

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.6208 of 2013

The Management,
E-2625, Poogunam Primary Agricultural
Co-operative Credit Society Ltd.,
Rep. by its President,
Panrutti Taluk
Cuddalore District.

... Petitioner

(Petitioner cause title amended as per order dated 05.06.2014 in
MP Nos.1 & 2 of 2014)

Vs

1. The Appellate Authority,
Tamil Nadu Shops and Establishment Act/
Assistant Commissioner of Labour (Minimum Wages),
Teynampet,
Chennai - 6.

2. D.Thenmozhi

... Respondents

Writ Petition filed under Article 226 of the Constitution
of India, praying to issue a writ of Certiorari to call for the
records of the 1st respondent in his order in TSE-II/4/2012,
dated 29.12.12, and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents: Mr.S.Thangavel,

Spl. Govt. Pleader for R1

Mr.D.Selvaraju for R2

ORDER

The Management of Poogunam Primary Agricultural Co-
operative Credit Society has come up with the present Writ
Petition seeking to quash the order dated 29.12.2012 vide TSE-
II/4/2012 passed by the 1st Respondent/Appellate Authority.

2. It is stated by the Petitioner/Society that, the 2nd Respondent, who was working as a Sales Woman in the Fair Price Shop at L.N.Puram run by the Petitioner/Society, was placed under suspension on 22.06.2011, on the basis of the Report submitted by the Flying Squad, as it was found that, there was deficiency of stock, falsification of accounts and diversion of essential commodities to non-card holders.

3. Thereafter, a Charge Memo containing four counts was issued to the 2nd Respondent on 09.07.2011 and she submitted her explanation on 28.07.2011 and paid the deficit caused by her to the Society, on her own accord. Not being satisfied with the explanation given by the 2nd Respondent, the Petitioner/Society appointed an Enquiry Officer to enquire into the charges. The Enquiry Officer found that, all the charges against the Petitioner are proved. A copy of the Enquiry Report was received by the 2nd Respondent on 25.11.2011 and she submitted her explanation on 07.12.2011. Though, she was offered personal hearing on 20.12.2011, 05.01.2012 and 13.01.2012, she did not appear.

4. Taking note of the charges framed against the Petitioner and the Enquiry Report, the 2nd Respondent passed an order dated 14.01.2012, dismissing the Petitioner from service. Challenging the same, the Petitioner approached the 1st Respondent/Appellate Authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1967. In spite of detailed counter being filed by the Petitioner/Society, the 1st Respondent allowed the Appeal on 29.12.2012.

5. Learned counsel for the Petitioner/Society pointed out that, the loss caused by the 2nd Respondent to the Petitioner/Society is Rs.6,059.56. Though the 2nd Respondent admitted her guilt, in writing and paid the deficit caused by her, learned counsel contended that, the 2nd Respondent had misappropriated huge amounts from the Society on six occasions and the present incident is the seventh one. The primary contention of the learned counsel is that, the 1st Respondent failed to take note of the previous misconduct of the 2nd Respondent and her habitual misappropriation of the Society funds, repay the same on detection, plead for mercy and later get reinstated. When the same modus operandi is employed by the 2nd Respondent on seven occasions, the Petitioner/Society had no other means, except to dismiss her from service.

6. Secondly, learned counsel for the Petitioner/Society pointed out that, the 2nd Respondent is an employee of Poogunam Primary Agricultural Co-operative Credit Society, which is not notified under Section 1(3)(a)(iii) of the Tamil Nadu Shops and

Establishments Act. Under such circumstances, the 2nd Respondent cannot approach the 1st Respondent for redressal of her grievance invoking the provisions of Section 41(2) of the Shops Act and hence, the order passed by the 1st Respondent against the Society cannot be allowed to stand, as it has no jurisdiction. In support of his stand, learned counsel has relied on a First Bench decision of this Court in the case of Management of Akkur Primary Agricultural Co-operative Bank Ltd., vs. Gnanasekaran reported in 2007 (3) LLN 516, relevant portion of which, reads thus:

"11. Pursuant to our direction, the Commissioner of Labour had filed an affidavit dated 15.11.2006 wherein it is stated as follows:

3. For the above queries, I submit as follows:

a. The Akkur Panchayat is a Village Panchayat.

b. The notification Under Section 1 (3) (iii) (b) of the Tamil Nadu Shops & Establishments act has not been issued, notifying that the provisions of Tamil Nadu Shops & Establishments Act are applicable to the said Akkur Panchayat.

c. The provisions of the Tamil Nadu Shops & Establishments Act are not applicable to the said Akkur Panchayat."

12. After the authoritative statement is made by the competent authority under the Act, there is very little that could be argued by the learned counsels on both sides. However, Mr.K.Kumar, learned Senior counsel appearing for the first respondent argued that on the basis of the notification issued under Section 6 of the Shops Act, the Act will apply to the appellant Society. We are unable to agree with the said submission. When the intention of the legislature is to apply the provisions of the Act on a stage by stage basis, firstly to the Corporations in the State and thereafter to all the Municipalities and only thereafter, to the Panchayats, which

were notified as major panchayats under the Madras Village Panchayats Act, 1950 and also reserved further power to notify to any other area by a specific notification, we cannot agree with the submission made by the learned senior counsel appearing for the first respondent that the notification issued under S.6 will be equated to a notification under S.1(3)(b) of the Shops Act. ...

13. In view of the fact that, the Act does not apply to the Akkur Panchayat wherein the appellant-Society is situated, the writ Appeal shall stand allowed and the order passed by the second respondent, dated 7 May 2001, confirmed by the learned Judge vide order, dated 28 June 2006 in the Writ Petition, is hereby set aside. In view of the fact that the Writ Appeal is allowed, it is open to the first respondent to work out his remedy in accordance with law, by making appropriate petition before appropriate forum."

7. Learned counsel appearing for the 2nd Respondent contended that, the issue of jurisdiction was not raised by the Petitioner/Society before the Authority under the Tamil Nadu Shops and Establishments Act and that, the said point is canvassed only before this Court by way of 'Additional Grounds'.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Facts of the case are not in dispute. It is seen that, the 2nd Respondent has admitted her guilt, in writing and has paid the deficit amount to the Petitioner/Society. The contention of the Petitioner/Society that, the 2nd Respondent is in the habit of misappropriating Society funds, plead mercy thereafter and later get reinstated into service, cannot be brushed aside. As regards the second contention of the Petitioner/Society that, the order passed by the 1st Respondent against the Society cannot be allowed to stand, as it has no jurisdiction, it is seen that, the First Bench of this Court in the case of Management of Akkur Primary Agricultural Co-operative Bank Ltd., vs. Gnanasekaran (cited supra), has allowed the Writ Appeal by holding that, the Tamil Nadu Shops and

Establishment Act does not apply to Akkur Panchayat, based on the Affidavit dated 15.11.2006 filed by the Commissioner of Labour, before the Court.

10. Taking note of the ratio laid down by the First Bench of this Court in the said decision, this Court holds that, the order passed by the 1st Respondent under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1967 is without jurisdiction and hence, the same is set aside and the matter is remanded to the 1st Respondent for fresh consideration. The 1st Respondent shall consider the matter afresh and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed with the above direction. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

(vsi2/aeb)

To
The Appellate Authority,
Tamil Nadu Shops and Establishment Act/
Assistant Commissioner of Labour (Minimum Wages),
Teynampet,
Chennai - 6.

+1 cc to M/s.M.S.Palaniswamy Advocate sr38473
+1 cc to Government Pleader 38442

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W.P.No.6208 of 2013

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