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W.P.No.10622 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.10622 of 2016
and W.M.P.No.9354 of 2016

No.K-771, Chinnaputhur Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. by its President,
Reddypalayam, Dharapuram – 638 657,
Tiruppur District.

... Petitioner

Vs.

1.A. Nija Moideen

2.The Presiding Officer,
Labour Court,
Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned Award in I.D.No.170 of 2009 dated 14.09.2015 on the file of the Labour Court at Salem and quash the same.

For Petitioner : Mr.K. Prem Kumar

For R1 : Mr.K.V. Shanmuganathan
For R2 : Court



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ORDER

The award of the Labour Court passed in I.D.No.170 of 2009 dated 14.09.2015, directing the petitioner/Society to reinstate the first respondent/workman herein, together with continuity of service with the entire back wages and other attendant benefits, is put under challenge in the present Writ Petition.

2. The case of the petitioner/Society is that the first respondent herein, while working as a salesman, had tendered his resignation on 08.12.2004. Thereafter, as an afterthought, he claims to have given letters to the Secretary on 08.01.2005 and 01.08.2006, stating that he was on medical leave from 08.12.2004 to 07.01.2005 and therefore, when he had sought for rejoining, the Management had orally terminated him from service. Before the Labour Court, the Management had marked the resignation letter dated 08.12.2004 as Ex.M3 and Ex.M4 is the acceptance of the resignation letter and handing over of the charges. The Management had also marked Ex.M5 - letter dated 08.12.2004, whereby, one N.Kanagaraj was assigned with the work of the salesman in the place



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of the first respondent herein. The workman had marked Exs.P2 & P3, which are the alleged letters given by him to the Secretary of the petitioner/Society.

3. The Labour Court had found that since the workman had denied that the resignation letter was not made by him, it had shifted the burden on the Management for proving the contrary and thereby, had held that the workman had not resigned from the said post, but had gone on medical leave from 08.12.2004 to 07.01.2005. In this background, the Labour Court had also observed that the Management had not chosen to frame any charges nor conduct an inquiry against the workman, who was a permanent employee and therefore, held the oral termination to be bad in law.

4. The learned counsel for the petitioner submitted that before the Labour Court, the then Secretary of the Society was examined as M.W.1 and as per his statements, he had categorically stated that he has received a resignation letter in Ex.M3 from the workman and insofar as the letters which are alleged to have been given by the workman through Ex.P2 and



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Ex.P3, the counter signature therein was denied by him. This apart, M.W.1 had also stated that after the workman has tendered his objection, the same was accepted by him through Ex.M4 and the duties of the salesman were also assigned to one Kanagaraj through Ex.M5.

5. The finding of the Labour Court, while appreciating this evidence of M.W.1, in the light of the documents marked by the Management, may suffer from perversity. When M.W.1 had categorically stated that the workman has tendered his resignation on 08.12.2004 and has also relied upon Ex.M4, apart from substantiating that the resignation was accepted and that the duties were assigned to one another salesman, the Labour Court ought to have considered the defence taken by the Management based on these documents. This apart, the Labour Court had also failed to properly appreciate the specific stand of M.W.1 that he had not received the letters in Exs.P2 & P3, which are alleged to have been given by their workman and had also denied his counter signature therein.



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6. Viewed from this angle, there was no infirmity on the part of the Management in not framing the charges or conducting an inquiry, since it is not a case of oral termination. Even assuming that the onus was on the part on the Management to prove that the workman has resigned from his post, this Court is of the view that the Management had substantially established before the Labour Court through Exs.M3, M4 & M5, as well as the evidence of M.W.1 to show that this is not a case of oral termination, but one of resignation.

7. In the light of the above findings, the award passed by the Labour Court, cannot be sustained, as it suffers from perversity.

8. At this juncture, the learned counsel appearing for the first respondent herein submitted that though the first respondent had joined the services of the petitioner/Society on 01.03.1989 and worked till 08.12.2004, the monetary benefits have not been disbursed to him.

9. It is needless to point out that even in cases of resignation, there is a duty cast on the Management to forthwith disburse such monetary



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benefits, arising out of the termination of the services of the workman-on-resignation. Since the Management had not chosen to disburse such legal entitlements from 08.12.2004 till date, the first respondent would be entitled for interest on the outstanding dues.

10. In the result, the impugned award dated 14.09.2015 passed in I.D.No.170 of 2009, is hereby quashed. Consequently, there shall be a direction to the petitioner/Society, to forthwith disburse all the monetary benefits, which the first respondent herein would be entitled, for the service period between 01.03.1989 and 08.12.2004, together with interest at the rate of 8% per annum, within a period of two (2) months from the date of receipt of a copy of this order.

11. With the above directions, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

17.04.2023

Speaking order/Non-speaking order

Index:Yes/No

Neutral Citation: Yes/No

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To

The Presiding Officer,
Labour Court,
Salem.



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M.S.RAMESH,J.

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