

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.11.2019

CORAM

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

W.P.No.29573 of 2016

and

WMP.Nos.25589 of 2016 and 26730 and 26731 of 2018

Dharmapuri Co-operative Printing Works Ltd.,  
Represented by its Managing Director,  
No.84, Industrial Park,  
Dharmapuri- 5. ..Petitioner

vs

1. The Presiding Officer,  
Labour Court, Salem.

2. M.C. Ravikumar .. Respondents

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorari or  
any other appropriate writ order or direction in the nature of a  
writ calling for the records of the first respondent award in  
I.D.No.197 of 2010 dated 16.03.2016 and quash the same.

For Petitioner : Mr. M.S. Palanichamy  
for M/s. R. Ashrafkhan

For Respondents : R1- Labour Court  
Mr. R.M.D. Nazarullah for R2

O R D E R

The award dated 16.03.2016 passed in I.D.No.197 of 2010 is  
under challenge in the present Writ Petition.

2. The writ petitioner is the Dharmapuri Co-operative  
Printing Works Limited which is a company registered under the  
provisions of the Tamil Nadu Cooperative Societies Act.

3. The learned counsel appearing on behalf of the writ  
petitioner management made a submission that on 12.12.1989, the  
second respondent was appointed as a Clerk in the petitioner's  
management. The competent authority namely Additional Registrar

of Co-operative Societies ordered for a statutory enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act on 12.12.2002. Based on the statutory enquiry, a report was submitted by the enquiry officer on 15.07.2002. The enquiry officer held that the second respondent and others have misappropriated a huge amount of Rs.41,69,593.79/- and recommended for criminal action, disciplinary action and surcharge actions against the delinquents.

4. Pursuant to the enquiry report, the second respondent employee was placed under suspension in proceedings dated 06.01.2003. Subsequently, a charge memo was issued containing 8 charges i.e., falsification of accounts, misappropriation, forgery, insubordination etc. on 03.02.2003. The petitioner-management appointed an enquiry officer on 18.08.2003. After conducting the enquiry, the enquiry officer submitted his report on 23.09.2003 by which except charges 1 and 2, other charges against the second respondent were held proved. On 12.01.2004, second show cause notice was issued along with enquiry report to the second respondent and the second respondent also submitted his explanation on 27.01.2004. Meanwhile in the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act also initiated against the second respondent and the surcharge order was passed on 6.4.2004. The second respondent was dismissed from service on 14.05.2004.

5. The second respondent filed a Statutory Revision Petition under Section 157 of the Tamil Nadu Co-operative Societies Act challenging the order of dismissal dated 14.05.2004. The Regional Joint Registrar of Co-operative Societies conducted an enquiry by affording an opportunity to all the parties concerned and rejected the Revision Petition in proceedings dated 28.03.2008. Challenging the said rejection order passed by the Revisional authority under Section 157 of the Co-operative Societies Act, the second respondent employee filed W.P.No.13801 of 2008 and the said Writ Petition is pending for hearing before this Court. During the pendency of the Writ Petition, by specifically suppressing the fact regarding the pendency of Writ Petition, the second respondent employee raised an industrial dispute in I.D.No.197 of 2010 before the Labour Court on 30.09.2010. During the pendency of the industrial dispute, the Writ Petition was dismissed on 22.11.2012. Thereafter in the year 2016, the Labour Court passed an order setting aside the order of termination and granted continuity of service with 50 % back wages and the said award is challenged in the present Writ Petition.

6. The learned counsel for the writ petitioner reiterated that the Industrial dispute was raised during the pendency of the Writ Petition which was filed challenging the final order

passed by the Revisional Authority under Section 153 of the Act. Thus, the award is liable to be scrapped on the ground that the second respondent employee, by suppressing the fact regarding the pendency of the Writ Petition, had raised an industrial dispute.

7. The learned counsel appearing on behalf of the second respondent disputed the contention by stating that there is no bar for an employee to approach the competent authority under the Co-operative Societies Act and raise an industrial dispute under the Industrial Disputes Act. In view of the fact that there is no bar, the second respondent has chosen to raise an industrial dispute. In this regard, he cited a judgment of this Court dated 08.06.2010 passed in W.P.No.8059 of 2008 and argued that the employee of co-operative society has the right to raise an industrial dispute before the Labour Court provided he is able to establish that he is a workmen under the definition of Section 2(S) of the Industrial Disputes Act. So also the employee can file a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act which is also an alternative remedy provided under the said Act. However the employee cannot approach both the forums simultaneously, namely one by raising an industrial dispute, when has already taken action challenging the order of termination by filing Writ Petition against the Revisional order under Section 153 of the Act. The person who has approached the Court with unclean hands is not entitled for any relief at the hands of the Court. The writ petitioner is required to approach the Court with true facts. In the event of being identified that the litigant has filed a W.P with false statement, then such litigation is liable to be rejected in limine. This being the settled principle, however the second respondent had filed a Writ Petition against the Revisional order under Section 153 of the Tamil Nadu Co-operative Societies Act dated 28.03.2008 and the said Writ Petition was rejected on 22.11.2012. The second respondent filed W.P.No.13801 of 2008 challenging the order passed by the Revisional authority under Section 153 of the Act. During the pendency of the Writ Petition and by suppressing such pendency, the second respondent raised an industrial dispute by filing I.D.No.197 of 2010. The Writ Petition was thereafter dismissed on 22.11.2012. Thus, the facts are clear that the industrial dispute was raised during the pendency of the Writ Petition and a perusal of the claim petition filed by the second respondent reveals that he has not made any statement regarding the pendency of the Writ Petition or the rejection of 153 revision by the competent authorities.

8. Under these circumstances, the second respondent is not entitled for any relief before this Court. However, this Court is not inclined to close the entire avenue of the second

respondent for the purpose of redressal of his grievances. Therefore as the Writ Petitioner has already adjudicated the issue against the order of termination before the Revisional authority and apart from that he filed a Writ Petition that was already dismissed, thus the second respondent is at liberty to approach the authority competent under Section 154 of the Tamil Nadu Co-operative Societies Act seeking review of the order, as the Writ Petition was dismissed on the ground that no Writ Petition can be entertained against the co-operative society. In view of the fact that the Writ Petition was not decided on merits, liberty is granted to the second respondent to approach the Review Authority under the Tamil Nadu Co-operative Societies Act. With this liberty, the award passed by the Labour Court in award dated 16.03.2010 passed in I.D.No.197 of 2010 is quashed. Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Presiding Officer,  
Labour Court, Salem.

+lcc to Mr.R.Ashraf Khan, Advocate, S.R.No. 95754

+lcc to Mr.K.V.Shanmuganathan, Advocate, S.R.No. 95942

W.P.No.29573 of 2016

and

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PM(CO)

GN(22/01/2020)

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