



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2019

CORAM:

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

W.P.(MD).No.9429 of 2010
and M.P.(MD).No.1 of 2010

The Management/Special Officer,
Radhapuram Taluk Co-operative Housing Society,
Radhapuram, Tirunelveli.

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.A.Meenachi Sundaram

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the 1st respondent order made in C.P.No.70/2004, dated 23.10.2009 and quash the same.

For Petitioner : Mr.S.Karthik

For Respondents : Mr.S.Anwar Sameed for
Mr.S.M.Suri for R2
R1 - Court.

ORDER

This writ petition has been filed challenging the award of Labour Court, Tirunelveli, in C.P.No.70 of 2004 filed by the second respondent under Section 33(c)(2) of Industrial Disputes Act.

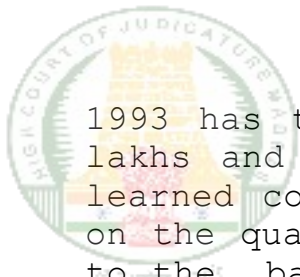
2.The petitioner is a Housing society. The second respondent was appointed as an employee of some other society in 1979 and he was transferred to the petitioner's society on 01.09.1988. Thereafter, disciplinary proceedings was initiated against the second respondent alleging that he collected the loan amount from members of the society without any receipt and misappropriated the amount received by him. After issuing charge memo, a domestic enquiry was conducted and the second respondent was dismissed from service. The dismissal of second respondent



was challenged by him by raising an Industrial Dispute before the Labour Court in I.D.No.175 of 1993. The Labour Court passed a preliminary order on 18.08.2003, stating that domestic enquiry was not fairly conducted. Against the said order, the petitioner filed a writ petition in W.P.No.5180 of 2004. Though the Principal Bench admitted the writ petition, it is seen that no stay was granted. Thereafter, I.D.No.175 of 1993 was proceeded and the Labour Court passed an *ex-parte* award on 11.11.2003. Though the petitioner filed a petition to set aside the *ex-parte* award on 14.11.2003, the same was dismissed. It is admitted that the *ex-parte* award of Labour Court setting aside the order dismissing the petitioner from service has become final and no proceedings or writ is pending as on date challenging the award of Labour Court before any forum.

3.The second respondent filed claim petitions earlier for the purpose of getting salary for the period of his absence. Subsequently, C.P.No.70 of 2004 was filed by the second respondent claiming monetary benefit to the tune of Rs.2,00,226.25 in terms of the award of the Labour Court in I.D.No.175 of 1993. The claim petition was contested by the petitioner mainly on the ground that a writ petition has been filed in W.P.No.5180 of 2004 challenging the preliminary order of the Labour Court and that the petition filed by the petitioner to set aside the *ex-parte* award in I.A.No.116 of 2004 was pending. The Labour Court found that the second respondent is entitled to the monetary benefits in terms of the award passed in I.D.No.175 of 1993. It is admitted before this Court that the writ petition filed by the petitioner in W.P.No.5180 of 2004 was dismissed by the Principal Bench. There is no dispute that the petition filed by the petitioner to set aside the *ex-parte* award was also dismissed by the Labour Court. In the said circumstances, the defence taken by the petitioner before the Labour Court is not sustainable. One of the ground raised by the petitioner is that the claim petition was based on the *ex-parte* award in I.D.No.175 of 1993. The other submission of the learned counsel for the petitioner is that the society has lost its business and that it is now without any income. Since the petitioner is now facing liquidation, the learned counsel for the petitioner would submit that the petitioner has no wherewithal to settle the employee.

4.This Court is unable to accept the contentions of the counsel for the petitioner. The petition filed by the petitioner to set aside the *ex-parte* award has already been dismissed and the award has become final. Hence, the petitioner cannot contend that the *ex-parte* award in I.D.No.175 of 1993 is not enforceable. Secondly, the writ petition filed by the petitioner in W.P.No.5180 of 2004 is also dismissed. In the aforesaid circumstances, the claim petition in terms of the Labour Court award in I.D.No.175 of



1993 has to be allowed. As against the claim of a sum of Rs.2 lakhs and odd, the Labour Court has awarded Rs.1,72,125/-. The learned counsel for the petitioner has not advanced any argument on the quantum that was awarded by the Labour Court. With regard to the bankruptcy or insolvency of the petitioner, objection may not be raised while considering the claim petition. It is unfortunate to notice that several Housing societies and Co-operative Banks are in doldrums and still there are employees without any business. It is surprising to note that even these societies attract many people with political background to grab Administration of the societies. The Government out of public funds cannot be compelled to shoulder any responsibility in financial commitments of the societies. Unless, the Government takes a policy decision, the position is not going to change. Since the societies cause a great amount of loss and expenditure to the Government, the Government may take appropriate measures to take a policy decision so that huge amount of public money can be saved. This Court is unable to find any irregularity or illegality in the order of the Labour Court.

5.This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

TM

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.S.KARTHIK, Advocate (SR-89058[F] dated 25/09/2019)

+1 CC to M/s.M.SURI, Advocate (SR-89611[F] dated 26/09/2019)

W.P. (MD) .No.9429 of 2010

24.09.2019

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