



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.4200 of 2011

The Management,
A-1348 Elumalai Primary Co-operative Bank,
Through its Special Officer
G.Veerapandi.

... Petitioner

Vs.

1.The Appellate Authority,
Under Tamil Nadu Shop and
Establishment Act,
(Deputy Commissioner of Labour),
147, Sundaram Theatre Road,
Madurai-20.

2.S.Subramanian

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records of the first respondent made in case No.T.N.S.E.No.29/2002, dated 30.07.2010 and quash the same.

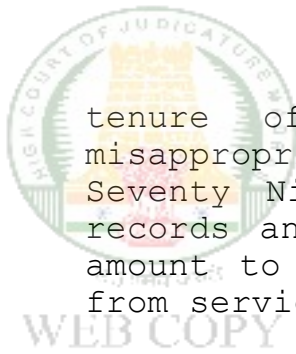
For Petitioner : Mr.R.Saravanan
For Respondents : T.Ravichandran
for R.2

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorari to call for the records of the first respondent made in case No.T.N.S.E.No.29/2002, dated 30.07.2010 and quash the same.

2. The case of the petitioner is that the petitioner Bank is a Co-operative Institution constituted under the provisions of the Tamil Nadu Co-operative Societies Act and Rules framed thereunder. The main object of the Bank was that the Bank has issued agricultural loan to their members and also provided financial assistance by way of jewel loan to their members and non-members and the petitioner Bank is also running fair price shops in various villages in and around area operation.

3. The second respondent was working as a Cashier in the petitioner Bank and the duties and responsibilities were fixed to their employees and the second respondent was a custodian of the cash and join liability to the Secretary to one Perumal. During his



tenure of service, he committed a serious misconduct and misappropriated the amount of Rs.1,79,000/- (Rupees One Lakh and Seventy Nine Thousand only) in various heads and created false records and accounts. Since the act of the second respondent is amount to serious misconduct, the second respondent was suspended from service on 31.05.2001.

4. Thereafter, the disciplinary proceedings were initiated against the second respondent as well as the erred official viz., the Secretary Perumal. After adhering the principles of natural justice, the Enquiry Officer submitted his findings, in which, it is held that all charges levelled against the second respondent and the Secretary of Perumal were proved.

5. The Secretary Perumal has reimbursed the misappropriated amount of Rs.85,700/-. However, the second respondent has not reimbursed the misappropriated amount of Rs.1,79,000/- and cause loss to the Bank. Hence, the petitioner Bank dismissed the second respondent, vide order dated 27.02.2002. Aggrieved over the same, the second respondent has filed an appeal under Section 41 of the Tamil Nadu Shop and Establishment Act before the first respondent and the same was taken on file as T.N.S.E.29/2002, under the Shop and Establishment Act and thereafter, the first respondent set aside the order of dismissal passed by the petitioner Bank, vide his order dated 18.02.2004.

6. Aggrieved by the said order, the petitioner Bank filed a writ petition before this Court in W.P.No.3547 of 2004. This Court set aside the order passed by the first respondent and directed the first respondent to lead the evidence in justifying the action of the petitioner Bank as prayed by them in the counter statement on 15.06.2007. Thereafter, the matter was remitted back to the first respondent for fresh consideration.

7. Before the first respondent, the petitioner Bank examined two witnesses and marked 24 documents and on behalf of the second respondent, he himself was examined as witness and marked 12 documents. After appreciating the witnesses and documents, the first respondent set aside the order of punishment imposed by the petitioner Bank against the second respondent. Against which, the present writ petition is filed by the petitioner Bank.

8. Learned Counsel appearing for the petitioner Bank would submit that the first respondent arrived at a conclusion that based on the evidence of second respondent, the second respondent filed documents for the remittance of Rs.99,000/- and Rs.50,000/- on 13.01.2010 and Rs.30,000/- on 04.02.2010 and since, the second respondent recouped the loss to the Bank, the order of dismissal was set aside, which is *non-est* in law. In fact, the second respondent himself admitted the guilt committed by him and he would also submit



is no need to set aside the order of dismissal. Therefore, he prays for allowing of the writ petition.

9. Per contra, learned Counsel appearing for the second respondent would submit that admittedly Perumal - Secretary of the petitioner Bank, who made misappropriation of Rs.85,700/- repaid the said amount and based on that, a punishment was imposed, by which he was demoted as Assistant Secretary. Likewise, the second respondent was also paid the amount of Rs.1,79,000/-. However, the petitioner Bank passed the order of dismissal, which is non-est in law. After appreciating all the witness and documents, the first respondent has set aside the order of dismissal, which does not warrant any interference of this Court. Hence, he prays for dismissal of the writ petition.

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

11. On a careful perusal of the entire evidences and records and further the order of the first respondent, it makes is clear that the second respondent paid the entire misappropriated amount, for which the order of setting the order of dismissal is *per se* illegal. When the second respondent himself admitted his guilt and paid the misappropriate amount, that itself is sufficient to impose major punishment. The second respondent was a cashier in the petitioner Bank and his duty is to collect the money from the borrower and the loanee and immediately after collection, he should be made entry in the Bank account. However, the same was utilised by him and the Secretary viz., Peruaml for their personal use, which was well established and the same fact was also admitted by the second respondent as well as the Secretary of the petitioner Bank. Therefore the order of dismissal passed by the petitioner Bank is a sustainable one.

12. For the above stated reasons, the writ petition is allowed, by setting aside the order passed by the first respondent and confirming the order of dismissal passed by the petitioner Bank. No costs.

Sd/-

Assistant Registrar (P & A)

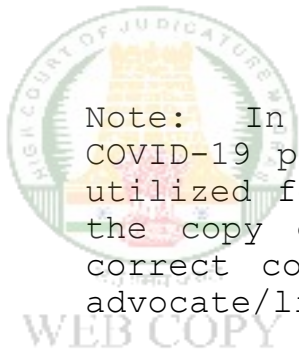
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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 Appellate Authority,
Under Tamil Nadu Shop and
Establishment Act,
(Deputy Commissioner of Labour),
147, Sundaram Theatre Road,
Madurai-20.

+1cc to Mr.R.Saravanan, Advocate Sr.No.612

W.P(MD)No.4200 of 2011

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NR (19/01/2020) 4P : 3C