

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2019

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

W.P.No.27120 of 2013
and
M.P.No.1 of 2013
and
M.P.Nos.1 & 2 of 2014

The Management,
Eruthukottai Primary
Agricultural Co-operative Credit Society Ltd.,
Rep by its President, Eruthukottai,
Denkanikottah, Krishnagiri District. ..Petitioner

vs

1.The Presiding Officer,
Labour Court, Salem.

2.K.Chandran ..Respondents

Prayer : Writ 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 1st respondent
in I.A.No.54 of 2013 in I.D.No.14 of 2001 dated 06.07.2013 and
quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : R-1 - Labour Court
Mr.C.Prakasam for R2

O R D E R

The order dated 06.07.2013 passed by the 1st respondent in
I.A.No.54 of 2013 in I.D.No.14 of 2001 is under challenge in the
present writ petition.

2. The writ petitioner is the Management of Eruthukottai
Primary Agricultural Cooperative Credit Society Limited. The 2nd
respondent was employed as the Secretary of the petitioner
Cooperative Society and on account of the allegation of
misappropriation of the funds of the Society, a Charge

Memorandum was issued to the 2nd respondent. The allegation against the 2nd respondent was that he had misappropriated the funds of the society to the tune of Rs.2,15,315.53/-. On initiation of disciplinary proceedings, he was placed under suspension on 26.11.1997 and a charge memo was issued on 14.11.1997. The 2nd respondent submitted his explanation on 12.01.1998. Thereafter, the domestic enquiry was ordered and the Enquiry officer submitted his report on 24.11.1999. The findings of the Enquiry officer reveals that the charges against the 2nd respondent were proved. Consequently, a second Show Cause Notice was issued on 10.12.1999 and the 2nd respondent submitted his further objections / explanations on 21.12.1999. The Management passed an order, dismissing the services of the 2nd respondent in proceedings dated 19.01.2000. The 2nd respondent raised an Industrial dispute and an Exparte Award was passed on 27.04.2006. The writ petitioner Management filed an Interlocutory Application to set aside the Exparte award. However, the said Interlocutory Application was dismissed on default. Thus, a second application to set aside the Exparte decree was passed and the said Interlocutory Application was decided on merits and the claim of the writ petitioner Management to set aside the Exparte award was dismissed by the Labour Court. Challenging the said order, the present writ petition is filed.

3. The learned counsel for the writ petitioner Management mainly contended that the Award was passed Exparte and therefore, the writ petitioner has got every right to seek for the complete adjudication of the issues raised by the 2nd respondent. This apart, the allegations against the 2nd respondent was grave in nature and the misappropriation of the funds of the Cooperative society was established before the Enquiry officer. The criminal case registered against the 2nd respondent also ended against him and the charges against the 2nd respondent were proved. Under these circumstances, the benefit of reinstatement based on the Exparte Award cannot be extended in favour of the 2nd respondent by this Court.

4. The preliminary issue was raised by stating that the 2nd respondent was holding the Post of Secretary in the writ petitioner Cooperative Society, which is a managerial cadre and therefore, he will not fall under the definition of Section 2(s) of the Industrial Disputes Act and therefore, the industrial dispute cannot be raised by the 2nd respondent before the Labour Court. The effective alternate remedy is provided under the provisions of the Tamil Nadu Cooperative Societies Act itself. Section 153 of the Tamil Nadu Cooperative Societies Act provides Revision before the competent authority and the Registrar is delegated to the Regional Joint Registrar, who all are functioning as quasi-judicial authorities. Thus, an effective

adjudication can be done by producing the original documents and by adducing evidences before the Joint Registrar, who is authorized to entertain Revision Petition under Section 153 of the Tamil Nadu Cooperative Societies Act. This being the factum, the Labour Court may not have jurisdiction to entertain a dispute in respect of the 2nd respondent, who was holding the Post of Secretary of the writ petitioner society.

5. The learned counsel appearing on behalf of the 2nd respondent disputed the contentions by stating that all along the 2nd respondent is agitating before the Labour Court and an Exparte Award was passed long back and the writ petitioner Management is prolonging and protracting the issues and not implementing the award passed by the Labour Court. In respect of the maintainability of the industrial dispute before the Labour Court, the learned counsel for the 2nd respondent states that several such similar disputes were raised before the Labour Court and Industrial Tribunal and the Hon'ble High Court also passed several orders on merits and therefore, at this length of time, the point of maintainability cannot be raised before this Court in the present writ petition. By citing the earlier orders of this Court, the learned counsel for the 2nd respondent states that the point regarding the maintainability cannot be adjudicated in this writ petition as the Labour Court had already passed an award in favour of the 2nd respondent.

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.

11. This being the factum, this Court is of an opinion that the 2nd respondent has to provide with an opportunity to approach the competent authority for the redressal of his grievances. Contrarily, this Court cannot remand the matter back to the Labour Court for the purpose of re-adjudication of the issues on merits and in accordance with law. In such an event, a wrong person is directed to approach the Labour Court, who is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

12. The contention of the 2nd respondent is that, some other writ petitions were admitted during the earlier occasions, would not be a ground to reject the contentions of the learned counsel for the writ petitioner that the 2nd respondent is not a workman within the definition of Section 2(s) of the Industrial Disputes Act. Under these circumstances, this Court is of an opinion that the 2nd respondent has to approach the competent authority under the provisions of the Tamil Nadu Cooperative Societies Act, which is efficacious for the purpose of redressing his grievances.

13. The relief sought for in the present writ petition is to quash the order dated 06.07.2013 passed in I.A.No.54/2013 in I.D.No.14/2001. By quashing the said order, the Exparte Award is upheld. In such an event, the very decision of this Court, holding that the 2nd respondent is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act cannot have any significance. Thus, it is necessary for this Court to mould the prayer in the interest of both the parties as well as enabling the 2nd respondent to approach the competent authorities under the provisions of the Tamil Nadu Cooperative Societies Act. Thus, it is a fit case, where this Court should mould the relief for the purpose of providing complete relief, enabling the writ petitioner as well as the 2nd respondent to adjudicate the issues before the competent authorities under Section 153 of the Tamil Nadu Cooperative Societies Act.

14. Accordingly, the following orders are passed:

(1) The Exparte Award passed by the Labour Court, Salem dated 02.02.2013 in I.D.No.14/2001 as well as the order dated 06.07.2013 passed in I.A.No.54/2013 in I.D.No.14 of 2001 are quashed.

(2) The 2nd respondent employee is at liberty to file a Revision Petition under Section 153 of the Tamil Nadu Cooperative Societies Act before the jurisdictional Joint Registrar of Tamil Nadu Cooperative Societies within four weeks from the date of receipt of a copy of this order. If any such revision petition is received by the jurisdictional Joint Registrar of Cooperative Societies, he is directed to conduct an enquiry by following the procedures as contemplated and by affording opportunity to all the parties concerned and decide the matter on merits and in accordance with law within a period of twelve(12) weeks from the date of receipt of a copy of the revision petition filed by the 2nd respondent.

15. With these directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.C.Prakasam, Advocate, S.R.No. 78718

+1cc to Mr.S.Palanisamy, Advocate, S.R.No. 79084

W.P.No.27120 of 2013

RGN(CO)
GN(18/10/2019)

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