



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12074 of 2015

and

M.P.(MD)No.1 of 2015

WEB COPY

Secretary (Incharge),
E.E.378, Thandapathu Primary Agricultural
Co-Operative Credit Society,
Thandapathu - 628 208,
Tuticorin District.

... Petitioner

vs.

1.The Labour Court,
Tirunelveli.

2.B.Saravanan,

... Respondents

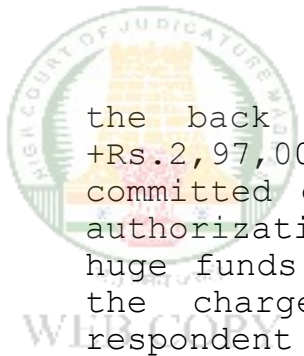
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the orders passed by the 1st Respondent in I.D. No. 16 of 2014, dated 19.05.2015, in reinstating the 2nd respondent in service with continuity in service and back wages and to quash the same as illegal.

For Petitioner	: Mr.R.Laxman
For R1	: Labour Court
For R2	: No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the orders passed by the 1st Respondent in I.D. No. 16 of 2014, dated 19.05.2015, in reinstating the 2nd respondent in service with continuity in service and back wages and to quash the same as illegal.

2.The second respondent he was working as Junior Clerk in the petitioner Society. The allegation against the second respondent is that he signed the business transaction and cash transaction and has misappropriated money to the tune of Rs.5,94,000/- and therefore, a criminal case was registered against the second respondent, under Section 120 (b), 408, 467, 468, 471 and 477 (a) of IPC in Crime no.3 of 2002. The second respondent along with the Secretary and other employees have committed this mistake. The members of the petitioner society, namely A.Appuraj and B.Rajasekar deposited Rs.3,00,000/- + Rs.3,00,000/- each under Fixed Deposit No.167 and 168 respectively. When the fixed deposit was received, merely by writing Rs.3,000/- in



the back sheet of the fixed deposit, a sum of Rs.2,97,000/- +Rs.2,97,000/- was misappropriated. The second respondent has committed grave offence of signing the Bank documents without any authorization to sign, by which he has committed misappropriation of huge funds causing heavy loss to the petitioner's Society. Hence, the charge memo, dated 05.05.2010 was issued to the second respondent and he has submitted a reply. After the enquiry, the second respondent was dismissed from service. The second respondent was fully aware of the fact that he was working merely as Junior Assistant and he is not supposed to sign in banking transaction documents but the second respondent has signed the Chitta and Bank documents with full intention and motive to the effect of misappropriating Society funds which was in the name of S.Rajasekar and Appuraj. The petitioner was terminated from service, vide order, dated 29.08.2011, with effect from 30.08.2011. The criminal case was registered under Crime No.3 of 2002, on the file of CCIW, Thoothukudi, which ended up in conviction. Thereafter, the second respondent preferred an appeal. In appeal, the second respondent was acquitted. In the meanwhile, the petitioner preferred I.D.No.16 of 2014, wherein the Labour Court has awarded reinstatement and continuity of service along with backwages. Aggrieved over the same, the petitioner Society has come up with this Writ Petition. This Court has ordered notice to the second respondent and the petitioner submitted that he has sent notice again to the second respondent and it was received by somebody on 23.02.2022, but the second respondent is not represented by anyone.

3.The learned Counsel appearing for the petitioner submitted that the petitioner Society received an information that the second respondent died. The petitioner in order to ascertain to ascertain the availability of the second respondent issued private notice and someone has received the notice. In spite of private notice the second respondent has not appeared before this Court.

4.Heard Mr.R.Laxman, learned Counsel appearing for the petitioner.

5.The contention of the petitioner Society is that the second respondent has colluded with others and has signed the Banking transactions and has misappropriated to the tune of Rs.5,94,000/-. Since the charges are very serious, the Labour Court ought to have dealt with the issue more seriously. The Criminal Court has convicted the second respondent, but on appeal he was acquitted, stating that the second respondent has only signed the documents, which will not conclusively prove that the second respondent has committed misappropriation. Since in criminal case, strict evidence is necessary, the Criminal Court has come to the conclusion that evidence is not adequate to convict the second respondent. However, under domestic enquiry, it is only preponderance of probability. The second respondent ought not to have indulged in signing the Bank documents, when he was not authorized to sign such



documents, more so, when the signing authority is available in the Society. Therefore, there is some contribution in the misappropriation transaction.

6. Therefore, this Court is of the considered opinion that the Labour Court award ought to be interfered with. The second respondent is not eligible for reinstatement and backwages. The punishment awarded by the petitioner Society is modified as compulsory retirement. The petitioner is directed to modify the punishment as compulsory retirement and disburse the terminal benefits to the second respondent. The said exercise shall be completed within a period of 6 weeks from the date of receipt of a copy of the order.

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

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

1. The Labour Court,
Tirunelveli.

2. Secretary (Incharge),
E.E.378, Thandapathu Primary Agricultural
Co-Operative Credit Society,
Thandapathu - 628 208,
Tuticorin District.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-11587[F] dated 11/03/2022)

W.P. (MD) No.12074 of 2015
10.03.2022

RS (29.03.2022) 3P-4C