



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2022

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) No.15009 of 2015

and

M.P. (MD) Nos.1 & 2 of 2015

E.E.423 Udangudi Primary Agricultural Co-operative
Society,
Udangudi,
Tiruchendur Taluk,
Thoothukudi District,
represented by its Secretary.

... Petitioner

Vs.

1. The Deputy Commissioner of Labour/
The Appellate Authority (under the
The Tamil Nadu Shops and Establishment Act of 1947),
Tirunelveli District.

2. Mr.S.Muthukumar

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to call for the records relating to impugned order passed by the first Respondent, dated 31.12.2014 delivered on 16.05.2015 in Case No. TNSE 1/12 and quash the same.

For Petitioner : Mr.N.Dilip Kumar
For R1 : Mr.P.Thambidurai
Government Advocate (Civil side)
For R2 : M/S.D.Geetha

ORDER

This writ petition is filed for Writ of Certiorari to quash the order, dated 31.12.2014 passed by the first respondent.

2. The petitioner is a Primary Agricultural Co-operative Credit Society. The petitioner Society initiated disciplinary proceedings through charge memo, dated 25.03.2007, for his unauthorized absence from duty since 01.06.2005 till the date of issuance of charge memo. Another notice was sent on 18.09.2006, directing the second respondent to furnish the Educational



Certificate. The second respondent did not give any reply, of several opportunities. Thereafter, an Enquiry Officer was appointed and the Enquiry Officer sent several notices, all were returned as unclaimed. Hence, the petitioner Society conducted the enquiry and an ex-parte order was passed and held the charges are proved. The second show cause notice was sent on 24.09.2009 along with the Enquiry Report and the second respondent submitted a reply on 10.02.2009. After consideration of reply, the second respondent was removed from service on 14.05.2011. Aggrieved over the same, the second respondent had filed TNSE No.1 of 2012, before the first respondent which was allowed directing the petitioner Society to reinstate the second respondent into service. Aggrieved over the same, the present writ petition has been filed.

3. Pending writ petition, the second respondent has filed M.P.(MD)No.1 of 2015 and this Court, vide order, dated 05.01.2016 has granted an interim stay on condition by directing the petitioner Society to deposit the entire wages as ordered by the first respondent. On such deposit, the second respondent was permitted to withdraw 50% of the amount. **(*)deleted**

4. The learned Counsel appearing for the respondent relied on the petition filed before the authority and submitted that the second respondent was not granted sufficient opportunity. The order of termination was an ex-parte order. Hence, the first respondent considering the evidence placed before it has allowed the petition by setting aside the termination order. Therefore, the second respondent prayed to dismiss the writ petition.

5. Heard Mr.N.Dilipkumar, learned Counsel appearing for the petitioner, Mr.P. Thambidurai, learned Government Advocate appearing for the first respondent, Ms.D.Geetha, learned Counsel appearing for the second respondent and perused the records.

6. On perusing the records and the impugned order, it is seen that the authority under the Tamil Nadu Shops and Establishment Act has held that the petitioner Society failed to issue proper notice. Further held in case, if the notice is not served, the petitioner Society ought to have issued substitution of service by making paper publication. Based on this ground, the authority has held that ex-parte order is bad in law and has granted relief to the second respondent.

7. On perusing the documents filed before the authority, Ex.R.13 is the notice, where it has been returned as "unclaimed". When the notice has been returned as unclaimed, it cannot be construed as notice not served. It is the deliberate act of the second respondent since he has not claimed the notice. Therefore, this Court is of the considered opinion that the order passed by the authority is erroneous, unclaimed cannot be considered as violation



of principle of natural justice and the impugned order is not sustainable in law and liable to be set aside.

8. The next contention of the second respondent is that he submitted repeated representation to reinstate the second respondent in service. Since the petitioner Society has not granted reinstatement, it cannot be construed as the second respondent deliberately absented from the work. Hence, the first respondent has directed the petitioner Society to reinstate the second respondent. Since, this Court has held that the second respondent has deliberately avoided the enquiry proceedings and there is no violation of principle of natural justice, this contention is not sustainable. Therefore, this Court is inclined to interfere with the impugned order.

9. The learned Counsel appearing for the second respondent submitted that the second respondent attained superannuation in the year 2019 and hence there is no question of reinstatement and prayed to direct the petitioner to disburse all the terminal benefits that is applicable to him by including the period of absence. The learned Counsel appearing for the petitioner Society submitted that from 05.01.2016 onwards until the second respondent's superannuation i.e., in the year 2019, all monetary benefits were granted to the second respondent. The second respondent has worked in the society from 1988-2005 and for the said period, the second respondent is eligible for Gratuity, Provident Fund and other benefits. The second respondent has also filed another writ petition in W.P.(MD) No.20874 of 2019, seeking to disburse all the benefits that is applicable to the second respondent.

"10. Considering all these factors into consideration, the following orders are passed:

(i) The second respondent shall withdraw the writ petition W.P. (MD) No.20874 of 2019.

(ii) The petitioner Society shall disburse the Gratuity and EPF that is applicable to the second respondent for the period from 1988-2005.

(iii) Since the second respondent already received the salary from 2016-2019, the second respondent is not entitled to any other benefits for the said period.

(iv) For the period from 2005-2016, the second respondent is entitled to compensation of Rs.1,40,000/- (Rupees One Lakh Forty Thousand only). Apart from this, the second respondent is not entitled to any other benefits and this compensation is paid as full and final quit.

(v) The petitioner society is permitted to adjust the loan dues which was availed by the second respondent."



W.P.(MD)N



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11. With the above said direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

(*)Amended as per order of this Court in WP(MD) No.15009/2015 dated 23-12-2022

Sd/-

Assistant Registrar(AE)

// True Copy //

/12/2022

Sub Assistant Registrar(CS)

jbr

To

To be substituted to the order already despatched on 19-12-2022.

The Deputy Commissioner of Labour/
The Appellate Authority (under the
The Tamil Nadu Shops and Establishment Act of 1947),
Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-564500[F])

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-64368[F])

+1 CC to M/s.D.GEETHA, Advocate (SR-64238[F])

W.P. (MD) No.15009 of 2015
21.11.2022

tp(CO)

KB(14.12.2022) 4P 5C

SS(03/01/2023) 4P 5C