



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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W.P. (MD) Nos. 1055 & 1066 of 2016
and
W.M.P. (MD). Nos. 872 & 889 of 2016

EE 145 Karungulam Primary
Agricultural Co-operative Bank
(Under Liquidation),
Seithunganallur, Rep. by its Liquidator and
Co-operative Sub Registrar,
(Execution and Liquidation)
Tuticorin District Central Co-op Bank Ltd.,
Tuticorin. .. Petitioner in both
writ petitions

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.K.Balasubramanian .. Respondents in
both writ petitions

PRAYER in W.P.(MD).No.1055 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for records relating to the impugned order dated 18.12.2015 passed by the first respondent in E.A.No.71 of 2015 in E.P.No.24 of 2015 in C.P.No.15 of 2011 and quash the same as illegal.

PRAYER in W.P.(MD).No.1066 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for records relating to the impugned order dated 27.01.2012 passed by the first respondent in C.P.No.15 of 2011 and quash the same as illegal.

For petitioner(in both WP's) : Mr.M.E.Ilango
For respondents(in both WP's) : Mr. M.P.Senthil



COMMON ORDER

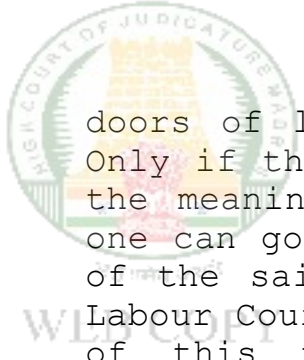
The Society under liquidation is the petitioner in both writ petitions. The second respondent herein was working as Secretary of the said Society. It is probably on account of the activities of the second respondent the petitioner/Society went into liquidation. A sum of Rs.45,98,610/- was the amount i.e., misappropriated by the second respondent herein. The second respondent herein was prosecuted before the criminal Court. It ended in conviction and sentence. The second respondent was incarcerated for a period of eight months. At the instance of the petitioner/Society, surcharge proceedings were initiated and surcharge order was also passed under Section 87 of Tamil Nadu Cooperative Societies Act against the second respondent. It is not in dispute that the said surcharge order had since attained finality.

2. In view of the act of delinquency committed by the second respondent, he was removed from service. The second respondent raised the industrial dispute by filing ID.No.110 of 1998. The said proceedings were not contested and an *ex parte* award came to be passed on 10.01.2011. The petitioner herein filed W.P.(MD).No.7738 of 2011 before this Court. On account of non-payment of batta, the said writ petition came to be dismissed for default. Since the award passed in I.D. No.110 of 1998 on the file of the Labour Court, Tirunelveli had become final, the second respondent herein felt emboldened to file C.P.No.15/2011 on the file of labour Court, Tirunelveli. The said Claim Petition was allowed by order dated 27.01.2012. The second respondent put the said Claim Petition order under execution by filing E.P.No.24 of 2015. In the said Execution Petition, the petitioner herein raised the question of maintainability by filing E.A.No.71 of 2015. By order dated 18.12.2015, the said Execution Application was dismissed by the Labour Court. Questioning the dismissal of E.A.No.71 of 2015 in E.P.No.24 of 2015 in C.P.No.15 of 2011, the W.P.(MD).No.1056 of 2016 has been filed. W.P.(MD).No.1066 of 2016 has been filed questioning the order dated 27.01.2012 made in C.P.No.15 of 2011 on the file of the Labour Court, Tirunelveli.

3. Both the writ petitions were taken up together

4. Heard the learned Counsel on either side.

5. It is not in dispute that the second respondent herein was working as Secretary in the petitioner Society. If he was aggrieved by his dismissal, the only remedy open to him is to file Revision Petition under Section 153 of Tamil Nadu Cooperatives Societies Act, 1963 before the Joint Registrar. The Secretary of Cooperative Society cannot be considered as workman within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. The



doors of labour Court remain permanently shut to such a person. Only if the petitioner can establish that he was a workman within the meaning of Section 2(s) of the Industrial Dispute Act, 1947 one can go to the Labour Court. If one falls outside the purview of the said provision, he cannot invoke the jurisdiction of the Labour Court. This Proposition is a well settled one. In support of this proposition, the learned counsel appearing for the petitioner called upon this Court to refer to order dated 05.01.2012 passed by a learned Judge in W.P.No.21014 of 2007. In the said decision, an earlier decision reported in 2003 WLR 371 (*The Management, T.P.Spl.67 Goundanpalayam, Primary Agricultural Cooperative Society ltd., vs. The Assistant Commissioner of Labour and another*) was followed.

6. When the second respondent could not have moved the labour Court, any award passed by the Labour Court can only be considered as a nullity. A plea of nullity can be set up even in collateral proceedings. The Labour Court should be considered as lacking in jurisdiction as far as the second respondent is concerned. Therefore the award passed by the labour Court could not have been put into execution and the labour Court erred in dismissing the E.A.No.71 of 2015 in E.P.No.24 of 2015 in C.P.No.15 of 2011 filed by the petitioner herein.

7. It is also to be seen that the second respondent herein had suffered an order of surcharge for a sum of Rs.48,35,510/-. The surcharge order was passed as earlier as on 22.06.1998. When considering the claim of workman for payment of his due under Section 33 of the Industrial Dispute Act, the Court below could not have been oblivious of the liability of the very same claimant to the management. Therefore the principle of set off ought to have been invoked in this case.

8. Therefore, looked at from any angle, the impugned orders deserve to be quashed and they are accordingly quashed.

9. Both the Writ Petitions are allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To:
The Presiding Officer,
Labour Court,
Tirunelveli.



+1cc to Mr.M.E.ILANGO, Advocate, SR.No. 50513
+1cc to Mr.M.P.SENTHIL, Advocate, SR.No.50174

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KMI

KK/SB/SAR-3/04.07.2018/4P-4C/