



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.2633 of 2021
and
C.M.P.No.17188 of 2021

The Special Officer,
Ambur Co-Op. Sugar Mills Ltd.,
Vadapudupet - 635 812,
Vellore District.

...Appellant/2nd Respondent

Vs.

1.S.Ramadevi

... 1st Respondent/Petitioner

2.The Director of Sugar,
474, Anna Salai,
Nandanam,
Chennai - 600 035.

...2nd Respondent/1st Respondent

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order in W.P.No.8094 of 2004 dated 14.02.2012.

Prayer in WP.No.2633 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the first respondent relating to the order passed by him in ref.No.16640/Tha.Ma.Aa1/2003 dated 25.02.2004 confirming the orders of the second respondent in ref.No.4353/2003/F2 dated 27.01.2003 and quash the same.

For Appellant : Mr.R.Gopinath

For Respondent 1: Mr.J. Jayamalam
for Mr. Mr.G.Sankaran



JUDGMENT

S.VAIDYANATHAN, J.

and

M.J. MOHAMMED SHAFFIQ, J.

WEB COPY

The present appeal has been preferred against the order of the learned Single Judge in W.P.No.8094 of 2004 dated 14.02.2012.

2. It is the case of the 1st respondent/employee that she was appointed as Chief Accounts Officer by the Director of Sugars/2nd respondent herein and was deputed as Chief Accounts Officer to the Ambur Co-operative Sugar Mills Ltd., Appellant herein. During the period, while she was deputed as Chief Accounts officer, she has purchased excess quantity of uniform to the tune of Rs.12,512/- and caused loss to the institution and the same was found during audit inspection. Subsequently, the 1st respondent/employee was issued a charge memo in Ref.No.4353/2003/F2 dated 27.01.2003 by the Appellant herein to recover the alleged amount from the wages of the employee in 24 equal instalments and the same was confirmed by the Director of Sugars/2nd respondent herein in Ref.No.16640/Tha.Ma.Aa.1/2003 dated 25.02.2004.

3. Challenging the charge memos issued by the Appellant and the 2nd respondent, the 1st respondent/ writ petitioner has approached this Court in W.P.No.8094 of 2004, which was allowed and the learned Single Judge passed an order on 14.02.2012 holding that the recovery is possible only under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 and that the Payment of Wages Act cannot be invoked.

4. The learned counsel appearing for the Appellant submitted that if disciplinary action is being ordered, the same is not barred or prohibited under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. He further submitted that the provisions of Payments of Wages Act has not been looked into in proper perspective by the learned single Judge. Hence, he prays to allow this writ appeal and set aside the order passed by the learned Single Judge.

5. The learned counsel appearing for the 1st respondent/employee contended that there should be a notice under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 and the matter should be referred to the concerned Authority for a decision. But, in the present case, there was no reference at all to Section 87 of the Co-operative Societies



Act, 1983. Hence, the order passed by the authorities concerned to recover the alleged amount from the employee is wholly without jurisdiction. Hence, he prays to confirm the order passed by the learned Single Judge and dismiss this appeal.

WEB COPY

6. Heard both sides and perused the materials available on record.

7. The case revolves around one aspect, namely whether the charge memo issued to the first respondent/employee to recover the alleged amount in consonance with the provisions of the Tamil Nadu Co-operative Societies Act, 1983. On a reading of the Section 87 of the Co-operative Societies Act, 1983, it is clear that when there is any dispute in respect of any loss said to have been caused by any employee, the matter should be referred to the Competent Authority, within the period of limitation, for adjudication. In the present case, no award has been passed by any Authority and there was no reference made under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Further, there is no provision for the appellant to recover the alleged amount under the aforesaid Act. But, the learned counsel appearing for the appellant submitted that even without any such award, the Appellant has got power under Section 7 of the Payment of Wages Act, 1936 to recover the amount.

8. In the present case, if the employee is falling within the definition of the Payment of Wages Act, 1936, certainly, the appellant is bound to recover the amount under the Said Act or by invoking Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. It is open to the employer to take recourse to any one of the above and the employer action in recovering the amount under Payment of Wages Act, 1936 cannot be found fault with. But at the same time, it should be borne in mind that in the present case on hand if the wages of an employee crosses Rs.1,600/-p.m at that relevant point of time he/she ceases to be an employee under the Payment of Wages Act, 1936 and the said act will not be applicable to the employee.

9. Considering the submissions made by the learned counsel appearing on either side, we are of the view that there is no necessity to interfere with the order passed by the learned single Judge and this writ Appeal stands dismissed. However, it is open to the Appellant herein to proceed to recover the amount if so advised by invoking Section 87 of the Tamil Nadu Co-operative Societies and period of delay till date is liable to be condoned in the light of the provision of the



Limitation Act and the Judgment of the Hon'ble Supreme Court in the case of State Bank of India Vs. Sarathy reported in (2000) 5 Supreme Court cases 355 and the relevant portion is extracted hereunder:

"It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time. It was for these reasons that we have allowed this appeal by our short order dated 28th of July, 1998 for which the reasons are recorded by us in detail."

10. In the result, the Writ Appeal stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Smn

To:

1.The Special Officer,
Ambur Co-Op. Sugar Mills Ltd.,
Vadapudupet - 635 812,
Vellore District.

2.The Director of Sugar,
474, Anna Salai,
Nandanam, Chennai - 600 035.

+1cc to Mr.R.Gopinath, Advocate SR.No.13673

W.A. No.2633 of 2021
and
C.M.P.No.17188 of 2021

SSD(CO)
GN(02/06/2022)