

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.23062 of 2011
and M.P.Nos.1 of 2011 & 1 of 2015

Management,
Rep. By Special Officer,
MRF Employees Cooperative
thrift and Credit Society Ltd.,
Tiruvotriyur,
Chennai 600 109. Petitioner

Vs.

1.T.S.Inpasekaran,
20 A, North Railway Station Road,
Tiruvotriyur,
Chennai 600 019.

Now residing at
No.71, Gangaianman Koil Street,
Todur (Village) Nirvalur (Po)
Kancheepuram (Tk)-631 561.

2.Presiding Officer,
First Additional Labour Court,
Chennai 600 004. ... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India seeking to issue a Writ of Certiorari, to
call for the records of the 1st Additional Labour Court, Chennai
relating to the award in I.D.No.727 of 2000 dated 18.04.2011 and
quash the same.

WEB COPY

For Petitioner : Mr.N.Chandra Raj
for Mr.P.G.Padmanabhan

For R1 : Ms.R.Hemalatha,
for M/s.C.Prakasam

For R2 : Court

O R D E R

The present Writ Petition is filed for a Writ of Certiorari, calling for the records of the 1st Additional Labour Court, Chennai relating to the award in I.D.No.727 of 2000 dated 18.04.2011 and quash the same.

2.The petitioner is a Co-operative Society, managed by an elected Board up to 25.05.2001, when a Special Officer was appointed to manage its affairs. The 1st respondent was working as a Secretary of the Society. The petitioner issued a charge memo dated 25.10.1999 to the 1st respondent while he was working as a Senior Assistant in the petitioner Society. The petitioner alleged that the 1st respondent forged loan documents in respect of One C.R.Baskaran and B.John and misappropriated a sum of Rs.20,000/- each of the loan document, totaling Rs.40,000/-. Not being satisfied with the explanation submitted by the 1st respondent, the petitioner ordered Domestic Enquiry and considering the report of the Enquiry Officer, the 1st respondent was removed from service. The 1st respondent raised Industrial Dispute in I.D.No.727 of 2000 on the file of the 2nd respondent. The 2nd respondent by the award dated 18.04.2011, ordered reinstatement of 1st respondent with continuity of service and other benefits with 25% back-wages. Against the said award, the petitioner Society has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the 2nd respondent did not follow the procedure and failed to consider first whether Domestic Enquiry conducted by the petitioner was fair and proper and if found that the Domestic Enquiry was not fair and proper, ought to have given an opportunity to the petitioner to let in evidence to support the charges leveled against the 1st respondent. The 2nd respondent erred in relying on the statement given by the petitioner Management witness which is not corroborated by any documentary evidence leveled against the petitioner beyond any doubt. Having produced all the documents in the Domestic Enquiry, it is not necessary for the petitioner to produce the said documents before the 1st respondent. The 2nd respondent failed to consider that C.R.Baskaran and B.John in whose loan account, the 1st respondent misappropriated Rs.20,000/- each, appeared before the Enquiry Officer and gave statement implicating the 1st respondent. The said statements were corroborated by the statements of two staff of the petitioner Society and 11 documents were marked in the Enquiry. The 1st respondent did not appear for the enquiry and the 2nd respondent erred in holding that necessary documents were not furnished to the 1st respondent in the enquiry proceedings. The 1st respondent did not

participate in the enquiry even though ample opportunity was given to him and did not cross-examine the witnesses of the petitioner. The Deputy Registrar of Cooperative Society, Ponneri conducted enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act and based on the said enquiry, an order was made in R.C.No.195 of 2003, dated 14.07.2003 for recovery of a sum of Rs.45,559/- with interest from the 1st respondent. The petitioner having lost confidence on the 1st respondent for his misappropriation of funds, removed him from service taking lenient view and paid all the terminal benefits even though the petitioner could have dismissed the 1st respondent from service and prayed for allowing the Writ Petition.

4.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent sought time for submitting his explanation and to furnish the copies of the document. The petitioner did not furnish the document. The Enquiry Officer appointed by the petitioner appeared for the petitioner in the proceedings initiated by the 1st respondent for payment of subsistence allowance. The 1st respondent requested to change the Enquiry Officer and furnish the documents and filed Writ Petition No.56 of 2000. This Court by the order dated 05.01.2000, directed the petitioner and Enquiry Officer to consider the representation of the 1st respondent dated 31.10.1999, seeking for certain documents, on merits and pass appropriate orders and dismissed the Writ Petition with regard to change of Enquiry Officer. In spite of the order of this Court, the petitioner or the Enquiry Officer had not furnished the copies of the document sought for by the 1st respondent. The 1st respondent therefore could not participate in the enquiry. In the Domestic Enquiry, the petitioner has not proved the charges leveled against the 1st respondent and has not filed any document to prove the charges leveled against the 1st respondent. The 2nd respondent considering the report of the Enquiry Officer and considering the oral and documentary evidence, especially evidence of the petitioner management witness, held that the Domestic Enquiry conducted by the petitioner is not fair and proper. The petitioner failed to substantiate his claim before the 2nd respondent also. The impugned award of the 2nd respondent is based on the materials and for valid reasons, the 2nd respondent has ordered reinstatement of the 1st respondent with continuity of service, attendant benefits and 25% back-wages. There is no error in the award of the 2nd respondent and prayed for dismissal of the Writ Petition.

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

6.The two charges leveled against the 1st respondent is that he has forged the loan document with regard to sanction of loan to one C.R.Baskaran and B.John and misappropriated Rs.20,000/- each in the said two loan accounts. The 1st respondent sought for document relied on by the petitioner so as to enable him to submit his explanation. The petitioner without furnishing the document, has ordered Domestic Enquiry and appointed Enquiry Officer to conduct the enquiry. The 1st respondent filed Writ Petition for a direction to the petitioner to furnish the documents as detailed in his representation dated 31.10.1999 and a further direction to appoint any other Enquiry Officer in the place of Mr.R.Kesavan. This Court, by the order dated 05.01.2000, dismissed the Writ Petition with regard to change of Enquiry Officer, but directed the petitioner and the Enquiry Officer to consider the representation of the 1st respondent dated 31.10.1999 for furnishing certain documents and pass appropriate orders. In spite of the said order of this Court, the documents sought for by the 1st respondent were not furnished to him. On the other hand, it is the contention of the learned counsel for the petitioner that the 1st respondent has taken away certain documents and the 1st respondent was informed that he can peruse the documents and take notice and participate in the enquiry. The petitioner has not filed any document before the 2nd respondent to substantiate the above contention that the 1st respondent has taken away certain documents.

6(i) Further, the petitioner has not produced any document to show that action was taken against the 1st respondent for removing the documents from the premises of the petitioner Society by giving any complaint to the Police or framing any charge to that effect. The 2nd respondent considering the enquiry proceedings, came to the conclusion that the petitioner has not produced any document in the Domestic Enquiry to substantiate the charges leveled against the 1st respondent. R.Kalirathinam, employee of the petitioner Society who was examined as M.W.1 before the 2nd respondent has admitted during cross-examination that the petitioner had not produced any document to show the misappropriation of the 1st respondent. He also admitted that the petitioner has not marked any document for having examined C.R.Baskaran and B.John and no letter was received from them with regard to misappropriation of Rs.20,000/- each from the loan amount sanctioned to them. The 2nd respondent considering the fact that no document was furnished to the 1st respondent as required by him and M.W.1 has admitted the said fact, held that the Domestic Enquiry was not conducted in a fair and proper manner and ordered reinstatement of the 1st respondent with continuity of service, attendant benefits and 25% of back-wages.

6(ii) The contention of the learned counsel for the petitioner that the 2nd respondent having held that Domestic Enquiry was not conducted in a fair and proper manner, ought to have granted an opportunity to the petitioner to let in evidence to prove the charges leveled against the 1st respondent. For such a relief, the petitioner ought to have prayed in the counter statement. From the counter statement filed in the typed set of papers, it is seen that the petitioner has not sought for permission to let in evidence in the event of 2nd respondent coming to the conclusion that the Domestic Enquiry was not conducted in a fair and proper manner. Having failed to seek such a relief, it is not open to the petitioner now to contend that the 2nd respondent ought to have granted permission to let in evidence to substantiate their case. Further, the petitioner has examined one R.Kalirathinam as M.W.1 and marked 7 documents. The petitioner has not produced any documents to substantiate the charges leveled against the 1st respondent. It is not open to the learned counsel for the petitioner to contend that the 2nd respondent ought not to have relied on the evidence of M.W.1. The 2nd respondent has appreciated all the materials on record in proper perspective and by giving valid reason has passed the impugned award. There is no reason warranting interference by this Court.

7. In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa
To

The Presiding Officer,
First Additional Labour Court,
Chennai 600 004.

+1cc to M/s.C.Prakasam, Advocate Sr.53852
+1cc to Mr.P.G.Padmanabhan, Advocate Sr.53211

W.P.No.23062 of 2011

rsi[co]
srg 16/08/2019