



W.P.No.5175 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5175 of 2017

And

W.M.P.No.5460 of 2017

The Management
Mambadi Primary Agricultural
Cooperative Credit Society Ltd.

... Petitioner

Vs.

1.The Deputy Labour Commissioner/
Appellate Authority under the
Tamil Nadu Shops and Establishment Act,
Coimbatore – 638 018.

2.K.Balasubramanian

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari call for the records relating to the impugned award dated 25.11.2016 made in TNSE No.1 of 2015 on the file of the first respondent, quash the same.

For Petitioner : Mr.M.R.Dhalapathy Vignesh Kumar
For Respondents : Mr.R.Marudhachalamurthy for R2

O R D E R

The petitioner has filed this writ petition seeking issuance



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of Writ of Certiorari to call for the records relating to the impugned award dated 25.11.2016 made in TNSE No.1 of 2015 on the file of the first respondent and to quash the same.

2.The case of the petitioner is that the Deputy Registrar of the Cooperative Society, Dharapuram Circle ordered for enquiry under Section 81 of the TNCS Act, 1983 on 02.01.2014. The second respondent being the Secretary of the petitioner society was the person responsible for the mismanagement of the funds and other irregularities. After enquiry, the second respondent did not turn up for work and hence, he was placed under suspension with effect from 11.04.2014. Thereafter, the Enquiry Officer filed his report dated 10.07.2014 and based on the enquiry report, the Deputy Registrar of the Cooperative Society, Dharapuram Circle recommended to initiate disciplinary action as against the second respondent on 08.08.2014.

3.The further case of the petitioner is that thereafter the Board resolved to form a Sub Committee and accordingly a Sub Committee was formed and the Sub Committee framed 11 charges as against the second respondent and issued show cause notice dated 30.08.2014 to the second respondent. Being not satisfied with the explanation



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given by the second respondent, the Sub Committee dismissed the second respondent from service on 31.10.2014. Challenging the order of dismissal, the second respondent filed appeal in TNSE No.1 of 2015 under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 before the first respondent and the appeal was allowed by the first respondent on the ground that the procedure contemplated under Section 41(1) of the Tamil Nadu Shops and Establishment Act was not properly followed. Challenging the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that the second respondent misappropriated huge amount and based on the enquiry report dated 10.07.2014, the Deputy Registrar of the Cooperative Society, Dharapuram Circle recommended to initiate disciplinary action as against the second respondent on 08.08.2014. Thereafter the Board resolved to form a Sub Committee and accordingly a Sub Committee was formed and the Sub Committee framed 11 charges as against the second respondent and issued show cause notice dated 30.08.2014 to the second respondent. Being not satisfied with the explanation given by the second respondent, the Sub Committee dismissed the second respondent from service on



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31.10.2014. However, the learned counsel fairly conceded that domestic enquiry was not conducted in the manner known to law.

5.The learned counsel appearing for the second respondent submitted that domestic enquiry was not conducted in the manner known to law and hastily, the order of dismissal was passed as against the second respondent and the said fact was properly considered by the first respondent and hence, the impugned order does not warrant any interference.

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

7.The facts in the present case is not in dispute. Admittedly, the second respondent was the Secretary of the petitioner society. It is equally un-disputed fact that the Deputy Registrar of the Cooperative Society, Dharapuram Circle ordered for enquiry under Section 81 of the TNCS Act, 1983 on 02.01.2014 and based on the enquiry report dated 10.07.2014, the Deputy Registrar of the Cooperative Society, Dharapuram Circle recommended to initiate disciplinary action as against the second respondent on 08.08.2014.



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8. Thereafter the Board resolved to form a Sub Committee and accordingly a Sub Committee was formed and the Sub Committee framed 11 charges as against the second respondent and issued show cause notice dated 30.08.2014 to the second respondent. Being not satisfied with the explanation given by the second respondent, the Sub Committee dismissed the second respondent from service on 31.10.2014.

9. Challenging the order of dismissal, the second respondent filed appeal in TNSE No.1 of 2015 under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 before the first respondent and the appeal was allowed by the first respondent on the ground that the procedure contemplated under Section 41(1) of the Tamil Nadu Shops and Establishment Act was not properly followed.

10. Admittedly, without conducting domestic enquiry in a proper manner, the order of dismissal order was passed and the same was set aside by the first respondent, which is perfectly in order and which cannot be interfered with. Hence, this Court is not inclined to interfere with the impugned order. However, considering the



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submission made by the learned counsel appearing for the petitioner that domestic enquiry was not conducted in the manner known to law, this Court grants liberty to the petitioner to conduct fresh enquiry as against the second respondent for the very same set of charges and to pass fresh orders after providing opportunity to the second respondent. The order dated 25.11.2016 made in TNSE No.1 of 2015 by the first respondent is modified to the above extent.

11.The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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M.DHANDAPANI,J.
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