



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.8473 of 2010

and

M.P. (MD)No.2 of 2010

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The Management,
A-1254, Theni Co-Operative Sale
Society Limited,
Periyakulam Road, Theni,
Theni District.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.C.Balasubarmanian

3.M/s.M.P.15, Vadugapatti Sedapatti
Co-Operative Stores Limited,
Vadugapatti, Periyakulam Taluk,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the impugned award passed by the first respondent, dated 23.12.2009 in I.D.No.165 of 1997 and quash the same.

For Petitioner :Mr.G.Murugan

For R2 :Mr.T.Ravichandran

O R D E R

This Writ Petition is filed by the Co-Operative Sale Society, challenging the award of Labour Court, Madurai, in I.D.No.165 of 1997.

2.The second respondent in this case was employed as Sales Man in the Fair Price Shop run by the third respondent Society. The third respondent Society became defunct and hence, during the pendency of the proceedings, the District Collector, Theni by proceedings, dated 17.12.1999 directed the writ petitioner herein to take over the Fair Price Shops run by the third respondent Society. It appears that the second respondent was denied employment in 1989 and he challenged his non-employment before Labour Court in I.D.No.165 of 1997. Though the second respondent was employed originally by the third respondent, by virtue of the order of District Collector to take over the Fair Price Shop run by the third respondent, the Labour Court directed the petitioner



to reinstate the second respondent, after holding that the termination of second respondent by the third respondent was illegal. Aggrieved by the order of Labour Court, Madurai, the above Writ Petition is filed.

3.The learned Counsel for the petitioner has no grievance against the order of reinstatement passed by the Labour Court. He is aggrieved by the direction to the petitioner to reinstate the second respondent, as there is no relationship between the petitioner and the second respondent as employer and employee. The learned Counsel for the petitioner submitted that the Fair Price Shops are run by several Co-Operative Societies and the District Collectors of every districts have powers to transfer the Fair Price Shops from one Society to another Co-Operative Society for convenience. It is further stated that such transfer of Fair Price Shop does not involve transfer of employees from one Society to another Society and such transfer of employees is unwarranted in the Cooperative Administration, unless there is specific direction, which is permissible in law with the consent of Societies.

4.It is further submitted by the learned Counsel for the petitioner that each Society has to follow certain norms for recruitment of staff for the Society and that absorption of second respondent in the petitioner Society will be against the by-laws of the petitioner Society. Since the liability of erstwhile third respondent Society cannot be fastened on the petitioner Society, the learned Counsel for the petitioner submitted that the Award of Labour Court is arbitrary and illegal.

5.The third respondent Society became defunct during the pendency of the proceedings and that the District Collector, Theni has directed the petitioner Society to take over all the three Fair Price Shops run by the third respondent. It is further stated that the Special Officer of the Society has addressed a letter to the Managing Director of petitioner Society to absorb four employees engaged by the third respondent in the Fair Price Shop run by them along with the Fair Price Shop handed over to the petitioner Society.

6.The learned Counsel for the petitioner relied upon the proceedings of the District Collector, dated 17.12.1999 and submitted that there was no direction from the District Collector to absorb the employees of third respondent Society in the petitioner Society and that the impugned order is not sustainable.

7.The learned Counsel for the second respondent, however, submitted that the third respondent Society became defunct and the Fair Price Shops runs by the third respondent Society were taken



over by the petitioner pursuant to the order of District Collector, who had directed the Fair Price Shop to be taken over along with its employees. The Labour Court relied upon the fact that there was a direction to the petitioner Society even in the *ex parte* Award, dated 16.07.1998 that the third respondent has to reinstate the second respondent. It is further stated that non inclusion of second respondent name in the communication, dated 17.12.1999, would not affect the direction in the *ex parte* Award. The third respondent Society is not taken over by petitioner Society. After setting aside the *ex parte* award, the Labour Court, even without going into the issue whether the non-employment is illegal, passed the award against petitioner. Hence, the Award is invalid.

8.The further contention of the learned Counsel for the petitioner has substance. In this case, there is no relationship between the petitioner and the second respondent as employer and employee at any point of time. There was no direction by the District Collector to give employment to the second respondent at any point of time. The control of four Fair Price Shops was handed over to the petitioner's Society by a direction of Collector. The District Collector has not passed any order regarding transfer of employees from the Society, which became defunct, to the petitioner Society. In those circumstances, unless, there is an order by any Statutory Authority in exercise of its power conferred under the Co-Operative Societies Act, it is not possible to infer automatic absorption of second respondent in the petitioner society pursuant to the direction of District Collector.

9.The Labour Court has erroneously passed the order directing the petitioner to reinstate the second respondent in service, presuming that the second respondent should be deemed to be engaged in the petitioner Society by virtue of *ex parte* order passed earlier, which was subsequently set aside. Hence, this Writ Petition is liable to be allowed and accordingly allowed and the impugned order, dated 23.12.2009 insofar as the direction against the petitioner to absorb the second respondent is set aside. It is open to the second respondent to work out his remedy in the manner known to law against the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To மேலாதிபதி

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The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-96154[F] dated
05/11/2019)

+1 CC to M/s.T.RAVICHANDRAN, Advocate (SR-96552[F] dated
07/11/2019)

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