

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18839 & 18840 of 2004
and
W.P.M.P.Nos.1994 & 1995 of 2004
and
W.P.M.P.Nos.243 & 248 of 2013

The Management,
Velakurichi Primary Agricultural
Co-operative Credit Society, rep.by its
Vice President,
Velakurichi, Kallakurichi Taluk,
Villupuram District.

(Petitioner cause title amended as per
order dated 12.11.2013 in W.P.M.P.Nos.
244, 243, 247 & 248 of 2013) ..Petitioner in both W.Ps

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.Kanmani Pillai ..Respondents in both W.Ps

Prayer in W.P.No.18839 of 2004 : Writ Petition filed under
Article 226 of the Constitution of India praying to issue a
Writ of Certiorari, calling for the records of the first
respondent made in C.P.No.217 of 2000 dated 24.02.2004 and
quash the same.

Prayer in W.P.No.18840 of 2004 : Writ Petition filed under
Article 226 of the Constitution of India praying to issue a
Writ of Certiorari, calling for the records of the first
respondent made in C.P.No.70 of 2001 dated 24.02.2004 and
quash the same.

For Petitioner : Mr.M.S.Palaniswamy
(in both W.Ps)

For Respondent : R1 - Labour Court
(in both W.Ps)

R2 - Mr.K.M.Ramesh
(in both W.Ps)

C O M M O N O R D E R

The orders passed by the 1st respondent in C.P.No.217 of 2000 and in C.P.No.70 of 2001, both dated 24.02.2004 are under challenge in the present writ petitions.

2. The writ petitioner in both the writ petitions are one and the same. The writ petitioner is the Management, Velakurichi Primary Agricultural Co-operative Credit Society, which is a Registered Cooperative Society under the provisions of the Tamil Nadu Cooperative Societies Act. Admittedly, the 2nd respondent was holding the Post of Secretary during the relevant point of time, when the Claim Petitions were filed.

3. The learned counsel for the writ petitioner made a submission that on account of certain allegations, the 2nd respondent was placed under suspension on 03.07.1998 and after conducting the domestic enquiry, he was dismissed from service on 10.12.1998. The 2nd respondent filed a petition before the Labour Officer, Cuddalore on 16.03.1999 and thereafter, the Management entered into a 12(3) Settlement and pursuant to the settlement, it was agreed by the Management that the 2nd respondent will be reinstated into service without back wages. Pursuant to the 12(3) Settlement, an order of appointment was issued by the Management on 01.07.1999, asking the 2nd respondent to join duty on 02.07.1999. The case of the writ petitioner is that the 2nd respondent failed to join duty in spite of the order of appointment issued. However, the Management issued a notice to the 2nd respondent on 14.08.1999, stating that he has not accepted the Settlement and consequently, the termination becomes valid.

4. The 2nd respondent filed two Claim Petitions before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act. The 1st Claim Petition filed in C.P.No.217 of 2000 is for claiming back wages from the period from 01.07.1999 to 31.03.2000 and the 2nd Claim Petition filed in C.P.No.70 of 2001 is for claiming backwages for the period from 01.04.2000 to 30.09.2001. These two Claim petitions were adjudicated by the Labour Court and an Award was passed by the 1st respondent for Rs.53,487/- for the period from 01.07.1999 to 31.03.2000 and Rs.1,06,974/- from 01.04.2000 to 30.09.2001.

5. Challenging the Award, the petitioner states that the 12(3) Settlement was implemented by the petitioner Management and the 2nd respondent had not reported for duty. Thus, there was no pre-existing right, which is a pre-condition for entertaining a claim petition under Section 33(C)(2) of the Industrial Disputes Act. In the absence of any such pre-existing right, the Labour Court has no jurisdiction to adjudicate the validity or otherwise of the order of termination issued by the Management.

6. In the present case, the Labour Court adjudicated the issues on merits, which is impermissible and the 2nd respondent has not raised any Industrial Dispute, challenging the order of termination and under these circumstances, the order of the Labour Court is perverse.

7. It is further contended that the 2nd respondent was holding the Post of Secretary, which is a Managerial cadre and therefore, he cannot be construed as a "workman" within the definition of Section 2(s) of the Industrial Disputes Act. To substantiate the said contention, the learned counsel for the petitioner states that, in the writ petitioner Society, several other employees are working, more specifically, the Post of Assistant Secretary, Cashier, Clerk, Fertilizer Salesman, Office Assistant and Night Watchman are working. All these employees are administered and controlled by the Secretary of the petitioner Society. Thus, he was working in the Managerial cadre and he was under the direct control of the Elected Board. Therefore, he cannot be defined as a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act.

8. The learned counsel appearing on behalf of the 2nd respondent disputed the contentions by stating that the ground was not raised by the petitioner at any point of time and further, before the year 2010, the Secretary of the Tamil Nadu Cooperative Societies were raising industrial dispute and filing claim petition before the Labour Courts across the State of Tamil Nadu. Thus, the claim petition was entertained during the relevant point of time, cannot be now rejected on the ground that the "workman" within the meaning of Section 2 (s) of the Industrial Disputes Act.

9. The learned counsel for the 2nd respondent further emphasized that though the Management signed the 12(3) Settlement and issued the order of appointment. They have refused to permit the 2nd respondent to join duty. Immediately, the 2nd respondent sent a letter to the Management, stating that he was all along willing to join duty and the Management had refused to grant permission to report for duty. This being the factum, there is no necessity to raise an industrial dispute and the claim petitions were rightly filed by the workman.

10. These all are the disputed facts and such disputed facts cannot be adjudicated in a Claim Petition under Section 33(C)(2) of the Industrial Disputes Act. This Court also cannot provide a finding in respect of such disputed facts, which all are to be ascertained by referring the original documents and by adducing evidences. Such an exercise cannot be done in a writ jurisdiction. As far as the claim petitions are concerned, only in the event of establishing a pre-existing right, the same can be entertained by the Labour Court and not otherwise.

11. Apart from the ground that there was no pre-existing right, the basic and preliminary objection raised by the writ petitioner is to be considered. Admittedly, the 2nd respondent was holding the post of Secretary in the writ petitioner Cooperative Society. In the writ petitioner Cooperative society, several other posts were sanctioned by the Registrar of Cooperative Society. Therefore, the writ petitioner was the Administrative head of the Cooperative Society and under him, the persons holding the Post of Assistant Secretary, Cashier, Clerk, Fertilizer Salesman, Office Assistant and Night Watchman were working. This being the factum, there is no iota of doubt, regarding the administrative capacity of the 2nd respondent as a Secretary as he was exercising the administration power and therefore, he cannot be construed as a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act.

12. The learned counsel for the 2nd respondent states that the judgment of this Court, holding that the Secretary is not a "workman", was delivered in the year 2010 and these Claim Petitions were filed prior to the year 2010 and therefore, the writ petitions cannot be rejected on that ground.

13. In the present case, the judgment delivered by this Court alone is not the point to be considered. Even before the judgment of the year 2010, the provisions of the Industrial Disputes Act was in force. The judgment was delivered in the year 2010, interpreting Section 2(s) of the Industrial Disputes Act and therefore, the date of judgment may not have any relevance as the Statute itself provides definition for a workman. When Section 2(s) is specific and unambiguous that a person, who is employed mainly in a Managerial cadre or administrative capacity, is not a "workman", then the 2nd respondent cannot be construed as a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

14. This apart, it is brought to the notice of this Court that during the relevant point of time, the Post of Secretary was declared as a common cadre service by the Government by invoking the powers under Section 75 of the Tamil Nadu Cooperative Societies Act. This being the facts and circumstances, the 2nd respondent has to exhaust the remedy provided under the Tamil Nadu Cooperative Societies Act. The provisions of the Tamil Nadu Cooperative Societies Act stipulates a revision to be filed before the competent authorities for redressal of the grievances by the employees of the society. Thus, the 2nd respondent is at liberty to approach the competent authority, more specifically, under Section 153 of the Tamil Nadu Cooperative Societies Act and in the event of receiving any such statutory revision from the 2nd respondent in the prescribed format and by paying the necessary fees, the competent authorities shall adjudicate the same by affording an opportunity to all the parties and

dispose of the same as expeditiously as possible. It is made clear that the competent authority, while entertaining the revision petition, shall not reject the same on the ground of delay as the writ petition was pending for long time before this Court. Thus, the competent authority shall entertain the Revision Petition and decide the same on merits and in accordance with law as expeditiously as possible.

15. The learned counsel for the petitioner made a submission that pursuant to the order passed in Claim Petitions, the petitioner had deposited the Award amount. The said Award amount is directed to be returned to the petitioner, if any petition is filed in this regard.

16. With this observation, the orders passed by the 1st respondent in C.P.No.217 of 2000 and in C.P.No.70 of 2001, both dated 24.02.2004 are quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court, Cuddalore.

+1cc to Mr.Palanisamy, Advocate, S.R.No. 86764

W.P.Nos.18839 & 18840 of 2004

MG(CO)
GN(21/11/2019)

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