

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.11.2019

CORAM

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

W.P.No.25044 of 2010

N.Kuppusamy

...Petitioner

..Vs..

1.The Presiding Officer,
Labour Court, Cuddalore.

2.The Special Officer,
Veeraperumanathur Co-operative
Agricultural Bank Ltd.,
Veeraperumanathur Village & Post,
Panrutti Taluk, Cuddalore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the Award dated 26.03.2007 in I.D.No.55/94, to quash the same and to issue consequential direction to the second respondent to reinstate the petitioner in service with continuity of service and backwages.

For Petitioner : K.Govindaraj

For Respondents : Mr.M.S.Palaniswamy
(for second respondent)

ORDER

The award dated 26.03.2007 passed in I.D.No.55/94 is under challenge in the present writ petition.

2.The petitioner states that he joined the services of the second respondent/Co-operative Society as a Clerk on 01.04.1971 and promoted upto the level of Secretary of the Society by 01.01.1985. The second respondent/Co-operative Society instituted a disciplinary proceedings against the writ petitioner and placed him under suspension and thereafter issued a charge sheet and a domestic enquiry was conducted. The allegation against the writ petitioner was regarding the misappropriation of the funds of the society which resulted in

financial loss to the second respondent/Co-operative Society. After conducting an enquiry, based on the findings of the Enquiry Officer, the writ petitioner was dismissed from service on 17.08.1993.

3.The writ petitioner raised an Industrial Dispute by filing I.D.No.55/94 under Section 2(A)(2) of the Industrial Disputes Act. The Labour Court has dismissed the above industrial dispute, against which the present writ petition is filed.

4.The main issue decided by the Labour Court is that whether the writ petitioner is a workman within definition of Section 2 (s) of the Industrial Disputes Act or not. The writ petitioner was holding the post of Secretary to a Co-operative Society, which is managerial cadre and therefore, he shall not fall under the definition of Section 2(s) of the Industrial Disputes Act. This apart an effective alternate remedy is provided to the Officials of Co-operative Society under the Tamil Nadu Co-operative Societies Act itself. Section 153 of the Tamil Nadu Co-operative Societies Act provides revision before the Competent Authority and Section 154 provides review.

5.These being the provisions available under the Tamil Nadu Co-operative Societies Act and the writ petitioner who was holding the post of Secretary, which is a managerial cadre cannot raise an industrial dispute under the Industrial Disputes Act.

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. The Co-operative Society is registered society under the Tamil Nadu Co-operative Societies Act and the Secretary is the Head of the Society as far as the administration is concerned. The resolution passed by the Board is to be implemented by the Secretary of the Co-operative Societies and all other employees would be functioning under the control of the Secretary of the Society.

9. Thus, the post of Secretary is the managerial cadre and would not fall under the definition of workman under Section 2 (s) of the Industrial Disputes Act. The Labour Court also categorically made a finding that the writ petitioner is not a workman within the definition of Section 2(s) of the Industrial Disputes Act. Considering the documents filed by the Management, the Labour Court found that the writ petitioner, as a Secretary, was exercising supervisory power and he was holding the managerial post. When the Labour Court examined the documents and considered the evidences and arrived at a conclusion that petitioner is not a workman, then there is no reason for this Court to interfere with the findings of the Labour Court in this regard.

10. This being the factum, there is no perversity or infirmity in respect of findings of the Labour Court. Accordingly, the award dated 26.03.2007 in I.D.No.55/94 is confirmed and consequently, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrm

To

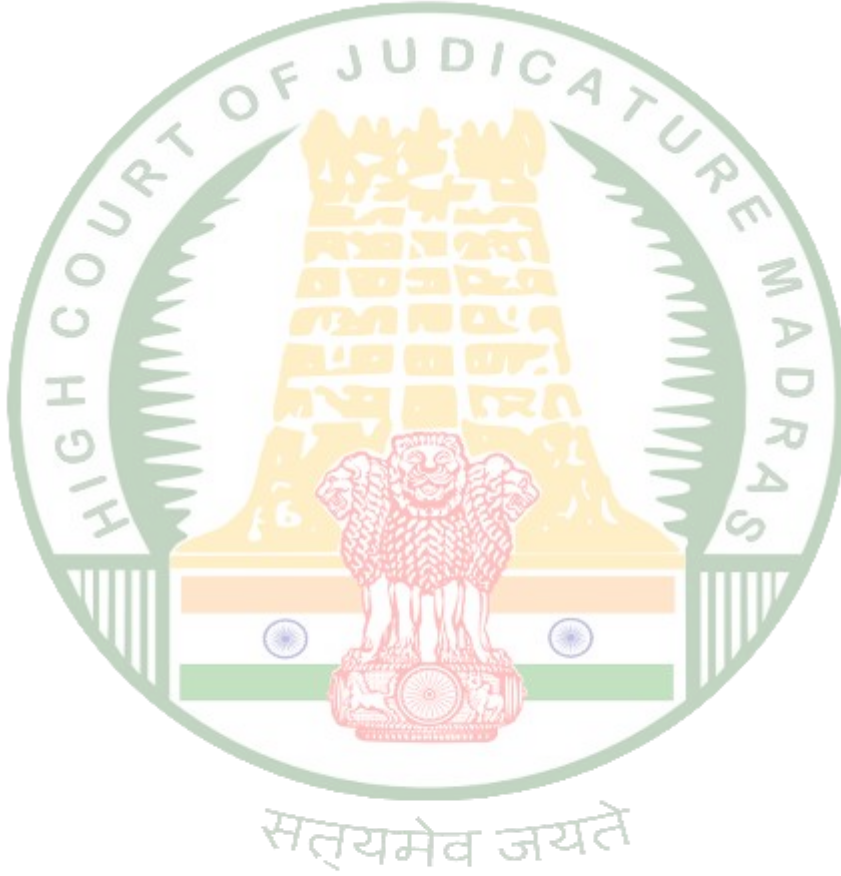
The Presiding Officer,
Labour Court, Cuddalore.

+1cc to Mr.S.Palanisamy , Advocate SR.No. 91924

+1cc to Mr.K.Govindaraj , Advocate SR.No. 91448

W.P.Nos.25044 of 2010

A.SK(17/12/2019)



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