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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.171 of 2012

The Special Officer,
ED 178 K Ganapathypalayam Milk
Producers Co-operative Society,
K.Ganapathypalayam Post,
Erode Taluk, Erode District.

.. Petitioner

Vs.

1.P.Rajendran

2.The Presiding Officer,
Labour Court,
Salem.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, calling for the records relating to the order dated 11.01.2010 made in I.D.No.283 of 2000 on the file of the 2nd respondent and to quash the same.

For Petitioner : Ms.T.Girija,
Government Advocate (Co-op.)

For R1 : Mr.R.MD.Nasarallah
for M/s.K.V.Shanmuganathan

O R D E R

The present Writ Petition is filed seeking to issue a Writ of Certiorari, calling for the records relating to the order dated 11.01.2010 made in I.D.No.283 of 2000 on the file of the 2nd respondent and to quash the same.

2.The petitioner is Milk Producers Co-operative Society. The petitioner appointed the 1st respondent as Secretary on 21.07.1978. While he was working as a Secretary, he was placed under suspension with effect from 07.08.1998 for certain misconduct and charge memo dated 31.08.1998 was issued to the 1st respondent, containing following charges:



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"(a) Unauthorized absence from reporting duty for a very long period.

(b) Not resided within the area covered by the Society.

(c) Due to his prolonged absence thereby caused great hardship to the Society."

2(i).The 1st respondent submitted explanation. Not being satisfied with the explanation submitted by the 1st respondent, a domestic enquiry was conducted for the charges leveled against the 1st respondent. The Enquiry Officer submitted his report holding that the charges leveled against the 1st respondent were proved. The 2nd Show Cause Notice dated 12.07.1999 was issued to the 1st respondent, enclosing copy of the enquiry report. The explanation dated 21.07.1999 submitted by the 1st respondent was not satisfactory and hence, by the order dated 20.09.1999, the petitioner dismissed the 1st respondent from service.

2(ii).The 1st respondent raised an Industrial Dispute in I.D.No.283 of 2000 before the 2nd respondent, Labour Court, Salem. The 1st respondent in the petition filed under Section 2 (A) of the Act, contended that he was working as a Secretary from 21.07.1978 without any complaint. He was suspended from service on 07.08.1998 and charge memo containing three charges were issued on 31.08.1998. The 1st respondent sent a reply stating that the petitioner without paying subsistence allowance, conducted domestic enquiry and hence, the 1st respondent could not attend the enquiry proceedings. The Enquiry Officer conducted the enquiry proceedings exparte and submitted his report, holding that the charges leveled against the 1st respondent were proved. Based on the said report, the petitioner terminated the 1st respondent from service. The entire proceedings is vitiated and the charges leveled against the 1st respondent are false. There was no dislocation of the work of the Society. The 1st respondent had been signing the cheques till 31.07.1998 for making payments to the members and the same had been encashed from the Co-operative Central Bank, Erode. The Board of Directors of the petitioner Society had vested interest in appointing another person to the post of Secretary in the place of 1st respondent and hence, the petitioner has initiated false and unsustainable proceedings and prayed for reinstating the 1st respondent to the post of Secretary with back-wages.

3.The petitioner filed counter statement and raised objection that the said Industrial Dispute is not maintainable as the 1st respondent is not a workmen as defined under Section 2 (s) (iii) & (iv) of the Industrial Disputes Act, 1947 [hereinafter referred to as 'the Act']. The 1st respondent is the Chief Executive of the Society and shall be responsible for



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maintenance of all registers of the Society. The petitioner also stated that due to misconduct of the 1st respondent, the work and normal transaction of the Society was disturbed and petitioner proved the charges leveled against the 1st respondent in domestic enquiry.

4. In the said I.D.No.283 of 2000, the 1st respondent examined himself as P.W.1 and marked 3 documents as Exs.P1 to P3. The petitioner examined one Thangavel, Secretary of the petitioner Society as R.W.1 and marked 8 documents as Exs.R1 to R8.

5. The 2nd respondent considering the pleadings, oral and documentary evidence, held that the domestic enquiry conducted by the petitioner was vitiated and set aside the finding of the Enquiry Officer and permitted the 1st respondent and petitioner to let in evidence. The 2nd respondent considering the evidence of R.W.1 and the judgments relied on by the petitioner as well as the 1st respondent, held that the petitioner failed to discharge its burden that 1st respondent is not a workmen and hence, he has to be held as workmen under Section 2 (s) of the Act. The 2nd respondent further held that the evidence of R.W.1 would go to show that the 1st respondent was not discharging managerial administration and supervisory duties in petitioner Society and he was working only as a clerk in petitioner's Society. The 2nd respondent by the award dated 11.01.2010, set aside the order of dismissal dated 20.09.1999 and directed reinstatement of the 1st respondent into service with 25% back-wages, continuity of service along with all other attendant benefits.

6. The petitioner has come out with the present Writ Petition challenging the award of the 2nd respondent.

7. The learned counsel appearing for the petitioner reiterated the averments in the counter statement filed in I.D before the 2nd respondent and further contended that the 2nd respondent failed to consider Section 2 (19) of the Tamil Nadu Co-operative Societies Act, 1983, wherein an Officer includes the Secretary of the Society. The 2nd respondent/ Labour Court erred in holding that the 1st respondent was working only as a clerk. The 1st respondent is not a workmen as defined under Sections 2 (s) (iii) & (iv) of the Act and the 1st respondent is not coming within the jurisdiction of the Act and only remedy available to the 1st respondent is to file an appeal before the Appellate Authority as per Section 152 of the Tamil Nadu Co-operative Societies Act and prayed for setting aside the award of the 2nd respondent.



8. The learned counsel appearing for the 1st respondent reiterated the averments in the petition filed before the 2nd respondent and further contended that the 1st respondent did not have any control over the activities of the petitioner Society. Only the President or the Special Officer of the Society are responsible for running the petitioner Society and the 1st respondent is a workman as defined under the Act and I.D raised by the 1st respondent is maintainable and there is no error in the award of the 2nd respondent. The learned counsel appearing for the 1st respondent relied on the judgment of the Hon'ble Apex Court reported in 2006 (4) L.L.N 157 [Anand Regional Co-operative Oil Seeds growers' Union, Ltd., Vs. Shaileshkumar Harshadbhai Shah]:

"12. Section 2(s) of the Industrial Disputes Act defines "workman" as under:

"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.""

9. Heard the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials available on record.

10. The point for consideration is whether the 1st respondent is a workman as defined under the I.D Act or not. To decide this



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issue, Section 2 (19) of the Tamil Nadu Co-operative Societies Act is the relevant portion, which reads as follows:

"Section 2 (19)- 'Officer' includes a President, Vice-President, Managing Director, Secretary, Assistant Secretary, member of Board and any other person empowered under the Rules or the by-laws to give directions in regard to the business of the registered Society."

11.A reading of the said Section clearly shows that the Secretary of the Society is an Officer of the Society. He has to maintain the registers of the Society. The 1st respondent in his petition filed before the 2nd respondent raising Industrial Dispute has stated that he was working as a Secretary till 31.07.1998 and he has signed cheques for payment to members and the same have been encashed from Co-operative Central Bank, Erode. The person who is authorized to sign cheques for payment to the member who supply milk to the Society cannot be termed as a clerk. Considering Section 2 (19) of the Tamil Nadu Co-operative Societies Act and admission of the 1st respondent that he was signing cheques and issuing the cheques to the members for the milk supplied to them clearly shows that he was discharging managerial function and the 2nd respondent erred in holding that the 1st respondent was only a clerk and the petitioner Society has not been able to discharge the burden that the 1st respondent is not a workmen and erred in holding that the 1st respondent is a workman. The 2nd respondent/ Labour Court has not considered Section 2 (19) of the Tamil Nadu Cooperative Societies Act, 1983, while deciding the issue whether the 1st respondent is a workmen or not.

10.In view of the above errors, the impugned award of the 2nd respondent is liable to be set aside and it is hereby set aside. The order of termination issued by the petitioner terminating the service of the 1st respondent is upheld. In the result, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



gsa

To

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The Presiding Officer,
Labour Court,
Salem.

+1cc to M/s.K.V.Shanmuganathan, Advocate Sr.57918
+1cc to M/s.T.Girija, Advocate Sr.56757
+1cc to the Government Pleader Sr.58018

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