



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD)No.4650 of 2011

and

W.M.P(MD)No.1 of 2011

WEB COPY

The Management
Madurai District Central
Co-operative Bank Ltd.,
Rep by its Special Officer,
187, North Veli Street
Madurai

... Petitioner

Vs.

1.The Deputy Commissioner of Labour
142/1, Lake Road,
K.K.Nagar,
Madurai-625 020

2.R.Balakrishnan

... Respondents

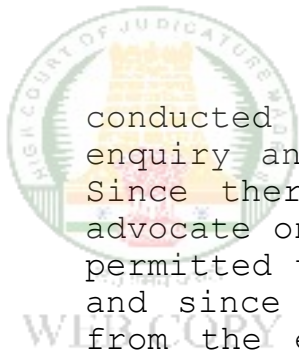
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in the proceedings in T.N.S.E.No.2/2008, quash the order dated 15.11.2010.

For Petitioner : Mr.D.Shanmugarajasethupathi
For Respondents : Mr.V.O.S.Kalaiselvan

O R D E R

This writ petition is filed by the petitioner, calling for the records of the 1st respondent in the proceedings in T.N.S.E.No.2/2008, quash the order dated 15.11.2010.

2.The case of the petitioner is that the second respondent was employed as Manager in Vadipatti Branch of the petitioner Bank. On 12.01.2006, the second respondent handed over 100 blank demand drafts to a third person without ascertaining the identity of a person and without making any enquiry from the Head Office and concerned other branches. As a result, out of 100 blank demand drafts, four demand drafts were misused by somebody causing loss to the petitioner bank to the extent of Rs.2,61,092/-. The said incident was brought to the knowledge of the petitioner Bank only after few months. Thereafter, the second respondent was placed under suspension and a charge memo was issued and domestic enquiry was

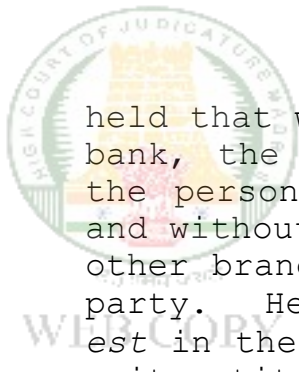


conducted against him. The petitioner participated in the said enquiry and sought permission to engage an advocate on his side. Since there was no provision in the special by-law to permit an advocate on the side of the delinquent employee, the Enquiry Officer permitted the second respondent to get assistance of any co-employee and since he was not satisfied, the second respondent walked out from the enquiry. Therefore, the said enquiry was adjourned to 26.03.2007. On that day, the second respondent did not attend the enquiry without any intimation and hence, the enquiry was conducted an ex-parte. After completion of enquiry, the Enquiry Officer submitted the proven minute, wherein, it has been stated that the charges leveled against the second respondent were proved. Therefore, the second show cause notice was issued to the second respondent by enclosing a copy of the enquiry report.

3.While so, the second respondent has filed a writ petition in W.P(MD)No.4290 of 2007 before this Court, seeking to reopen the enquiry, wherein, the second respondent has obtained an order of stay and subsequently, the said writ petition was dismissed, on 27.08.2007. As against the dismissal of the said writ petition, the second respondent filed a writ appeal in W.A(MD)No.283 of 2008 and the same was also dismissed, on 04.04.2008. However, the second respondent did not submit any explanation, even after dismissal of the writ appeal. Based on the proven minute, the second respondent was dismissed from service on 08.03.2008. Challenging the same, the second respondent filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1948, before the first respondent and the same was taken on file in T.N.S.E.No.2 of 2008. After hearing the arguments, the first respondent set aside the order of dismissal from service, on 15.11.2010. Challenging the same, the present writ petition is filed.

4.The learned counsel appearing for the petitioner submitted that a specific procedure is available for filing an appeal before the Appellate Authority, as per Special By-law of the Society, under Section 153 of the Tamil Nadu Co-operative Societies Act. However, without availing such an opportunity under the respective statutes, filing an appeal under the Shops and Establishments Act, is not maintainable. Even on merits, the second respondent himself admitted his guilt in his explanation dated 23.01.2007. Further, the second respondent himself admitted his negligence for handing over the blank Demand Draft to the third party. Therefore, the order of dismissal passed by the original authority is valid and hence, the order impugned is liable to be interfered and he prays for allowing the writ petition.

5.The learned counsel appearing for the second respondent submitted that though the second respondent admitted his guilt for issuing the blank Demand Draft to the third parties inadvertently, which was due to pressure of work on the particular day, the



held that when the Demand Draft is presented for the payment by the bank, the Bank Officials should verify the signature, identity of the person etc. Without ascertaining the identity of the person and without making an enquiry from the head office and the concerned other branch, the Bank disbursed the amount in favour of the third party. Hence, fixing the liability against the petitioner is non est in the eye of law. Hence, he prays for dismissal of the present writ petition.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

7. The facts in the present case are not in dispute. Admittedly, the petitioner was employed as a Manager in Vadipatti Branch, on 12.01.2006. The second respondent handed over 100 blank demand drafts to a third person without ascertaining the identity of a person and without making an enquiry from the head office and the concerned other branch. Due to which, there was a loss to the tune of Rs.2,61,092/- to the petitioner Bank. Therefore, the petitioner has issued a charge memo on 30.09.2006. In respect of the above charge, the second respondent submitted his explanation and admitted his guilt. The second respondent handed over the blank Demand Drafts to the major branch of K.Pudur. In the present case, preliminary objection was made by the petitioner that there is specific procedure available for the official before disbursing the amount. The decision of the original authority under the special by-law of the Co-operative Societies Act, is binding. Contrary to that procedure, the second respondent filed an appeal under Section 4(f) of the Tamil Nadu Shops and Establishments Act, however, the said preliminary objection was liable to be rejected. In this regard, reliance was placed on the decision of this Court in **Eswaramoorthy vs. Leoraj**, reported in **2008(5) MLJ 238**, wherein, in paragraph No.24 it has been held as under:-

"24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will merge:

(a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Co-operative Society and its Management. Therefore, no dispute can be referred to the Register or his nominee under Section 90 and consequently, no appeal will lie to the Tribunal under Section 152.

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority under Section 153 to call for and examine the record of any proceedings under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered Society or of the



competent authority constituted under Section 75(3) of the 1983 Act. Therefore, the employee of a Cooperative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc."

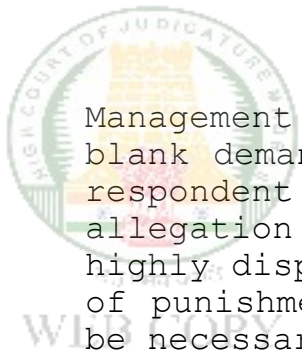
(c) There is no implied ouster of the jurisdiction of the power of the Labour Court/Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in *Somasundaram v. Liyakat Ali* 1997(1) CTC 4 : 1998-II-LLJ-719 may not be a good law. The employees therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either under Section 153 or by an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, they could not have gone before the Civil Court. Therefore, the bar under Section 156 of the Co-operative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D Act will directly apply and the suit is barred.

(e) The decision of *P.Sathasivam, J.* (as he then was) in *K.Radhakrishnan v. Additional Registrar* 2000(2) CTC 147 upholding the right of revision under Section 153 has laid the correct position of law. Likewise, the judgment of *P.Sathasivam, J.* (as he then was) in the *Management of Madras Atomic Power Project Employees' Consumers (Co-operative Stores Limited, Kalpakkam rep by its Special Officer v. The Deputy Commissioner of Labour (Appeal) Madras-6 and 2 others* 2000(3) CTC 738: 2000-II-LLJ-1451 holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided."

8. On perusal of the above said decision, in particular clause (c), the Division Bench of this Court, held that there is no implied ouster of the jurisdiction of the power of the Labour Court/Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions.

9. However, Since the second respondent himself has admitted his guilt but the Shops authority has arrived at a conclusion and fixed the responsibility against the petitioner Bank, which disbursed the amount to the third party. Such a finding is wholly unsustainable. Once the second respondent has admitted his guilt and negligence, the Shops Authority, should fix the responsibility on the second respondent. Further, it is not the case of the petitioner



Management that the 2nd respondent intentionally handed over the blank demand drafts to the third party and out of such act, the 2nd respondent had unjustly enriched himself. In the absence of such allegation and any finding to that end, the order of dismissal is highly disproportionate; but at the same time setting the said order of punishment also cannot be sustained as the 2nd respondent has to be necessarily punished for his proven delinquency.

10. Hence, this Court is inclined to modify the punishment of dismissal into one of compulsory retirement and the second respondent is not entitled to get any back-wages from the date of termination till the date of superannuation. The petitioner is directed to settle the terminal benefits to the second respondent, after deducting a sum of Rs.2,61,092/-. This Court makes it clear that the second respondent is not entitled any interest for terminal benefits from the date of superannuation to till the date of filing of the writ petition. The said exercise relating to settlement of terminal benefits shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11. In the result, this Writ Petition is disposed of with the above aforesaid directions and modification in punishment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Deputy Commissioner of Labour
142/1, Lake Road, K.K.Nagar, Madurai-625 020

+1 CC to M/s.SPL GP (SR-9223[F] dated 05/03/2021)

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-9289[F] dated 05/03/2021)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-8916[F] dated 04/03/2021)

W. P. (MD)No.4650 of 2011

04.03.2021

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