

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :13.06.2019
Pronounced on : 18.06.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.23625 of 2018
and
W.M.P.Nos.27564 and 33470 of 2018

The President
S.A.62, Periakalrayan Hill
Tribe LAMP (Large Size Multipurpose)
Co-operative Society Ltd.,
Soolankurichi & P.O.
Atur Taluk, Salem District - 636 138 Petitioner

Vs.

G.Meganathan ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the Labour Court, Salem in E.P.No.41/2018 in Na.Ka.No.23/2015 (Sec.12(3) Settlement under the Industrial Disputes Act) and quash its docket order dated 28.08.2018.

For Petitioner : Mr.Anand Gopalan

For M/s.T.S.Gopalan and Co.

For Respondent : Mr.S.Ayyathurai

ORDER

The petitioner/Co-operative Society was founded in 1987. The respondent joined as an employee of the Society as a Clerk on 14.08.1989 and subsequently was promoted as Assistant Secretary on 01.01.1991. In 2011, the respondent stopped reporting for work without any intimation to the Society. The Society, which waited almost for a year for the respondent to resume duty, found that the petitioner did not turn up at all. Therefore, a show cause notice was issued to the respondent to show cause why disciplinary action should not be initiated against him for unauthorised absence. Although the respondent received the show

cause notice, he neither reported for work nor submitted any reply. Thereafter, the Society sent communications to him on 24.04.2012, 10.05.2012, 12.06.2012 and 16.07.2012 calling upon the respondent to report back for work.

2. Since there was no response at all from the respondent, a domestic enquiry was ordered and even in the domestic enquiry, the respondent did not choose to participate. The report was submitted by the Enquiry Officer holding the charge proved against the respondent vide Report dated 18.03.2013. A copy of the Enquiry Report was furnished to the respondent calling upon him to submit his reply and even in respect of the same, there was no response from the respondent. Thereafter, a second show cause notice was issued and the respondent finally responded and sought time to reply to the second show cause notice. However, the Society felt that the request was unreasonable and therefore, finally chosen to terminate his services on 05.04.2013.

3. The respondent, in pursuance of the communications, raised a dispute before the Conciliation Authority. In the Conciliation, the erstwhile President of the Society signed a Settlement under Section 12(3) of the Industrial Disputes Act, consenting to provide employment to the respondent. According to the Society, the erstwhile President was not authorised to sign the Settlement at all and no resolution was passed by the Society to that effect. According to the Petitioner Society, signing of Settlement by the erstwhile President was without any authority and the same was invalid.

5. In view of the position viz., that the 12(3) Settlement entered into by the Society with the respondent was invalid, the same was not implemented rightly. In the said circumstances, the respondent preferred a Writ Petition No.3616 of 2016 seeking implementation of the Settlement. This Court has disposed of the writ petition holding that the petitioner had adequate remedy under the provisions of the Industrial Disputes Act, 1947 vide order dated 29.03.2016. Thereafter, the petitioner raised a dispute in I.D.No.19 of 2016 before the Labour Court, Salem. In the said proceeding, the Society appeared and filed its counter statement. In the meanwhile, the respondent had also filed Execution Petition in April 2016 in REP.No.41 of 2018. But, it appears, the same was returned on the issue of 'Maintainability'. While so, the respondent withdrew the I.D.No.19 of 2016 and he sought revival of the Execution Petition in 2018.

6. The Labour Court took up the Execution Petition on 16.07.2018 and ordered numbering of the same and sent summons to the Petitioner Society. On behalf of the Society, vakalat was

filed in EP proceedings before the Labour Court and without giving any opportunity to the Society, the Labour Court vide its Docket Order dated 28.08.2018 has held that the respondent was entitled to payment of arrears of salary to the tune of Rs.1,39,856/- with accrued interest and directed the respondent to file a calculation memo in Court on or before 31.08.2018. The said Docket Order is under challenge in the present writ petition.

7.Mr.C.Anand Gopalan, learned counsel for the petitioner/Society would submit that the Labour Court unfortunately without giving any opportunity to the management has arrived at the arrears of salary payable to the respondent/workman without dealing with the objections raised by the management in regard to the validity of the Settlement reached by the Society with the workman before the Conciliation Authority under Section 12 (3) of the Industrial Disputes Act. The entire case of the management was the erstwhile President of the Society was not authorised by the Society as there was no resolution by the Society giving authority to the President to sign such Settlement. In the said circumstances, he would submit that the so-called Settlement under Section 12(3) of the Industrial Disputes Act is non est and cannot be acted upon. However, the Labour Court without calling for the objection from the management has proceeded and came to a conclusion as if the Settlement was valid and the workman was entitled to the amount and directed the respondent to file calculation memo.

8.The learned counsel for the petitioner management would also submit that when this Court disposed of the earlier writ petition in W.P.No.3616 of 2016, this Court did not mean about the filing of the Execution Petition, but only filing of Industrial Disputes. But the Labour Court mistakenly took it that the High Court has meant about filing of the Execution Petition. In any event, the learned counsel would submit that the management ought to be given an opportunity to contest the Execution Petition and such an opportunity is well within the established principles of Natural Justice.

9.Per contra, Mr.S.Ayyathurai, learned counsel for the respondent would submit that the management never objected to the authority of the President when he signed the Settlement earlier, but it was an afterthought later to raise such objection. Once 12(3) Settlement had been entered into between the management and the workman, the same is presumed to be valid and operative and the Labour Court has rightly come to the conclusion about the entitlement of the workman during the period of his non-employment.

10. According to the learned counsel for the respondent/workman, under Section 11-B of the Industrial Disputes Act, the Labour Court is well within the power to entertain Execution Petition and therefore, the adjudication of the Execution Petition by the Labour Court is well within the frame work of the Industrial Disputes Act.

11. Heard the learned counsels appearing for the parties.

12. Although it is not in doubt that the Execution Petition can be filed before the Labour Court for execution of valid Settlement entered into between the management and the labour, but when the validity of the Settlement being questioned by the management, the Labour Court ought to have granted opportunity to the management to put forth its objection before coming to any conclusion in the EP proceedings. In this case, from the records, it could be seen that after the vakalat was filed on behalf of the management in the EP proceedings, the Labour Court has straightaway directed filing of calculation memo by the workman, after holding that the workman was entitled to Rs.1,39,856/-. Such a course adopted by the Labour Court cannot be countenanced either in law or on facts. When the management questioned the very authority of the person who signed the Settlement for whatever basis, it has to be given opportunity to contest the validity of the Settlement and such an opportunity is mandatory to be given to the management before coming to any conclusion in the EP proceedings. The Labour Court has denied such opportunity to the petitioner management, which cannot be appreciated at all.

13. For the above said reason, this Court is of the considered view that the conclusion arrived at by the Labour Court as reflected in the Docket Order dated 28.08.2018 in E.P.No.41 of 2018 cannot be sustained and therefore, this Court is constrained to interfere with the proceedings which is pending before the Labour Court. Hence, the Docket Order dated 28.08.2018 passed in E.P.No.41 of 2018 in Na.Ka.No.23/2015 is hereby set aside and the matter is remitted back to the Labour Court for fresh consideration, after affording opportunity to the management to put forth its objections in regard to the validity of the 12(3) Settlement entered into between the petitioner Society and the respondent/workman before the Conciliation Authority. The Labour Court, after providing sufficient opportunity to the parties, proceed to pass final orders in the Execution Petition within a period of three months from the date the matter is restored to its file.

14.The Writ Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Labour Court,
Salem.

2. The Section Officer,
E.R Section,
High Court, Madras

+2cc to M/s.T.S.Gopalan and Co., Advocate sr.48366
+1cc to Mr.S.Ayyathurai, Advocate sr.47935

W.P.No.23625 of 2018

vba (co)
nr 12/07/2019

सत्यमेव जयते
WEB COPY