

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.11.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM
W.P.No.17665 of 2011
&
M.P.No.2 of 2011

Tiruchengode Co-operative Urban Bank Ltd.,
Rep by its Deputy Registrar/Special Officer,
Tiruchengode - 637 211,
Namakkal District.

...Petitioner

..Vs..

1.The Presiding Officer,
Labour Court,
Salem.

2.A.K.Thangavel

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the order passed by the first respondent in C.P.No.1/2009 dated 21.02.2011 quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.R.M.D.Nasurullah
(for second respondent)

ORDER

The order dated 21.02.2011 passed in C.P.No.1/2009 is under challenge in the present writ petition.

2.The petitioner is a Co-operative Bank which is registered under the Tamil Nadu Co-operative Societies Act. The learned counsel appearing on behalf of the writ petitioner made a submission that on account of certain irregularities committed regarding the disbursal of loans to the members of the writ petitioner/Bank, the second respondent was charged with misdeeds committed and accordingly an enquiry was conducted, surcharge proceedings were initiated under the Tamil Nadu Co-operative Societies Act. A criminal case was also registered against the second respondent and he was arrayed as Accused No.12 in C.C.No.71/2006 and the said criminal case is under trial.

3. Under these circumstances, the second respondent filed a petition in C.P.No.1/2009 under Section 33 C (2) of the Industrial Disputes Act before the first respondent to claim the benefit of gratuity and earned leave salary. The Labour Court adjudicated the issue and passed an order allowing the prayer sought for by the petitioner and directed the writ petitioner/Management to settle the gratuity amount and earned leave salary.

4. The learned counsel appearing on behalf of the petitioner mainly contended that the second respondent was the head of the branch and he cannot consider himself as a workman under Section 2(s) of the Industrial Disputes Act. The petitioner as an alternate remedy can approach the competent authority under the Tamil Nadu Co-operative Societies Act. Thus, the claim of the petitioner under Section 33 C (2) of the Industrial Disputes Act ought not to have been entertained by the Labour Court.

5. The Branch Manager is a managerial cadre and therefore, the second respondent cannot be construed as a workman within the definition of Section 2(s) of the Industrial Disputes Act. A similar issue has been elaborately considered by this Court in W.P.No.27120 of 2013 dated 12.09.2019 in the case of The Management, Eruthukottai Primary Agricultural Co-operative Credit Society Ltd., Vs. The Presiding Officer, Labour Court, Salem and the relevant paragraphs are extracted hereunder;

"6. This Court now has to consider the ingredients of Section 2(s) of the Industrial Disputes Act and Section 2(s) reads as follows:

2. (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or

administrative capacity; or
(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

7. Undoubtedly, if persons employed mainly in a managerial or administrative capacity; or being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. Sub Clause (ii) and (iii) of the above cited Act enumerates that the persons, who all are serving in a managerial or administrative capacity, cannot be construed as a workman within the meaning of Section 2 (s) of the Industrial Disputes Act.

8. Let us now consider the duties and responsibilities of the Secretary of a Cooperative Society.

9. A Cooperative Society is a Registered Society under the provisions of the Tamil Nadu Cooperative Societies Act. In the present case, the writ petitioner Society is managed by the Elected Board of Directors and the Head of the Administration is the Secretary of the Society. Below the Post of Secretary, the Post of Assistant Secretary is also available and Senior Clerk and thereafter Clerk and Office Assistants and other Clause IV employees are working. Thus, the Secretary is the person, who is responsible for the implementation of the policy decisions taken by the Elected Board of a Cooperative Society. The Secretary of the Cooperative Society is the administrative head, who has to pass orders, implementing the policy decisions or the directions given either by the Board or by the Registrar of the Cooperative Societies. Thus, the Secretary is functioning as an Administrative head and implementing the directions issued by the Registrar of Cooperative Societies as well as decisions taken by the Elected Board.

10. Under these circumstances, the 2nd respondent, who was holding the Post of Secretary, cannot be brought under the definition of the workman

under Section 2(s) of the Industrial Disputes Act. When a Prima facie case is made out that a particular post is not falling under the definition of the workman. There is no point in remanding the matter back to the Labour Court. No useful purpose would be served in the event of remanding the matter in such a manner. Contrarily, if an appropriate remedy is granted, the further lapse of time can be saved and the 2nd respondent employee can approach the appropriate authority for the redressal of his grievances. Undoubtedly, there is enormous delay in disposing of the Interlocutory Applications and the writ petition by the High Court. However, the preliminary point regarding the maintainability of the writ petition has to be considered in order to settle the issue, whether a person is a workman or not. When such a point is raised before the High Court, the same is to be addressed with reference to the provisions of the Industrial Disputes Act and merely on the ground of long pending of litigations. Such a preliminary issue cannot be avoided."

6. In view of the observations made above, this Court is of the considered opinion that the petitioner has to redress his grievances by approaching the competent authorities under Tamil Nadu Co-operative Societies Act. Section 153 of the Industrial Disputes Act contemplates a revision which is to be filed before the Registrar who is an authorized authority to address his grievances. Thus, the petitioner is at liberty to approach the Competent Authority for redressal of his grievances. The competent authority, in the event of receiving any such application from the second respondent, shall consider the delay in filing the review petition and condone the same and entertain the review petition and adjudicate the same on merits and in accordance with law. Consequently, the order dated 21.02.2011 in C.P.No.1/2009 is hereby quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

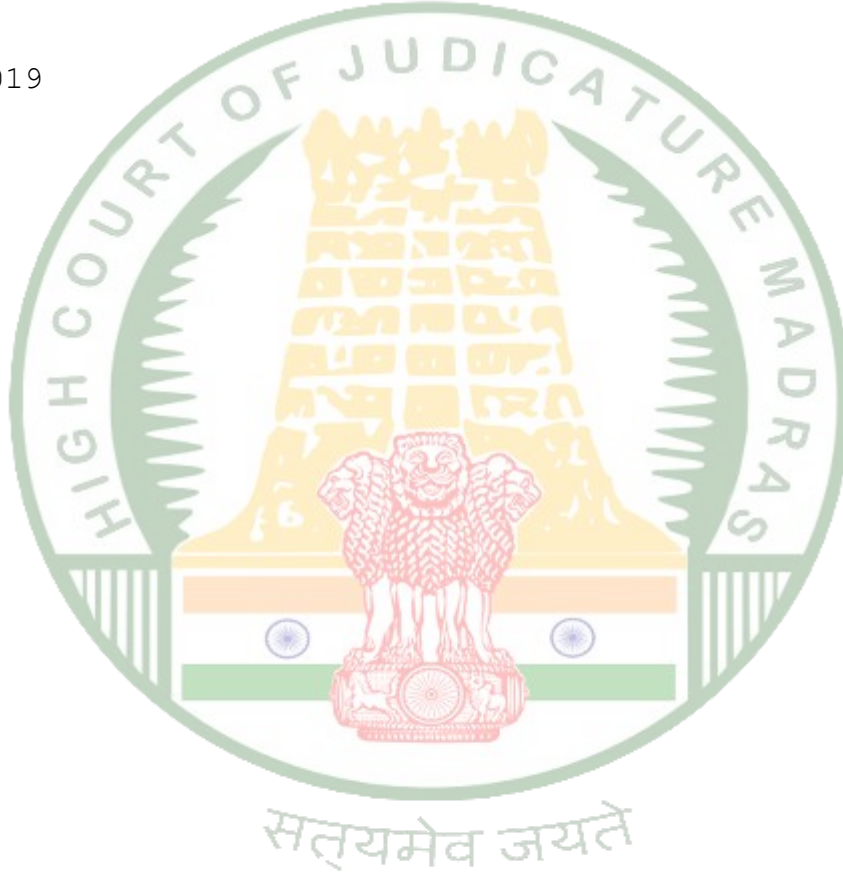
The Presiding Officer,
Labour Court,
Salem.

+1 cc to M/s.R.M.D.Nasurulla Advocate sr96793

+1 cc to M/s.M.S.Palaniswamy Advocate sr96373

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