



W.P.No.20098 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.20098 of 2016

And

W.M.P.Nos.17318 of 2016 and 1975 of 2017

The Special Officer/Managing Director,
Chennai Central Cooperative Bank Ltd.,
215, Prakasam Salai,
Chennai – 600 108.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour/
Appellate Authority,
Teynampet,
Chennai – 600 006.

2.K.Kumarasamy

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent relating to her order No.TNSE-1/06/2010 dated 24.02.2016 and quash the same and also pass such further or other orders as may be considered necessary in the circumstances of the case.



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For Petitioner : Mr.P.Anbarasan
For Respondents : Mr.S.Mohan for R2

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the first respondent relating to order No.TNSE-1/06/2010 dated 24.02.2016 and quash the same and also pass such further or other orders as may be considered necessary in the circumstances of the case.

2.The case of the petitioner is that the second respondent was working as Assistant in the Sowcarpet Branch of the Chennai Central Cooperative Bank Limited (hereinafter referred to as 'Bank'). At that time, the Bank was managed by Branch Manager, Assistant/ petitioner and Cashier. The Government of Tamilnadu formulated and introduced two loan Schemes, namely, loans to petty traders and loans under the revamped micro credit scheme for women. The liberal terms of the loans are, prescribed loan application with two sureties, passport size photos, copy of the ration card and personal surety.

3.The further case of the petitioner is that during the period from 11.10.2007 to 17.05.2008, the second respondent as Assistant cum



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Cashier and the Manager of the Bank issued loans under the above Schemes. 44 loans under the revamped micro credit scheme for women and 28 loans to petty traders were found to be bogus and misappropriation amounted to Rs.3,60,000/-. The alleged borrowers gave in writing that they did not receive the loan amount of Rs.5,000/- and for copy of the ration cards and photos, they were paid Rs.400/- to Rs.500/-.

4.The further case of the petitioner is that for misappropriation of funds, charge memo was issued and the second respondent submitted his explanation dated 20.07.2009. Thereafter, enquiry was conducted and the Enquiry Officer confirmed the charges vide enquiry report dated 12.03.2010. Thereafter, the petitioner Management issued show cause notice enclosing the enquiry report to the second respondent and the second respondent submitted his explanation on 05.04.2010. Thereafter, the petitioner Management vide order dated 29.04.2010 dismissed the second respondent from service. Challenging the same, the second respondent filed appeal before the first respondent under Section 41 of the Tamil Nadu Shops and Establishment Act and the first respondent passed the impugned order



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by setting aside the termination order with attendant benefits. Hence this writ petition.

5.The learned counsel appearing for the petitioner submitted that though the second respondent was dismissed from service, he is entitled to adjudicate the issue before the competent Authority under the Tamil Nadu Co-operative Societies Act, however, he preferred appeal before the first respondent under the Tamil Nadu Shops and Establishment Act and further submitted that the first respondent without any jurisdiction passed the impugned order, which is not sustainable one. The learned counsel further submitted that it is for the second respondent to aver and establish before the first respondent that he is not gainfully employed during the non employment period, however, without any evidence, the first respondent has allowed the appeal with attendant benefits, which is liable to be interfered with. Accordingly, he prayed for allowing the writ petition.

6.The learned counsel appearing for the second respondent submitted that the issue with regard to jurisdiction is no longer *res*



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integra and the same has already been settled by this Court in the decision reported in **2000 (III) CTC 738 (The Management of Madras Atomic Power Project Employees Consumers Vs. The Deputy Commissioner of Labour (Appeal) and 2 others)**, wherein, this Court held that the provisions of the Tamil Nadu Shops and Establishment Act apply to a person even though he is employed as an Assistant Manager in a position of Management and the appeal filed by him under Section 41(2) of the said Act is maintainable. Hence, the impugned order warrants no interference. Accordingly, he prayed for dismissal of the writ petition.

7. Heard the arguments advanced on either side and perused the materials available on record.

8. The facts in the present case is not in dispute. Admittedly, the second respondent was working as Assistant in the Sowcarpet Branch of the Bank. The Government of Tamilnadu formulated and introduced two loan Schemes, namely, loans to petty traders and loans under the revamped micro credit scheme for women. The liberal terms of the loans are, prescribed loan application with two sureties, passport size



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photos, copy of the ration card and personal surety. During the period from 11.10.2007 to 17.05.2008, the second respondent as Assistant cum Cashier and the Manager of the Bank issued loans under the above Schemes. 44 loans under the revamped micro credit scheme for women and 28 loans to petty traders were found to be bogus and misappropriation amounted to Rs.3,60,000/-. The alleged borrowers gave in writing that they did not receive the loan amount of Rs.5,000/- and for copy of the ration cards and photos, they were paid Rs.400/- to Rs.500/-.

9.For misappropriation of funds, charge memo was issued to the second respondent for the following charges:

"(i)Promising the public the issue of loans under the said scheme copy of Family cards were collected, applications were prepared for 66 loans each at Rs.5,000/- and the loans were not disbursed to the prospective borrowers.

(ii)Based on one Family card, loan applications were prepared for two persons one for E.Devi in loan number 506 and 519A and another for M.Vani in loan numbers 518 & 525 and they were sanctioned two loans each.

(iii)Similarly based on a Family card in the



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name of Mrs.Jayalakshmi, loan applications were prepared, for another Jayalakshmi for two loans – one under Petty Traders Scheme and another under the Revamped Micro Credit Scheme and amount of Rs.10,000/- was misappropriated.

(iv)In the name of Mrs.Radha, who is illiterate and not able to sign her name, loan application was prepared and a signature was put in the loan application. The amount was misappropriated."

10.After receipt of the charge memo, the second respondent submitted his explanation dated 20.07.2009. Thereafter, enquiry was conducted and the Enquiry Officer confirmed the charges vide enquiry report dated 12.03.2010. Thereafter, the petitioner Management issued show cause notice enclosing the enquiry report to the second respondent and the second respondent submitted his explanation on 05.04.2010. Thereafter, the petitioner Management vide order dated 29.04.2010 dismissed the second respondent from service.

11.Aggrieved by the dismissal order, the second respondent filed appeal before the first respondent under Section 41 of the Tamil Nadu Shops and Establishment Act. The first respondent elaborately



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discussed the factual aspects and observed that no documentary evidence or any other form of evidence was put forth by the Management to show that the second respondent had taken the alleged loan amount which is meant for the borrowers and had misappropriated the Bank funds.

12.The first respondent further observed that a proper case of forgery has to be made out as per law before a conclusion has been arrived that an act of forgery has been committed. In the instant case there is no evidence let in the domestic enquiry that the second respondent has forged the signatures in the loan application. The inspection report of the Management also does not put forth sufficient material evidence about the alleged forgery of signatures committed by the second respondent. A mere difference of signatures in the loan application and letters given by them does not necessarily lead to the conclusion that the signatures in the loan application have been forged by the second respondent.

13.The first respondent further observed that it is well settled in law that if employees are involved in same incident, the department should proceed against all or should not proceed against none. There



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is no discretion to the Management to proceed against some leaving others who are identically placed when involvement being identical and arrived at a conclusion that the Management failed to establish preponderance of probabilities in terminating the second respondent and passed the impugned order by setting aside the termination order with attendant benefits.

14.However, coming to the question of attendant benefits, there is no evidence or pleadings to show that the second respondent is not gainfully employed anywhere. In the absence of any evidence or pleadings, the first respondent awarding attendant benefits is not sustainable one.

15.In view of the above, this Court modifies the Award of the first respondent in No.TNSE-1/06/2010 dated 24.02.2016 as follows:

(i)The second respondent is entitled for reinstatement without any attendant benefits.

(ii)However, the second respondent is entitled for continuity of service.

(iii)The amount paid to the second respondent till date, towards



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wages under Section 17 (B) of the Industrial Disputes Act, need not be recovered from the second respondent.

16.The writ petition is allowed on the above terms. No costs.
Consequently, connected miscellaneous petitions are closed.

19.07.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Special Deputy Commissioner of Labour/
Appellate Authority,
Teynampet,
Chennai – 600 006.



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M.DHANDAPANI,J.
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