



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.16211 of 2015

and

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

WEB COPY

Liquidation Officer,
T.S.3 Naickerpatti Primary Agricultural
Co-operative Bank,
Sankarankoil Taluk,
Tirunelveli District Central Co-operative Bank Ltd.,
Tirunelveli - 1.
represented by Co-operative Sub Registrar,
(Execution and Liquidation)

... Petitioner

vs

1. The Presiding officer,
Honourable Labour Court,
Tirunelveli.

2. M.Balasubramanian (Died)
3. Seethalakshmi
4. Ulagammal
5. Malaiappan
6. Shanmugaperumal
(All Legal heirs of R-2 deceased)

7. T.S.3 Naickerpatti Primary Agricultural
Co-operative Bank,
Naickerpatti,
Sankarankoil Taluk,
represented by its President.

... 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 13.08.2015 passed by the first respondent in E.P.No.4 of 2015 in C.P.No.44/98 and quash the same as illegal.

For Petitioner : Mr.M.E.Ilango

For Respondents : Labour Court for R1
Mr.R.Rajamohan for R3 to R6

No appearance for R7

Died- R2

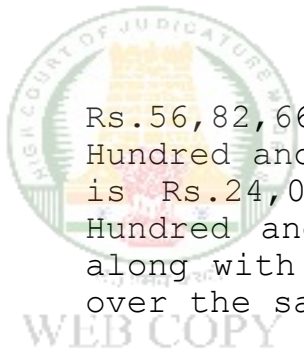


O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 13.08.2015 passed by the first respondent in E.P.No.4 of 2015 in C.P.No.44/98 and quash the same as illegal.

2. The facts of the case are that the second respondent was working as Secretary in the Society. Because of the omissions and commissions including misappropriation of huge amount, the second respondent was subjected to disciplinary action that culminated in his dismissal on 24.02.1992. Aggrieved over the same, the second respondent raised an Industrial Dispute in I.D.No.81 of 1993. By an award, dated 03.05.1993, the Labour Court ordered to reinstate with back wages. In the meanwhile, the surcharge proceedings were initiated against the second respondent and he was directed to pay Rs.70,375/- (Rupees Seventy Thousand Three Hundred and Seventy Five only) with 18% interest, vide order dated 17.04.1993. The Management has challenged the award before the High Court in W.P.No.17643 of 1997 and this Court, vide order, dated 17.9.1997 dismissed the writ petition, with the observation, the same would not affect the surcharge proceedings. Based on the award, dated 03.05.1993, the second respondent has filed an application under Section 33 C(2) of the Industrial Dispute Act 1947, in C.P.No.44 of 1998. By an order, dated 14.12.1998, the Labour Court awarded a sum of Rs.3,30,361/- (Rupees Three Lakh Thirty Thousand Three Hundred and Sixty One only) with 12% interest. The society has challenged the consequential order in W.P.No.13053 of 2003 and this Court vide order, dated 17.06.2011 directed the Society to deduct the surcharge amount with interest and the balance amount was ordered to be paid to the second respondent. The second respondent died on 28.05.2012. Subsequently, the legal heirs were impleaded in the said execution petition. The Labour Court has directed the Society to pay Rs.4,83,241/- (Rupees Four Lakh Eighty Three Thousand Two Hundred and Forty One only) along with interest.

3. In the meanwhile, surcharge proceedings were initiated against the second respondent in No.4/04-05 and vide order, dated 26.11.2004, a sum of Rs.1,48,504/- (Rupees One Lakh Forty Eight Thousand Five Hundred and Four only) along with the 18% interest was imposed on the second respondent. The Management has filed a detailed counter affidavit in E.P.No.04 of 2015 stating that the two surcharge amounts are pending against the second respondent along with interest. If the amount is adjusted against the surcharge proceedings then the petitioner Management is entitled to get the balance amount from the second respondent. Moreover the petitioner management is under liquidation. The Labour Court, vide order, dated 13.08.2015 has directed the Society to pay Rs.4,83,241/- (Rupees Four Lakh Eighty Three Thousand Two Hundred and Forty One only) to the respondent Nos. 3 to 6 on or before 10.09.2015. The Society is already under liquidation and the total liabilities is



Rs.56,82,666/- (Rupees Fifty Six Lakh Eighty Two Thousand Six Hundred and Sixty Six only), whereas the total assets of the Society is Rs.24,07,891/- (Rupees Twenty Four Lakh Seven Thousand Eight Hundred and Ninety One only). In such circumstances, the amount along with 18% interest cannot be paid by the petitioner. Aggrieved over the same, the present writ petition is filed.

4. The respondents relied on petition filed before the Labour Court and the affidavit filed before the High Court.

5. Heard Mr. Jerin Mathew, Learned Counsel for the petitioner and Mr. R. Rajamohan, learned Counsel appearing for the respondent Nos.3 to 6 and no appearance for seventh respondent.

6. The petitioner Society is admittedly under liquidation and the total liabilities are more than the assets as stated supra. It is an admitted fact that there are two surcharge proceedings against second respondent. The first surcharge proceedings amount is a sum of Rs.70,310/- (Rupees Seventy Thousand Three Hundred and Ten only) and the second surcharge proceedings is a sum of Rs.1,48,545/- (Rupees One Lakh Forty Eight Thousand Five Hundred and Forty Five only) is imposed on the second respondent. The Society is liable to pay Rs.3,30,361/- (Rupees Three Lakh Thirty Thousand Three Hundred and Sixty One only) to the second respondent.

7. Therefore, this Court is of the considered view that the second respondent is being alleged for misappropriation, the Society under liquidation is dealing with the public amount, therefore, the surcharge amount ought to be deducted from the terminal benefits of the second respondent. Therefore, this Court is directing the petitioner to pay a sum of Rs.2,00,000/- (Rupees Two Lakh only). The petitioner shall not take any proceedings against the second respondent's legal heirs for any dues, likewise, the second respondent's legal heirs shall not take any proceedings against the Society for any other further amount. The amount as stated supra is the final settlement of the petitioner and the second respondent's legal heirs.

8. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

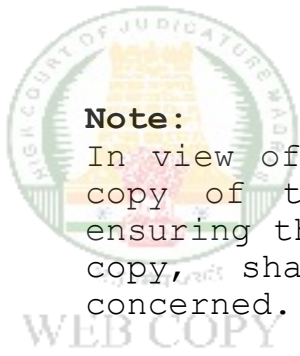
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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 Presiding officer,
Labour Court,
Tirunelveli.
2. The President,
T.S.3 Naickerpatti Primary Agricultural
Co-operative Bank,
Naickerpatti,
Sankarankoil Taluk,

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-10139[F] dated 04/03/2022)

W.P. (MD) No.16211 of 2015
04.03.2022

RK(04/05/2022) 4P 4C