



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos.6787 & 11406 of 2015

and

M.P. (MD) .No.2 of 2015

W.P. (MD) No.6787 of 2015:

The Management,
Virudhunagar District Consumers Co-operative
Whole Sales Stores Limited,
Arupukottai Road, Virudhunagar,
Rep. by its Managing Director.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
District Court Building,
Melur Road,
Madurai - 625 020.

2. S.Malliga

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the first respondent pertaining to the order dated 10.10.2012 passed in I.A.No.102 of 2012 in I.D.No.104 of 2010 and consequential award dated 13.11.2014 passed in I.D.No.104 of 2010 and quash the same.

For Petitioner : Mr.T.Ravichandran
For R-2 : Mr.I.Suthakaran

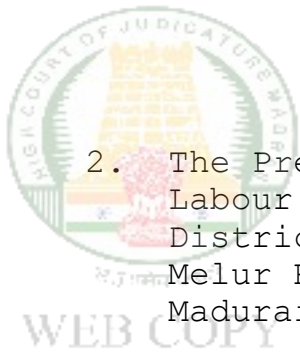
W.P. (MD) No.11406 of 2015:

S.Malliga

... Petitioner

Vs.

1. The Management,
Virudhunagar District Consumers Co-operative
Whole Sales Stores Limited,
Arupukottai Road, Virudhunagar.



2. The Presiding Officer,
Labour Court,
District Court Building,
Melur Road,
Madurai - 625 020.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Award dated 13.11.2014 passed in I.D.No.104 of 2010 on the file of the second respondent and quash the same in respect of disallowing the backwages and other attended benefits to the petitioner and consequently direct the first respondent/Management to pay the same from the date of termination of the petitioner.

For Petitioner : Mr.I.Suthakaran

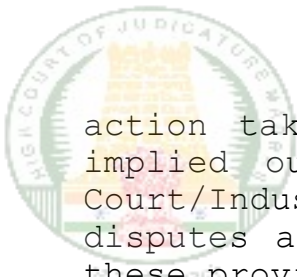
For R-1 : Mr.T.Ravichandran

COMMON ORDER

One S.Mallika was employed as Saleswoman in the Virudhunagar District Consumers Co-operative, Whole Sales Stores Limited, Arupukottai Road, Virudhunagar. She was alleged to have committed some acts of delinquency. Therefore, charge memo was issued. After domestic enquiry, she was also dismissed from service, by order dated 05.12.2008. Since the Management was a registered co-operative society, the said employee filed Revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act before the Joint Registrar of Co-operative Society, Virudhunagar. The revisional authority by order dated 29.05.2009 dismissed the revision petition.

2. Thereafter, the said dismissed employee filed I.D. No.104 of 2010 before the Labour Court, Madurai. The Labour Court, by award dated 13.11.2014 directed the Management to reinstate the said employee in service. However, backwages were denied. Aggrieved by the order directing reinstatement and setting aside the order of dismissal, W.P.(MD)No.6787 of 2015 was filed by the Management. Aggrieved by the denial of backwages, the dismissed employee filed W.P.(MD)No.11406 of 2015. Both the writ petitions were taken up for disposal today.

3. The Hon'ble Division Bench of this Court in the decision reported in **2008 (6) C.T.C. 770 (P.Eswaramoorthy V. R.J.B.Leoraj)** held that the employees of a Co-operative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Co-operative Society relating to disciplinary



action taken against him. It was further held that there is no implied ouster of the jurisdiction of the power of the Labour Court/Industrial Tribunal to deal with similar matters, if the disputes are raised before them by workmen or employees covered by these provisions. It was held that both the remedies are available.

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4. Now the question is whether the employee could have invoked the jurisdiction of the Labour Court, after her Revision petition was dismissed by the Joint Registrar. This Court is of the view that the doctrine of election is applicable in this case. It was open to the employee to either move the Labour Court questioning the termination or move the revisional authority. The employee chose to move the revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. Having done so, it is not open to the employee to retrace her steps and knock the doors of the Labour Court. This is because, the order of termination passed by the Management of the Society got merged with the order passed by the revisional authority.

5. A mere look at the cause title of the I.D., would show that it was only the Management of the Society that was before the Labour Court. In the very nature of things, the order passed by the revisional authority in terms of the power conferred on him under Section 153 of the Act could not have been questioned before the Labour Court.

6. Section 156 of the Tamil Nadu Co-operative Societies Act, 1983, states that notwithstanding anything contained in any other law for the time being in force, no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court. The expression "any Court" would include the Labour Court also. The Tamil Nadu Act 30 of 1983 received the assent of the President on 15th July, 1983. Therefore, the provisions of Industrial Disputes Act, 1947, obviously cannot prevail over Section 156 of the Tamil Nadu Co-operative Societies Act, 1983.

7. In view of the bar of jurisdiction set out in Section 156 of the Tamil Nadu Co-operative Societies Act, 1983, the matter could not have been agitated by the delinquent before the Labour Court. The Labour Court did not have the jurisdiction to entertain the claim.

8. In this view of the matter, the impugned award of the Labour Court is set aside. It is however made clear that the employee would be at liberty to question the order passed by the revisional authority dated 29.05.2009 in the manner known to law. Such a challenge cannot be negated by raising the plea of laches.

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

9. With these observations, W.P.(MD)No.6787 of 2015 stands



allowed and W.P.(MD)No.11406 of 2015 stands dismissed. No costs.
Consequently, connected Miscellaneous petition is closed.

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/True Copy/

Sd/-
Assistant Registrar (CO)

Sub Assistant Registrar

To:

The Presiding Officer,
Labour Court,
District Court Building,
Melur Road,
Madurai - 625 020.

- + 1 CC TO Mr.T.RAVICHANDRAN, ADVOCATE IN SR No. 51722
- + 2 CC TO Mr.I.SUTHAKARAN, ADVOCATE IN SR Nos. 51773 & 51774

SKN/PMU

TE/SKN-RSK/SAR-1 : 18/06/2018 : 4P/5C

W.P. (MD) Nos.6787 & 11406 of 2015 and
M.P. (MD).No.2 of 2015
27.02.2018