



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S. SRIMATHY**

W.P.(MD)No.479 of 2013

and

M.P.(MD)Nos.1 of 2013 and

1 and 2 of 2015

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The Management,
Kulasekharam Primary Agricultural
Co-operative Credit Society Limited,
Kulasekharam Post-629 161,
Kanyakumari District,
represented by its Special Officer. ... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.K.Muthaiyan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order, dated 22.05.2012, passed by the first respondent in I.D.No.111/97 and to quash the same as illegal.

For Petitioner : Mr.Jerlin Mathew
for Mr.M.E.Ilango

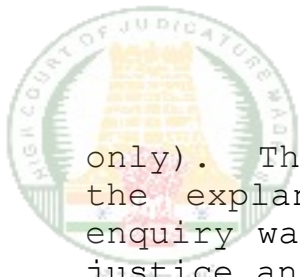
For R-1 : Labour Court

For R-2 : Mr.L.Krishnamoorthy

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order, dated 22.05.2012, passed by the first respondent in I.D.No.111/97.

2.The second respondent was working in the petitioner Society as Clerk and subsequently promoted as Cashier with effect from 01.07.1989. The allegation against the second respondent is misappropriation to the tune of Rs.4,00,000/- (Rupees Four Lakh



only). The second respondent was issued with a charge memo, since the explanation was not satisfactory, a full fledged domestic enquiry was conducted in accordance with the principles of natural justice and the enquiry report held all the charges are proved.

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3. Based on the enquiry report, dated 20.12.1995 the petitioner issued a second show cause notice, dated 28.02.1996, seeking explanation for imposing punishment of termination from service. Finally, an order of dismissal was passed on, 28.02.1996. Thereafter, the second respondent filed a Writ Petition under Section 153 of Tamil Nadu Co-operative Societies Act, 1983, before the Joint Registrar of the Co-operative Societies. After an elaborate enquiry, the Joint Registrar dismissed the Revision Petition, vide order, dated 30.07.1996 and confirmed the order of dismissal. Against which the second respondent preferred a Writ Petition in W.P.(MD)No.26149 of 2003, but subsequently withdrawn the Writ Petition vide order, dated 26.10.2005.

4. Thereafter, raised an industrial dispute in I.D.No.111 of 1997 and by an order, dated 28.08.2007, the Labour Court was pleased to set aside the order of dismissal and directed to pay full wages. Aggrieved over the same, the Society preferred Writ Petition under W.P.(MD)No.9614 of 2008 and this Court, vide order, dated 30.03.2011, remitted the case back on ground that enquiry minutes were not produced before the Labour Court. A full enquiry was conducted and a preliminary award, dated 20.09.2011, was passed. Thereafter, a final award was passed on 22.05.2012.

5. In the meanwhile, in the criminal proceedings, the second respondent was convicted. Against which the second respondent has preferred Criminal Appeal in S.C.No.25 of 2005, on the file of Sessions Court, Nagercoil and the same is pending.

6. Heard Mr. Jerlin Mathew, learned Counsel appearing for the petitioner and Mr. L. Krishnamoorthy, learned Counsel appearing for the second respondent.

7. The first respondent submitted that the Labour Court passed an order on 28.02.2007 and thus, elaborately dealt with the case. But the learned Counsel appearing for the petitioner refused stating the order dated 28.02.2007 was challenged before this Court and the order was set aside and the case remitted back. Thereafter the Labour Court has passed an order dated 22.05.2012 and therefore the order dated 28.02.2007 will merge with the order dated 22.05.2012 and so the plea of the second respondent cannot be considered. This Court is of the view that the earlier



order merges with the subsequent order. Therefore, the reliance placed on the order, dated 28.08.2007, is not acceptable.

8. The second point that was raised by the Society is that two petitions are filed before the Joint Registrar and the Labour Court, then, the claim of the second respondent is hit by *res judicata*. Admittedly, the second respondent has preferred a Revision Petition before the Joint Registrar under Section 153. As far as the order against which the second respondent preferred a Writ Petition is concerned, unfortunately, it was withdrawn. Thereafter, the petitioner preferred an industrial dispute before the Labour Court. As rightly pointed out by the learned Counsel appearing for the petitioner Society, the petition filed before the Labour Court is hit by *res judicata*. Therefore, this Court is of the opinion that the Labour Court award is hit by *res judicata* and this Writ Petition is allowed by setting aside the order, dated 22.05.2012.

9. The third point that was raised is that the 2nd respondent was convicted in criminal proceedings and the 2nd respondent has preferred criminal appeal in S.C.No.25 of 2005, on the file of Sessions Court, Nagercoil and the same is pending. As on date the 2nd respondent is convicted and therefore the grant of backwages is totally illegal.

10. For the reasons stated above the writ petition is allowed. However, liberty is granted to the second respondent, if the criminal appeal ended up in acquittal, the second respondent shall file a petition before the Joint Registrar under Section 154 review jurisdiction to reconsider the punishment on the basis of the acquittal in the criminal proceedings.

11. Accordingly, the Writ Petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar (CS)

Tmg



To

The Presiding Officer,
Labour Court,
Tirunelveli.

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+1 CC to M/s.M.E.ILANGO, Advocate (SR-38007[F] dated 09/12/2021)

W.P. (MD) No.479 of 2013
07.12.2021

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