labour Court must be satisfied that the worker was not employed elsewhere during the period of non-employment.

11.This Court has no hesitation to hold that the exparte award, dated 18.10.2004 made in I.D.No.267 of 1996 is not an award in the eye of law. There is no discussion of the relevant facts and the relevant principles of law have also not been invoked or applied.

12.Considering the nature of the award, this Court is of the view that such an award deserves to be effaced from the record. Therefore, at last for this reason, I.A.No.375 of 2012 filed by the Management ought to have been allowed. This Court has to bear in mind that this is a case of misappropriation. At the same time, this Court cannot lose sight of the fact that a Competent Court has passed an award in favour of the workman. The workman has no control over the manner, in which, the Presiding Officer would author the judgment. Therefore, the worker cannot be faulted.

13. This Court is therefore of the view that no purpose will be served by remitting the matter to the file of the Labour Court for fresh adjudication. More than 24 years have lapsed after passing the order of dismissal. Since the Management is guilty of enormous delay, this Court called upon the Management to make a statement as to how they propose to settle the matter.



14. The learned Counsel for the Management, on instructions, submitted that Management is ready to pay a sum of Rs.3,75,000/- in four monthly installments towards the full and final settlement of the claims of the workman. This submission is recorded. The Management is directed to pay the aforesaid sum to the second respondent within a period of four months from the date of receipt of a copy of this order. The order impugned in both the writ petition stands quashed. The writ petitions are allowed in terms as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Madurai.

+1CC to Mr.T.Ravichandran, Advocate, SR.No.66902
+1CC to M/s.D.S.Sadiq Raja, Advocate, SR.No.66776

W.P. (MD) Nos.7129 and 11081 of 2014
04.06.2018

RMI
ES/JC/SAR 4/18.06.2018/4P/4C