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W.P.No.16848 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.16848 of 2016
and
W.M.P.No.14455 of 2016

The Management of K796,
The Pollachi Municipal Employees Co-operative
Thrift and Credit Society,
Rep. by its Secretary (incharge),
No.1, Venkataraman Street,
Pollachi – 642 001,
Coimbatore District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.S.Sakunthala

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to preliminary award dated 10.06.2010 and final award dated 12.09.2013 made in I.D.No.117 of 2005 on the file of the 1st respondent, quash the same.

For Petitioner : Ms.R.Divya Preathika
for Ms.R.Bharathi Kumar

For Respondents : Mr.K.Prem Kumar [R2]



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ORDER

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This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records relating to preliminary award dated 10.06.2010 and final award dated 12.09.2013 made in I.D.No.117 of 2005 on the file of the first respondent, quash the same.

2. The case of the petitioner is that, it is a Co-operative thrift and credit Society and the second respondent was working as Junior Assistant with the petitioner. During the year 1993 to 1994, there was an audit objection regarding the scale of pay pertaining to the second respondent paid during years 1991 – 1992, 1992 – 1993 and 1993 – 1994. The audit also further observed that certain portions of the salaries were paid without proper administrative sanction and recommended recovery of the same. Though the second respondent initiated certain legal proceedings with the Deputy Registrar of Co-operative Societies pertaining to the audit observations and regarding the non payment of salaries that she was drawing, the petitioner received two proceedings dated 06.11.1997 and 18.03.1998 purporting to be the proceedings of the Deputy Registrar of Co-operative Societies upholding the pay that the second respondent was drawing prior to the audit objection and the proceedings consequently were overriding the audit objections. Thereby, enquiry was



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initiated against the second respondent and charge memo was issued to the second respondent on 05.01.1999 relating to forgery and proceedings dated 06.11.1997 and second charge sheet was issued on 10.08.2001. The Enquiry Officer was appointed and the Enquiry Officer drawn the proven minute as against the second respondent, pursuant to which, the second respondent was dismissed from service on 06.11.2003. As against the order of dismissal, the second respondent raised an Industrial Dispute in I.D.No.117 of 2005 before the first respondent/Labour Court and the first respondent, after elaborate trial, passed preliminary award in favour of the second respondent. Challenging the same, a writ petition in W.P.No.16060 of 2011 was filed before this Court and the same was dismissed on 06.07.2011 granting liberty to the petitioner to challenge the propriety of the preliminary award along with the final award passed in I.D.No.117 of 2005. Subsequently, final award was passed on 12.09.2013 directing the petitioner to reinstate the second respondent in service with 25% back wages and other attendant benefits. Challenging the same, the above writ petition has been filed before this Court.

3. The learned counsel for the petitioner submits that, the second respondent is not entitled for reinstatement, since she already reached the superannuation on 31.07.2013 itself, which is prior to passing the final award.



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Further, though the allegations made against the second respondent is serious in nature with regard to forgery of the documents for drawing excess salary from the petitioner Society, however, the same was not properly considered by the first respondent/Labour Court. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for the second respondent fairly submitted that, since the second respondent already reached the age of superannuation, it would suffice, if this Court permits the second respondent to withdraw the 25% back wages already deposited by the petitioner Society before the first respondent/Labour Court as per the order passed by this Court in W.M.P.No.14455 of 2016 in W.P.No.16848 of 2016, dated 29.04.2016. Further, the order of the first respondent/Labour Court does not suffer any perversity or arbitrary and the same was well considered order, which cannot be interfered with under Article 226 of the Constitution of India. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the second respondent and perused the materials available on record.



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6. Admittedly, the second respondent was initially appointed as full time

Clerk in the petitioner Society in the year 1984. During the year 1993, there was an audit objection alleging that the second respondent drawing excess salary, for which, disciplinary proceedings was initiated as against the second respondent and order of dismissal was passed. Aggrieved by the same, second respondent filed an I.D. before the first respondent/Labour Court and the first respondent set aside the order of dismissal and ordered for reinstatement of the second respondent with 25% back wages. It is also an admitted fact that, the second respondent retired from service in the year 2013, however, the first respondent passed final award in favour of the second respondent for reinstatement with 25% back wages. A perusal of the final award passed by the first respondent makes it clear that, it is alleged that the second respondent had falsely created the proceedings as if they were issued by the Deputy Registrar of Co-operative Societies, Pollachi dated 06.11.1997 and Joint Registrar of Co-operative Societies, Coimbatore dated 18.03.1998, which are marked as Ex.M.13 and Ex.M.15 respectively. It is stated in Ex.M.15 that one M.Senthamilselvan, Joint Registrar had issued proceedings dated 18.03.1998, however, the petitioner Society had not denied in their counter before the first respondent/Labour Court that no such person had worked as Joint Registrar during the relevant date. Hence, it is presumed that on the relevant date,



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M.Senthamilselvan was working as Joint Registrar in the petitioner Society.

This itself shows that the petitioner Society did not establish the case before the first respondent/Labour Court as if the second respondent committed misconduct for claiming excess salary amount from the petitioner Society. In the absence of any documentary evidence, the first respondent/Labour Court has correctly arrived a conclusion that order of dismissal is an unfair labour practice, thereby, the Labour Court set aside the order of dismissal, which cannot be interfered with. Hence, the writ petition is liable to be dismissed.

7. However, the fact remains that the second respondent already reached the age of superannuation before passing the final award. Hence, the order of reinstatement in favour of the second respondent does not arise.

8. In view of the above, this Court is inclined to pass the following order:

(i) the reinstatement of the second respondent as awarded by the first respondent/Labour Court is set aside;

(ii) the second respondent is permitted to withdraw the 25% back wages already deposited by the petitioner Society before the first respondent/Labour Court as per the order passed by this Court, in W.M.P.No.14455 of 2016 in W.P.No.16848 of 2016, dated 29.04.2016, within a period of



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four (4) weeks from the date of receipt of a copy of this order; and

(iii) the petitioner Society is directed to settle the other benefits, if any, to the second respondent, within a period of four (4) weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition is dismissed with the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

06.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Presiding Officer,
Labour Court,
Coimbatore.



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M.DHANDAPANI, J.

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