



W.P.No.11771 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.11771 of 2020

and

W.M.P.Nos.14479 and 14475 of 2020

The Management

Bramana Periya Agraharam Primary

Agricultural Cooperative Credit Society Ltd.,

Now called as Bramana Periya Agraharam,

Urban Cooperative Credit Society,

Rep. By its Secretary

B.Ravikumar

... Petitioner

Vs

1. The Joint Commissioner of Labour,
Appellate Authority,
Tamil Nadu Shops and Establishment Act,
Coonoor, The Nilgiris District.

2. T.A.Krishnaveni

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of certiorari calling for the entire records



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relating to the impugned order passed by the first respondent in his proceedings T.N.S.E.I.A.No.02/2019 dated 20.07.2020 and quash the same.

For petitioner : Mr.C.Prakasam
For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
For R2 : No appearance

ORDER

The petitioner has filed this writ petition seeking to quash the proceedings dated 20.07.2020 in T.N.S.E.I.A.No.02/2019 .

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The second respondent was appointed as a clerk in the petitioners Society on 04.10.1990 and she was subsequently promoted as Secretary in the Society w.e.f. 19.06.2010 and alleged that she has misappropriated an amount to a tune of Rs.3,48,560/- and she was suspended by the petitioner Society on 09.12.2011. A charge memo was issued to her



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and she has submitted her explanations. Having not satisfied with her explanations an enquiry officer was appointed and enquiry report was submitted on 27.02.2013 holding that the charges were proved. A second show cause notice was issued to the second respondent, however, as she has refused to receive the same the notice was affixed on her house, society notice board and also published in newspaper. In response to that she has submitted her explanations but the same was not satisfactory to the petitioner Society and accordingly, termination proceedings were issued on 21.06.2012.

2.2. Aggrieved by the termination orders, the second respondent has approached the first respondent and filed a appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947 (for brevity the Act). The petitioner should not have approached the first respondent instead should have filed a revision under Section 153 of the Act. The second respondent is the Chief Executive Officer of the petitioner Society and not a workman thereby, she cannot filed any appeal under the Act.



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2.3. The said appeal in A.No.1 of 2013 was transferred from the Deputy Commissioner of Labour, Salem to the first respondent and renumbered as T.N.S.E.No.02 of 2018. While so, the petitioner Society approached the first respondent and filed a petition in T.N.S.E.I.A.No.02 of 2019 in T.N.S.E.I.A.No.02 of 2018 and raised preliminary issue as to whether the first respondent is having power to entertain the appeal preferred by the Cooperative employee against the termination order. The first respondent without considering the powers vested on them has passed orders dated 20.07.2020 rejecting the said I.A stating that the I.A.will be decided along with the main appeal.

3. Counter affidavit has not been filed by any of the respondents.

4. Heard both sides and perused the materials available on record.

5. Both the sides have submitted vehemently as to whether the second respondent being a Secretary of the petitioner Society can approach the authorities under the Act.



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6. It is submitted by the learned counsel for the petitioner that the second respondent cannot approach the authorities as well as the appellate authorities under the Act and the same is without jurisdiction and that the respondent should have approached the revisional authorities under Section 153 of the Tamil Nadu Co operative Societies Act.

7. The learned counsel for the petitioner submitted that the appellate authorities should not have passed the impugned orders and should have decided the issue as to whether the second respondent can file an appeal under the Act or whether she was required to approach the revisional authorities under Section 153 of Tamil Nadu Co operative Societies Act. The learned Additional Government Pleader on the other hand submits that the Labour Court has kept this issue aside to be decided along with the merits of the petition.

8. Considering the rival submissions, this Court is of the opinion that the appellate authority under the Act should have decided the issue of the jurisdiction which was raised by the petitioner Society as a preliminary issue and later depending upon the result the main appeal should have been



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proceeded further. This is because if it is found that the second respondent cannot file application under the Act and is required to approach only the revisional authorities under Section 153 of the Tamil Nadu Co operative Societies Act, then there is no necessity to go ahead with the exercise of the merits of the appeal. In the contrary, if it is decided that the second respondent can approach the appellate authorities under the Act then appeal can be proceeded further. The question as to whether the second respondent can approach the appellate authorities under the Act or revisional authorities under Tamil Nadu Co operative Societies Act is purely a leagal issue. Therefore, the appellate authority under the Act should have decided the preliminary issue in I.A.and passed orders before proceeding with the merits of appeal. Unless it is held that the appellate authority has jurisdiction, it shall not take up the main appeal.

9. In view of the above, this Court is of the opinion that the impugned orders passed by the first respondent in T.N.S.E.I.A.No.02/2019 is liable to be interfered with.



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10. In the result, this writ petition is allowed with a direction to the first respondent appellate authority to decide the issue of jurisdiction of the appellate authority under the Act in T.N.S.E.I.A.No.1 of 2019 in T.N.S.E.I.A.No.2 of 2018 under the Act by following the due process. No costs. Connected W.M.Ps are closed.

24.06.2024

vca

Internet : Yes/No
Index : Yes/No
Citation : Yes/No

TO,

The Joint Commissioner of Labour,
Appellate Authority,
Tamil Nadu Shops and Establishment Act,
Coonoor, The Nilgiris District.



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DR.D.NAGARJUN,J.

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