



WEB COPY

W.P.(MD)No.5211 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2021

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.5211 of 2013

and

M.P. (MD)No.1 of 2013

The Special Officer,
EE 464 Mappillaiyurani Agricultural
Co-operative Society,
Presently EE 464 Mappillaiyurani Primary
Co-operative Bank,
No.09/92, Mappillaiyurani,
Tuticorin - 628 002.

... Petitioner

vs

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. S.Muthuraj

... 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 award, dated 09.11.2012 passed in I.D.NO.82 of 1993 on the file of the first respondent and to quash the same.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents : Labour Court, for R-1
Mr.M.Arumugam for
B.Rajesh Saravanan, for R-2

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to award, dated 09.11.2012 passed in I.D.NO.82 of 1993 on the file of the first respondent and to quash the same.

2. The petitioner is a Co-operative Bank. The second respondent had worked as a Secretary in Co-operative Society. The contention of the second respondent is that he was illegally retrenched from the service of the petitioner Bank from the year 1985 and raised an Industrial Dispute, only in the year 1993, under Section 2(A)(2) of the Industrial Dispute Act.



3.The contention of the petitioner Cooperative Bank is that the second respondent has voluntarily abstained from the service and afraid of facing charges of misappropriation. The Industrial Dispute raised by the second respondent was taken up on record in I.D.No.82 of 1993, and the notice of the hearing date 04.02.1993, was sent by the petitioner Bank. The contention of the Bank is that since the Bank was not in operation from 03.08.1991, the bank has become defunct. The notice was sent to the petitioner bank as if it was served on the bank. The contention of the Bank is that since the bank is not functioning the notice was not served on the bank. Thereafter first respondent had passed an ex-parte award on 20.04.1993, directing the petitioner Bank to reinstate the second respondent with continuity of service and to pay wages for the period of his non-employment.

4. Based on the ex-parte award, the second respondent has filed a petition in C/P/No.50 of 1996. The petitioner Bank filed an application to set aside the ex-parte award, dated 20.04.1993, along with an application in I.A.No.130 of 1997 to condone the delay of 1435 days. The condone delay was rejected by order, dated 16.11.2007. The petitioner Bank has preferred two writ petitions in W.P(MD)No.1230 and 1231 of 2008, challenging the ex-parte award, dated 20.04.1993 and also the order, dated 16.11.2007, refusing to condone the delay. This Court, allowed the writ petitions by setting aside the order, dated 16.11.2007, subject to the payment of cost and disposed of the other writ petition, by setting aside the exparte award, dated 20.04.1993. Thereafter, the first respondent awarded, vide order, dated 09.11.2012, a lump sum payment of Rs.1,00,000/- (Rupees One Lakh only) in lieu of compensation, taking into account the age of superannuation. Aggrieved over the order of compensation of Rs.1,00,000/- (Rupees One Lakh only) the Co-operative Society has filed this petition. The Cooperative Society has challenged the award on technical ground that the second respondent was working in the Co-operative Bank as Secretary and the post comes under the Managerial cadre, the second respondent cannot raise any Industrial Dispute.

5. The respondents have not filed any counter affidavit. Heard the learned Counsels for the petitioner and the respondents

6.Admittedly the post of Secretary in Co-operative Society comes under Managerial cadre. Therefore, the petitioner Society is right, in stating that the second respondent was served as Secretary and he cannot raise any Industrial Dispute. In fact, the Labour Court has taken all these into consideration and has not granted reinstatement with continuity of service and backwages to the second respondent. However, a lump sum payment of Rs.1,00,000/- (Rupees One Lakh only) as compensation is awarded to the second respondent.



7. As rightly pointed out, the Labour Court may not have jurisdiction to award Rs.1,00,000/- (Rupees One Lakh only). When the award is put to challenge before this Court under Article 226, this Court has power to entertain the petition to render over all justice to the parties.

8. Therefore this Court is entertaining this petition. On perusing the records, it is seen at the time of filing this petition, the second respondent was 58 years old. Now, the second respondent is 63 years old. The petitioner society is defunct and it is not functioning. Taking all these factors into consideration this Court is modifying the amount alone. This Court is directing the Management to pay Rs.25,000/- (Rupees Twenty Five Thousand only) to the 2nd respondent.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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.P.JESSI JEEVA PRIYA, Advocate (SR-39313[F] dated 17/12/2021)

W.P. (MD)No.5211 of 2013

16.12.2021

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