



WEB COPY



W.P.No.264 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.264 of 2018
And
W.M.P.No.321 of 2018**

The Management
Pothanur Primary Agricultural
Co-operative Credit Society Ltd.,
Rep. by its President,
Pothanur, Paramathi Velur,
Namakkal District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.M.Kanagasabapathi

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records of the award passed by the first respondent in I.D.No.33 of 2010 dated 25.07.2017, quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.K.Prem Kumar for R2



W.P.No.264 of 2018

ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for records of the award passed by the first respondent in I.D.No.33 of 2010 dated 25.07.2017 and to quash the same.

2.The case of the petitioner is that the second respondent was the Assistant Secretary and Secretary incharge of the petitioner society and during his tenure, he caused huge loss to the society and hence, he was issued with a charge memo dated 18.02.1999. Thereafter enquiry was conducted and the Enquiry Officer submitted his report on 30.01.2003, based on which, second show cause notice dated 02.03.2007 was served on the second respondent by enclosing the findings of the Enquiry Officer and thereafter, the second respondent was dismissed from service. Thereafter, the second respondent raised industrial dispute in I.D.No.33 of 2010 before the first respondent and the first respondent passed award dated 25.07.2017 directing the petitioner to reinstate the second respondent in service with continuity of service, backwages and all attendant benefits. Challenging the same, the petitioner has filed this writ petition.



W.P.No.264 of 2018

WEB COPY

3.The learned counsel appearing for the petitioner submitted that prior to passing of the award, the petitioner lodged criminal prosecution as against the second respondent and the same was adjudicated before the Judicial Magistrate Court, Paramathy in C.C.No.45 of 2000 and the learned Judicial Magistrate on 27.09.2017 passed an order of conviction as against which the second respondent preferred appeal before the Principal Sessions Court, Namakkal in C.A.No.61 of 2017 and the learned Principal Sessions Judge on 23.08.2018 held that the prosecution proved the case beyond reasonable doubt and since the misappropriated amount was paid to the society, learned Principal Sessions Judge set aside the trial Court judgment in respect of punishment and confirmed the fine amount imposed by the trial Court. When such being the position, the award passed by the Labour Court is liable to be set aside.

4.Per contra, the learned counsel appearing for the second respondent submitted that admittedly, charge was not proved before the Enquiry Officer, even then, the Enquiry Officer drawn proven minute as against the second respondent. The Labour Court after elaborately considering the factual aspects, passed award in favour of



W.P.No.264 of 2018

the second respondent. Hence, the impugned award warrants no interference.

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

6. Admittedly, the petitioner initiated disciplinary proceedings as well as criminal proceedings as against the second respondent. The disciplinary proceedings ended in termination of service and the same was set aside by the Labour Court. The criminal proceedings ended in conviction and the same was upheld by the lower Appellate Court. What is the requirement in the departmental proceedings is *preponderance of probabilities* and what is the requirement in the criminal proceedings is beyond reasonable doubt. In the present case, the criminal Court itself arrived at a conclusion that the prosecution and petitioner department proved the case beyond reasonable doubt. Hence, the award of the Labour Court is perverse and liable to be interfered with.

7. The award passed by the Labour Court directing the petitioner



W.P.No.264 of 2018

to reinstate the second respondent in service with continuity of service, backwages and all attendant benefits is not sustainable one in view of the order passed by the trial Court and confirmed by the lower Appellate Court in the criminal proceedings.

8.In view of the above, the award passed by the first respondent in I.D.No.33 of 2010, dated 25.07.2017 is set aside. The writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

22.08.2023

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

To

1.The Presiding Officer,
Labour Court,
Salem.



WEB COPY



W.P.No.264 of 2018

M.DHANDAPANI,J.
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W.P.No.264 of 2018
And
W.M.P.No.321 of 2018

22.08.2023