



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD) No.5031 of 2012

WEB COPY

K.Samuthrapandian

... Petitioner

Vs.

1.The Management,
T.N.34, Sivagiri Saraga Private School
Teachers and Employees Thrift and
Credit Society,
Rayagiri Post, Sivagiri Taluk,
Tirunelveli District.

2.The Presiding Officer,
Labour Court,
District Court Buildings,
Tirunelveli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari, to call for the records relating to the impugned order in I.D.No.75 of 2003 dated 06.01.2011 issued by the second respondent and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvan

For Respondent No.1 : Mr.M.Jerin Mathew
for M/s.M.E.Ilango

Respondent No.2 : Labour Court

ORDER

This writ petition is filed seeking a writ of certiorari, to quash the award dated 06.01.2011 passed in I.D.No.75 of 2003 on the file of the Labour Court, Tirunelveli.

2. The case of the petitioner is that the petitioner was appointed as a Secretary on 16.03.1984 in the first respondent Society through Employment Exchange. While he was working as Secretary, there was a dispute in between the elected representatives, namely, the President and the Vice-President. When the President of the Society was relieved from service, one Ramasamy, Vice-President took charge on 01.07.2000 as President in-charge. In the meantime, since the petitioner was sick, he applied for Medical Leave for a period of 58 days from 08.12.2000



and handed over all the charges to the Vice President, Ramasamy on 04.12.2000. At that time, the elected board was replaced by the special officer and immediately after assuming charges, notice was affixed in the door of the house to the effect that the petitioner has to handover the charges and subsequently, the special officer placed the petitioner under suspension on 20.12.2000 with effect from 11.12.2000, though the petitioner was on Medical Leave. Thereafter, charge memo was issued on 05.01.2001 and without considering the representation given by the petitioner to verify the records and without considering the explanation submitted by the petitioner, domestic enquiry was ordered. The Enquiry Officer drawn the proven minutes and the charges against the petitioner were proved and without issuing second show cause notice, by an order dated 13.02.2001, the petitioner was dismissed from service retrospectively from 11.12.2000.

3. As against the order of dismissal from service, the petitioner raised an Industrial Dispute in I.D.No.75 of 2003 before the Labour Court, Tirunelveli. On behalf of the petitioner, Ex.P1 to Ex.P21 were marked and one Samuthirapandian was examined as PW.1. On the side of the Management, Ex.M1 to Ex.M.23 were marked, and MW.1 to MW.5 were examined as management witnesses.

4. After analyzing the oral and documentary evidence, the Labour Court held that the charges levelled against the petitioner were proved and therefore, the Labour Court dismissed the dispute. As against the said dismissal order passed by the Labour Court, the petitioner has filed the present writ petition.

5. The learned counsel appearing for the petitioner would submit that the allegation levelled against the petitioner is not with regard to any fraud committed by him. However, on the allegation that the petitioner has not handed over the charges to the Special Officer during his medical leave period, the Management imposed major punishment, which is unsustainable one and the fact remains that the principle of natural justice is not followed by the Enquiry Officer and the Disciplinary Authority. Hence, the order of the Labour Court is disproportionate and liable to be dismissed.

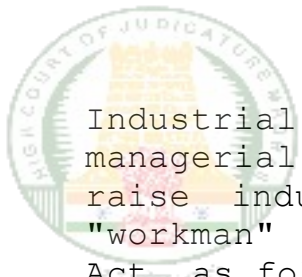
6. Per contra, the learned counsel for the Management would submit that as against the order of dismissal, the petitioner filed a revision under Section 153 of the Co-operative Societies Act before the revisional authority, however, the said revision was also dismissed. Further, in the present case, the petitioner is working as Secretary, ie., he belongs to the 'officer' cadre in the Society and as per Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, the expression "officer" is defined as including the President, Vice-President, Managing Director,



Secretary, Assistant Secretary, Member of the Board and any other person empowered under the Rules or Bylaws, to give directions with regard to the business of the registered Society. The above expression "officer" makes it very clear that the functions of the Secretary is mainly managerial and administrative in character being vested with the power to give directions to his subordinates as regards the business of the Society and all the other categories of the staff right from Assistant Secretary, Manager, Supervisor, Head Clerk, etc., down to the peons, work under the Secretary's administrative control. There are only non-officials above the cadre of Secretary, namely, the President and the Board of Directors, who are subject to periodical change due to elections and nominations. It is the Secretary, who heads and runs the executive administration and exercises managerial control over all the staff. He further submitted that since the petitioner was not a workman within the meaning of the word "workman" under Section 2(s) of the Industrial Disputes Act, he is not entitled to raise industrial dispute before the Labour Court. Hence, the Labour Court rightly dismissed the dispute and the learned counsel prays for dismissal of this writ petition.

7. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the order of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally, a writ court should not interfere with the order of the Labour Court, unless the order is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the order. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned order.

8. The facts in the present case are not disputed. Admittedly, the petitioner is working as a Secretary in the Society and the Disciplinary Authority imposed punishment and subsequently issued order of dismissal against the petitioner. Challenging the same, he raised industrial dispute and the same was ended against the petitioner. The crucial issue before this Court is whether the petitioner is entitled to raise industrial dispute as per Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner's post is defined as 'officer' category under Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983. Further, as per Section 2(s) of the



Industrial Disputes Act, if a person was employed mainly in a managerial and administrative capacity, he is not entitled to raise industrial dispute before the Labour Court. The word "workman" is defined under Section 2(s) of the Industrial Disputes Act as follows:

"2.(s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the officer or by reason of the powers vested in him, functions mainly of a managerial nature."

Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, reads as follows:

"2(19) "officer" includes a president, vice-president, managing director, secretary, assistant secretary, member of board and any other person empowered under the rules or the by-laws to give directions in regard to the business of the registered society;"

9. Perusal of the definitions contained in the above Sections, the Secretary is an "officer" and the above expression "officer" makes it very clear that the functions of the Secretary is mainly managerial and administrative in character being vested with the power to give directions to his subordinates as regards the business of the Society. Hence, the petitioner being a



Secretary, ie., working as managerial capacity, raising industrial dispute is not sustainable in law and hence I am not inclined to interfere with the order of the Labour Court.

10. In the light of the above discussion, the order of the Labour Court, Tirunelveli, passed in I.D.No.75 of 2003, dated 06.01.2011 is confirmed and this writ petition stands dismissed accordingly. No costs. However, liberty is granted to the petitioner to work out his remedy in the manner known to law.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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,
District Court Buildings,
Tirunelveli.

+1 CC to MR.V.O.S.KALAISELVAM, Advocate (SR-7397[F] dated 25/02/2021)

+1 CC to MR.M.E.ILANGO, Advocate (SR-7617[F] dated 26/02/2021)

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