



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.11212 of 2010

and

M.P. (MD)No.1 of 2010

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The Special Officer,
TC 70, TAC Employees Co-operative Thrift and
Credit Society Ltd.,
TAC Nagar, Thoothukudi-628 005,
Through its Special Officer. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.K.Kanagaraj ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the proceedings in Claim Petition No.09/01, dated 25.02.2010, on the file of the first respondent and quash the same.

For Petitioner	:	Mr.A.Robert Chandrakumar for Mr.G.Prabhu Rajadurai
For Respondents	:	Mr.A.Jayaramachandran for R.2

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ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorari to call for the records relating to the proceedings in Claim Petition No.09/01, dated 25.02.2010, on the file of the first respondent and quash the same.

2. The case of the petitioner is that the second respondent filed a claim petition in O.P.No.9 of 2001 against the petitioner Society before the first respondent claiming a sum of Rs.2,07,117.54/- by stating that he was working as a Secretary of the petitioner Society since 01.11.85 and that he resigned on 12.08.2000 and that he was not paid the salary for a period from 01.08.2000 to 11.08.2000, the Provident Fund, gratuity, earn leave and bonus for the period from 1997-2000 and the second respondent claimed that his last drawn salary was Rs.7,937/-.



3. The petitioner Society filed an objection by stating that the second respondent has no right to invoke the jurisdiction of the first respondent as he was an officer under the Tamil Nadu Co-operative Societies Act. It is further averred that the second respondent did not hand over the charge on his registration and the proceedings under Section 81 of the said Act was initiated for the irregularities committed by him and pending enquiry, the second respondent raised an industrial dispute and filed a claim petition under Section 33(c)(2) of the Industrial Dispute Act 1947 and the Labour Court, without considering the settled issue that the Secretary who has to be considered as Management and not as a workman under the Industrial Disputes Act and the petitioner is an Officer under the Tamil Nadu Co-operative Societies Act. However, the Labour Court passed the award in favour of the second respondent. Challenging the same, the present writ petition is filed by the petitioner Society.

4. Learned Counsel appearing for the petitioner would submit that the issue involved in the present case is no more *res integra* and this Court has already held that the Secretary of the Society cannot be defined as a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

5. In support of his contentions, the learned Counsel appearing for the petitioner relied upon the decision of this Court in **The Management, T.P.Spl.67, Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President Vs. The Assistant Commissioner of Labour, Salem-7 and another** reported in **2002(4) CTC 339**, wherein this Court held as follows:

10. The second respondent, admittedly the Secretary of the petitioner Bank, squarely falls under the definition of "Officer" as defined under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 and he is bound by the Tamil Nadu Cooperative Societies Act and Rules and would not fall under any other Act, much less the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as an "employee". The one and the same authority cannot be an "Officer" and an "employee", nor could he be taken both as an "Officer" for the purpose of Cooperative Societies Act and could be taken as an "employee" for the purpose of Tamil Nadu Payment of Subsistence Allowance Act, and therefore, since the second respondent having been the Secretary of the petitioner Bank and falling under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 as an "Officer", he cannot be



less for the purpose of Payment of Subsistence Allowance.

11. Moreover, whether the assignment of the petitioner would fall under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act having such powers as expressed by the learned single Judge of this Court in his judgment reported in 1989-1-L.L.N. 689 (supra) has been established which is wanting in this case, especially in view of the fact that the Secretary being an "Officer" of the particular cooperative Wing or Bank is the Chief Executive having all the powers not only appointing, determining the salary and having the powers to dismiss its employees, but also doing all such executive acts which are necessary in the functioning of the Cooperative Society or Bank. Therefore, he cannot, under any circumstance, be brought under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as a mere "employee", particularly when no good reasons are assigned as to how he ceases to be an "Officer" as defined under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983, which is a special legislation having overriding powers on other general Acts.

12. For all the above discussions held and the reasons assigned, the second respondent cannot be defined as an "employee" under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 since he is an "Officer" as defined under the definition section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 and as such he is not entitled to file an application before the first respondent herein so as to become entitled to get an order as passed by the said authority, which is impugned herein since the first respondent is ousted from assuming jurisdiction in such matters.

6. Further the learned Counsel appearing for the petitioner would rely upon the order of this Court in **K.Pazhani Vs. the Presiding Officer, Labour Court, Cuddalore and another [W.P.No.21014 of 2007, dated 05.01.2012]**, wherein this Court held as follows:

7. The question whether a secretary of a Cooperative Society is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and also Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 came up for consideration in several judgments of this Court, where it was held that the definition of 'employee' is similar to that of a workman



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under Section 2(s) of the Industrial Disputes Act.

8. In this context, it is necessary to refer to the judgment of this Court in the case of *The Management, T.P.Spl.67 Goundanpalayam, Primary Agricultural Cooperative Society Limited V. The Assistant Commissioner of Labour* and another reported in 2003 Writ Law Reporter 371, wherein a similar claim was negatived by this Court. Under the said circumstances, there is no infirmity in the award passed by the first respondent Labour Court.

9. Accordingly, the Writ Petition stands dismissed. However, the dismissal of the Writ Petition will not disentitle the petitioner from availing the statutory revisional remedy under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 to the revisional authority. If any such revision is filed within a period of three weeks from the date of receipt of a copy of the order, the competent Revisional Authority shall entertain the same without reference to limitation prescribed under Section 153 of the Tamil Nadu Cooperative Societies Act and deal with the same on merits. No costs.

7. The learned Counsel would also rely upon the order of this Court in ***The Management, Velakurichi Primary Agricultural Co-operative Credit Society, represented by its Vice President, Vs. The Presiding Officer, Labour Court, Cuddalore and another [W.P.Nos.18839 and 18840 of 2004, dated 17.10.2019]*** wherein this Court held as follows:

10. These all are the disputed facts and such disputed facts cannot be adjudicated in a Claim Petition under Section 33(C)(2) of the Industrial Disputes Act. This Court also cannot provide a finding in respect of such disputed facts, which all are to be ascertained by referring the original documents and by adducing evidences. Such an exercise cannot be done in a writ jurisdiction. As far as the claim petitions are concerned, only in the event of establishing a pre existing right, the same can be entertained by the Labour Court and not otherwise.

11. Apart from the ground that there was no pre-existing right, the basic and preliminary objection raised by the writ petitioner is to be considered. Admittedly, the 2nd respondent was holding the post



Society. In the writ petitioner Cooperative society, several other posts were sanctioned by the Registrar of Cooperative Society. Therefore, the writ petitioner was the Administrative head of the Cooperative Society and under him, the persons holding the Post of Assistant Secretary, Cashier, Clerk, Fertilizer Salesman, Office Assistant and Night Watchman were working. This being the factum, there is no iota of doubt, regarding the administrative capacity of the 2nd respondent as a Secretary as he was exercising the administration power and therefore, he cannot be construed as a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act.

Therefore, the learned Counsel appearing for the petitioner would pray for allowing this writ petition, by setting aside the order of the Labour Court.

8. Learned Counsel appearing for the second respondent would submit that the Labour Court, by considering all the facts and circumstances of the case and also by considering all the relevant rules, passed the award and hence, there is no need to interfere with the same and accordingly, he would pray for dismissal of the writ petition.

9. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent and also perused the materials placed on record.

10. The facts relating to the present case is not in dispute. Admittedly the second respondent was working as a Secretary in the petitioner Society and for the commission of some irregularities, disciplinary proceedings were initiated against the second respondent under Section 81 of the Tamil Nadu Co-operative Societies Act and during the pendency of the proceedings, the second respondent filed a claim petition in O.P.No.9 of 2001 against the petitioner Society before the first respondent claiming a sum of Rs.2,07,117.54/- by stating that he was working as a Secretary of the petitioner Society since 01.11.85 and that he resigned on 12.08.2000 and that he was not paid the salary for a period from 01.08.2000 to 11.08.2000, the Provident Fund, gratuity, earn leave and bonus for the period from 1997-2000 and the second respondent claimed that his last drawn salary was Rs.7,937/-. The Labour Court, without considering the settled issue as rendered in various judgments of this Court that the Secretary has to be considered as Management and not as a workman under the Industrial Disputes Act and the petitioner is an Officer under the Tamil Nadu Co-operative Societies Act, passed the award



in favour of the second respondent, which is an unsustainable one.

11. Further, on a perusal of the above said decisions rendered by this Court(cited supra), it is made clear that the second respondent is not coming under the definition of the workman and he is the officer of the Society. Hence, the claim petition filed by the second respondent before the Labour Court is not maintainable. Accordingly, the Writ Petition stands allowed, by setting aside the award passed by the first respondent in Claim Petition No.09/2001, dated 25.02.2010. No costs. Consequently, the connected miscellaneous petition is closed.

12. However, this order will not stand on the way of the second respondent from availing the statutory revisional remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the revisional authority. If any such revision is filed within a period of three weeks from the date of receipt of a copy of this order, the competent Revisional Authority shall entertain the same without reference to limitation prescribed under Section 153 of the Tamil Nadu Cooperative Societies Act and deal with the same on merits.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court, Tirunelveli.

+1 CC to M/s.G.PRABHU RAJADUAI, Advocate (SR-2442[F] dated 29/01/2021)

+1 CC to M/s.A.JAYARAMACHANDRAN, Advocate (SR-2234[F] dated 27/01/2021)

W.P(MD)No.11212 of 2010

25.01.2021

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