



W.P.No.40880 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.40880 of 2016 and
W.M.P.No.34878 of 2016

The Management
The Tamil Nadu State Apex Co-operative Bank Ltd.,
No.4, NSC Bose Road,
Chennai-600 001.

... Petitioner

Vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai.

2. G.Rajasekaran

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in C.P.No.354 of 2011 on the file of the II Additional Labour Court, Chennai-600 104, the first respondent herein quash the final order dated 05.08.2016 passed therein.

For Petitioners : Mr.M.R.Raghavan

For Respondent : Mr.B.Hari Babu R2



W.P.No.40880 of 2016

ORDER

The petition has been filed seeking to quash the order in C.P.No.354 of 2011 on the file of the II Additional Labour Court, Chennai-600 104, the first respondent herein quash the final order dated 05.08.2016 passed therein.

2. It is the case of the petitioner that the petitioner is in cooperative bank in which the second respondent was employed as Chief Manager at the relevant point of time. For certain Commissions, omissions committed by him during and in the course of his employment a charge-sheet dated 05.06.1993 was issued to him. Since he did not offer proper explanation, an enquiry was conducted and the charges levelled against him were proved in the enquiry and at the time of settlement, a sum of Rs.1,69,369/- was withhold by the second respondent out of the benefits which represented the loss suffered by the bank. The second respondent filed a claim petition under Section 33(c)(2) of the Industrial Disputes Act on 28.06.2011 and the same was allowed. Challenging the said order, the present writ petition has filed by the Management.

3. The learned counsel for the petitioner submitted that the second respondent was not a workman as contemplated in Section 2(s) of the



W.P.No.40880 of 2016

Industrial Disputes Act. The second respondent admitted that he was chief manager in Anna Nagar Branch. Though the petitioner specifically pleaded in the counter statement and adduced oral evidence to the effect that the second respondent was not a workman, the second respondent neither rebutted the contention through his pleading. The Labour Court therefore ought to have held that the second respondent was not a workman and consequently, was not entitled to invoke the provisions of the Industrial Disputes Act for seeking remedy. The observations made by the Labour Court contrary to the above are not supported by any acceptable material. Hence, the impugned order is contrary to law and deserves to be set aside.

4. The learned counsel further submitted that for receiving the leave salary and Provident Fund, the second respondent has filed a claim petition before the Labour Court, which is not sustainable one. Instead of filing the claim petition, he has to approach the authorities for Gratuity and Provident Fund. Therefore, this Court may quash the impugned order.

5. The learned counsel for the second respondent submitted that the Labour Court has awarded a sum of Rs.1,96,369/- which is very meager and



W.P.No.40880 of 2016

hence, this Court may modify the award by directing the petitioner to pay the leave salary and other benefits to the second respondent within the reasonable time as fixed by this Court.

6. The learned counsel for the petitioner submitted that the petitioner has already received Provident Fund and therefore, this Court may grant liberty to the petitioner to file a claim petition before the P.F. authorities for claiming the same.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

8. Taking into consideration of the facts and circumstances of the case, the petitioner Management is directed to pay the leave salary and staff security deposit to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No further order is necessary in respect of Gratuity amount since the same has already been received by the second respondent. However, for claiming the Provident Fund, the petitioner is at liberty to make a fresh application before the Provident Fund authorities for appropriate order.



W.P.No.40880 of 2016

WEB COPY

9. With the above directions, the award is modified and the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

11.07.2023

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

rli

To

The Presiding Officer,
II Additional Labour Court,
Chennai.



WEB COPY



W.P.No.40880 of 2016

M.DHANDAPANI, J.

rli

W.P.No.40880 of 2016

11.07.2023