



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2021	PRONOUNCED ON : 23.12.2021
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CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. NO. 20906 OF 2012

AND

M.P. NO. 1 OF 2012

No. V.L.(Spl)213, Sathampakkam Primary Agricultural
Co-op Bank Ltd.,
Sathampakkam Village & Post,
Walaja Taluk,
Vellore District.

... Petitioner

-vs-

1. The Special Deputy Commissioner of Labour (Appeals),
(Authority under the Tamil Nadu Shops and
Establishments Act, 1947),
Chennai.

2. K.Sureshkumar

... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records in T.S.E. No. 1/17/2007 dated 21.09.2011
on the file of the First Respondent herein and quash the same.

For Petitioner : Mr.P.S.Sivashanmugasundaram

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader
(for R1)
Mr.B.Haribabu (for R2)

O R D E R

(through video conference)

Heard Mr. P.S.Sivashanmugasundaram, Learned Counsel for the
Petitioner, Mr. C.Harsha Raj, Learned Additional Government
Pleader appearing for the First Respondent and Mr. B.Haribabu,



Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who had been employed with the Petitioner, had been terminated from service by order dated 20.10.2006 on the charges that he had committed a serious misconduct by misappropriation causing loss to an extent of Rs. 3,24,175.35 to the Petitioner against which he had preferred an appeal in T.S.E. No. I/17/2007 under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as 'the TNSE Act' for short) before the First Respondent. It was held in the order dated 21.09.2011 passed in that appeal that while conducting disciplinary proceedings before such termination, the Second Respondent had been placed under suspension, but had not been paid the subsistence allowance due to him which would vitiate the order of termination itself following the dictum laid down by the Hon'ble Supreme Court of India in Jagdamba Prasad Shukla -vs- State of U.P [(2000) 7 SCC 90] and a consequence thereof, that order was set aside, which is assailed in this Writ Petition.

3. Though the Petitioner seeks to re-agitate the same issue in this Writ Petition, there does not appear to be any acceptable reason to take a different view from what has been concluded by the First Respondent in the impugned order, particularly when the Hon'ble Supreme Court of India in Anwarun Nisha Khatoon -vs- State of Bihar [(2002) 6 SCC 703] has reiterated the same legal position. It has been further brought to notice that surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short) had also been simultaneously taken against the Second Respondent by the Petitioner before the Co-operative Sub-Registrar/Field Officer, Sholinghur in A.R.C. No. 2462/2006/2006-2007 and by order dated 19.02.2007, the Second Respondent was fastened with liability for recovery of Rs. 4,68,351.85, but the said order had been set aside as having been made in violation of the principles of natural justice by the Principal District Judge, Vellore by order dated 24.07.2013 in C.T.A. No. 14 of 2007 preferred by the Second Respondent against that order, under Section 152 of the TNCS Act. In that backdrop, it is represented that after the filing of the Writ Petition, the Petitioner has been reinstated in service in the year 2013 as Packer and he is continuing to work in that same position till date, after receiving the eligible amount of subsistence allowance that was due to him during the period of his suspension in the service of the Petitioner.



4. Having regard to the aforesaid subsequent events, the Second Respondent has filed an affidavit dated 26.10.2021 relinquishing his right to claim backwages for the period from the time of his termination on 20.10.2016 till reinstatement in the year 2013 and the same is placed on record. In such circumstances, nothing further remains to be decided in this Writ Petition except to clarify that no view has been expressed by this Court on the proof of the misappropriation said to have been committed by the Second Respondent in the impugned proceedings, and if he indulges in any act of misconduct in future, the Petitioner is not precluded from establishing the earlier misappropriation, following the prescribed procedure in accordance with law.

In fine, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Special Deputy Commissioner of Labour (Appeals),
(Authority under the Tamil Nady Shops and Establishments Act,
1947),
Chennai.

Copy to

1. The Manager,
No. V.L.(Spl)213, Sathampakkam Primary Agricultural
Co-op Bank Ltd.,
Sathampakkam Village & Post,
Walaja Taluk, Vellore District.

2. K.Sureshkumar,
S/o. Krishna Pillai,
Former Village Shop Salesman,
Sathampakkam Primary Agricultural Co-operative Bank Ltd.,
Sathampakkam Village & Post,
Walaja Taluk, Vellore District.

W.P. No. 20906 of 2012

VBM(CO)

RLP (27/12/2021)