



W.P.No.22231 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22231 of 2016
and
WMP.No.18966 of 2016

DRL(C) 11 The Mohanur Co-operative Primary
Agricultural & Rural Development Bank Ltd.,
Rep. by its President,
Mohanur, Namakkal District – 637 015.

...Petitioner

Vs.

1. The Appellate Authority,
Tamil Nadu Shops & Establishment/
Deputy Commissioner of Labour,
Salem.

2. P.Tamilazhagan

...Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorari to call for the records of the
order in TSE.No.9 of 2006 dated 29.5.2015 on the file of the first
respondent and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.V.P.R.Ilamparuthi, AGP, for R1
: Mr.R.Prem Narayan, for R2



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ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 29.5.2015 made in TSE.No.9 of 2006.

2. Though the matter was listed today under the caption for dismissal, pursuant to the letter dated 30.06.2023 from the erstwhile President of the petitioner bank seeking withdrawal of the petition along with a memo dated 28.06.2023, however, when the matter was taken up for hearing, the learned counsel for the petitioner submitted that, the said Gunasekaran, erstwhile president of the petitioner bank without obtaining necessary approval from bank, on his own decided to withdraw the matter, for which, he was, subsequently removed from the post, vide proceedings of the Joint/Sub-Registrar. Hence, he prayed to eschew the withdrawal letter and sought for permission to proceed to argue the matter.

3. The case of the petitioner is that, on 13.2.1998, the then elected Board of Management appointed the 2nd respondent as a supervisor on daily wages, however, as early as on 10.08.1998, he was removed from work as there was no necessity for daily rated employees. At the instance of the 2nd respondent, pursuant to the interim order of this Court dated 28.09.1998



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passed in W.P.No.13222 of 1998, again he was appointed as a daily wager on 31.08.1998 and subsequently his services were regularized by the then President of the petitioner bank. Ultimately, W.P.No.13222 of 1998 came to be dismissed by order of this Court dated 03.07.2001 and as a consequence, the 2nd respondent was removed from service on 24.08.2001. Challenging the said order of removal, the 2nd respondent filed Writ petition in W.P.No. 16522 of 2001, which was disposed of by order dated 28.04.2003, granting liberty to the 2nd respondent to approach the Joint Registrar of Cooperative Societies concerned by filing a revision. It is pertinent to note that, the revision also ended in dismissal and the review filed against the revision also came to be dismissed. While so, the 2nd respondent invoked the provisions under the Tamil Nadu Shops and Establishments Act and filed an appeal before the 1st respondent, questioning the order of removal dated 24.08.2001. By the impugned order, after contest, the 1st respondent ordered for reinstatement of the 2nd respondent with continuity of service and back wages. Challenging the said order of the 1st respondent, the petitioner has come up with this Court.

4. Learned counsel for the petitioner submitted that, the 2nd



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respondent was removed from service as his appointment was in violation of

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Tamilnadu Co-operative Societies Acts and Rules and not within the approved cadre strength and no approval had also been obtained from the then Elected Board of Management. Further, aggrieved by the said order of dismissal, the 2nd respondent filed W.P.No.16522 of 2001, which was disposed of by order dated 28.04.2003, granting liberty to the 2nd respondent to approach the Joint Registrar of Cooperative Societies concerned by filing a revision. However, the revision filed by the 2nd respondent pursuant to the order of this Court, also ended in dismissal and the review filed against the said revision also came to be dismissed. After exhausting all the remedies available under the special enactment namely, the Tamil Nadu Cooperative Societies Act, the 2nd respondent invoked the provisions under the Tamil Nadu Shops and Establishments Act as well and filed an appeal before the 1st respondent, who in turn, without considering any of the above said facts, vide impugned order, ordered for reinstatement of the 2nd respondent with continuity of service and back wages, which is not sustainable. Once the authority under the Tamil Nadu Cooperative Societies Act exercised its power, the Shops and Establishments authority has no power to re-



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adjudicate the issue. Accordingly, he prayed for appropriate orders.

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5. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex court in the case of ***R.C.Tiwari Vs. M.P.State Co-operative Marketing Federation Ltd. & Ors.*** For better appreciation, the relevant paragraph is extracted hereunder:-

“2. The only question in this case is: whether the reference under Section 10(1) of the Industrial Disputes Act, 1947 (for short, the "Act") is maintainable in view of the provisions contained in the M.P. Co-operative Societies Act, 1960 (for short, the 'Societies Act')? Admittedly, the petitioner was dismissed from service for his misconduct. Thereafter, he sought a reference under the Societies Act which was confirmed and became final. On a reference made under the Act, the Labour Court in case No.45/85 held that domestic enquiry was vitiated by illegality and accordingly it set aside the order of dismissal. In Writ Petition No.2077/92 by judgment dated July 8, 1996, the High Court has held that in view of the provisions contained in Section 55 of the Societies Act, the Labour Court has no jurisdiction and, therefore, the reference is bad. It is also held that since the finding was recorded by the Deputy Registrar, Co- op. Societies against the petitioner in the award, it operates as *res judicata*. The question is whether the view taken by the High Court is correct in law. Section 55 of the Societies Act postulates thus:

"55. Registrar's power to determine conditions of employment in societies. - (1) The



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Registrar may, from time to time frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of the order sought to be impugned.

Provided further that in computing the period of limitation under the foregoing proviso the time requisite for obtaining copy of the order shall be excluded."

3. Learned counsel for the petitioner seeks to place reliance on Section 64 of the Act dealing with disputes referable to the arbitration and contends that the dispute of dismissal from service of the employee of the society being not one of the disputes referable to the arbitration under the Societies Act, the award of the Dy. Registrar is without jurisdiction. He relied on the decision of this Court in *Co-operative Central Bank Ltd. & Ors. V. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad & Ors. Etc.*, [AIR 1970 SC 245]. He also places reliance on Section 93 of the Societies Act which states that nothing contained in the Madhya



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Pradesh Shops and Establishments Act, 1958, the M.P. Industrial Workmen (Standing Orders) Act, 1959 and the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication, application of the Act has not been excluded and that, therefore, the Labour Court has jurisdiction to decide the matter. We find no force in the contention. Section 55 of the Societies Act gives power to the Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or arises between a Society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees. As regards power under Section 64, the language is very wide, viz., "Notwithstanding anything contained in any other law of the time being in force any dispute touching the constitution, a management or business of a Society or the liquidation of a Society shall be referred to the Registry by any of the parties to the dispute." Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference under section 10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society which the Act therein was amended.

4. Admittedly, there is a finding recorded by the Dy. Registrar upholding the misconduct of the petitioner. That constitutes *res judicata*. No doubt, section 11 CPC does not in



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terms apply because it is not a Court, but a Tribunal, constituted under the Societies Act is given special jurisdiction. So, the principle laid down thereunder *mutatis mutandis* squarely applies to the procedure provided under the Act. It operates as *res judicate*. thus, we find that the High Court is well justified in holding that the Labour Court has no jurisdiction to decide the dispute once over and the reference itself is bad in law.

(emphasis supplied)

6. Per contra, the learned counsel for the 2nd respondent submitted that, after the impugned order was passed, the 2nd respondent filed a Writ petition in W.P.No.13385 of 2016 to direct the 1st respondent to implement the impugned order and the same was disposed of by order dated 11.04.2016, directing the petitioner to implement the impugned order. While so, instead of complying with the order of this Court, the petitioner has come up with this Writ petition, which is not sustainable, as the same is done by the petitioner to prolong the proceedings. Further, there is no bar to approach the 1st respondent by filing an appeal. He further stated that, the elected board of the petitioner bank, who is the appointing authority, regularized the service of the 2nd respondent by passing resolution and only since the Board regularised the 2nd respondent's service, the Writ petition in W.P.No.13222 of 1998 filed by him became infructuous and therefore it was



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dismissed and the same cannot be held against the 2nd respondent. In such circumstances, once again the petitioner removed the 2nd respondent from service, which is *per se* illegal. Further, as the revision and the subsequent review filed by the 2nd respondent, pursuant to the order of this Court dated 28.04.2003 passed in W.P.No.16552 of 2001, have ended in dismissal, he approached the 1st respondent under Section 41(1) of the Tamil Nadu Shops and Establishment Act, who after conducting a detailed enquiry, during which, as the petitioner had not raised any objection regarding the filing of revision under Section 153 of the Tamil Nadu Cooperative Societies Act or the said petition filed under Section 41(1) of the Tamil Nadu Shops and Establishment Act, passed the present impugned order and the same does not warrant interference of this Court. Accordingly, he sought for dismissal of this Writ petition.

7. On the above said contentions, heard the learned Additional Government Pleader appearing for the 1st respondent and perused the material documents placed on record.



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8. Admittedly, the 2nd respondent was removed from service on the ground that, his appointment is illegal, challenging which, the 2nd respondent filed a Writ petition in W.P.No.16552 of 2001 and pursuant to the order of this Court dated 28.04.2003 made in the said petition, the 2nd respondent filed revision, which also ended in dismissal and the review filed against the said revision also came to be dismissed. As rightly pointed out by the learned counsel for the petitioner, after exhausting the remedies available under the special enactment namely, the Tamil Nadu Cooperative Societies Act, the 2nd respondent invoked the provisions under the Tamil Nadu Shops and Establishments Act and filed an appeal before the 1st respondent, pursuant to which, the present impugned order came to be passed, ordering reinstatement of the 2nd respondent with continuity of service and back wages.

9. The major issue involved in the present Writ petition is whether the 1st respondent has jurisdiction to decided the issue raised by the 2nd respondent, once the authority under the Tamil Nadu Cooperative Societies Act had exercised its power and the 2nd respondent had exhausted his



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remedies available under the Tamil Nadu Cooperative Societies Act.

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10. The similar issue came up for consideration of the Hon'ble Apex Court in *Tiwari case (supra)*. A perusal of the said decision makes it clear that, once the authority under the Tamil Nadu Cooperative Societies Act upheld the misconduct committed by the 2nd respondent, the same cannot be reopened by the authority under the Shops and Establishments Act and the same is barred by *res judicata*.

11. Applying the above decision of the Apex Court in the case of ***R.C.Tiwari (supra)***, this Court holds that the Shops and Establishment Authority entertaining the petition filed by the 2nd respondent under Section 41(1) of the Tamil Nadu Shops and Establishment Act is not sustainable and accordingly, the impugned order dated 29.05.2015 passed by the 1st respondent in TSE.No.9 of 2006 is set aside, confirming the order of dismissal dated 24.08.2001.



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12. With the above observations and directions, this Writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

06.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Appellate Authority,
Tamil Nadu Shops & Establishment/Deputy
Commissioner of Labour,
Salem.



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M.DHANDAPANI., J.

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