



WP.No.9277 of 2017

In the High Court of Judicature at Madras

Dated : 09.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.9277 of 2017
& WMP.Nos.10253 & 17700 of 2017

The Management, Attur
Pudupettai Primary Agricultural
Cooperative Society Ltd.,
rep.by its Special Officer
(now President), No.12,
Karuthan Street, Pudupettai,
Attur, Salem District.

...Petitioner

Vs

- 1.P.Krishnan (died)
- 2.The Deputy Commissioner of
Labour (Appellate Authority
under the Tamil Nadu Shops &
Establishments Act), Salem.
- 3.Indirani
- 4.Vijayakumar
- 5.Sasikala
- 6.Geetha
- 7.Vijaya Lakshmi
(R3 to R7 were substituted as the legal
heirs of the deceased R1 vide order of



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court dated 21.7.2023 in WMP.No.
16817 of 2020 by MDIJ)

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to passing of the order in TNSE No.7/2012 dated 04.4.2016 on the file of the Deputy Commissioner of Labour, Salem and quash the same.

For Petitioner	:	Mr.L.P.Shanmugasundaram
For Respondent-2	:	Mr.M.S.Premkumar, GA
For Respondents 3 to 7	:	Mr.S.Ayyathurai

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 04.4.2016 made in TNSE No.7 of 2012 on the file of the second respondent.

2. It is the case of the petitioner that the first respondent joined in the petitioner society as a peon in the year 1964. By efflux of time, he got promoted as Secretary in 1993. While discharging his duties as Secretary, he was found to have indulged in misappropriation and mismanagement of the funds of the society. Thereafter, he was placed under suspension on 16.11.1998. As a consequence, a charge memo came to be issued on



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24.7.1999, to which, the first respondent submitted his explanation on 09.8.1999. Parallely, criminal prosecution was going on. Ultimately, the first respondent was terminated from service by order dated 03.12.1999. As against the said order of dismissal, earlier the first respondent raised an industrial dispute in I.D.No.359 of 2000, in which, on 10.1.2006, the Labour Court directed the petitioner to pay back wages to the first respondent from the date, on which, he was placed under suspension i.e 16.11.1998 till the date of his superannuation i.e. 30.11.2003 and all other attendant benefits.

2.1. Challenging the same, the petitioner filed W.P.No.27356 of 2007 and it was allowed on 05.6.2012 setting aside the award of the Labour Court dated 10.1.2006 on the ground that the Labour Court had no jurisdiction to adjudicate the matter, that the first respondent did not fall within the definition of the expression "workman" under the Industrial Disputes Act and that the remedy for the first respondent would be under the Tamil Nadu Shops and Establishments Act.



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2.2. Thereafter, the first respondent filed the appeal u/s.41(2) of the Tamilnadu Shops and Establishments Act, 1947 (in short 'the Act') before the second respondent. By the impugned order, the second respondent allowed the appeal on the ground that there was a violation of the principles of natural justice. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that the petitioner filed the above writ petition on the ground that the impugned order passed by the second respondent was without jurisdiction and that there is a remedy available to the first respondent under the Tamil Nadu Cooperative Societies Act by way of a revision to the Joint Registrar concerned. He further submits that though one Sugumar and one Sakthivel, who are cashier and clerk respectively misappropriated the society fund to the tune of Rs.2,56,000/- and Rs.3,24,000/-, the said misconduct was not intimated by the first respondent to the management which is *per se* unsustainable. Since, the above said facts were not elaborately considered by the second respondent, the impugned award passed by the second respondent to reinstate the first respondent in service needs interference of this Court and



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the same is liable to be set aside.

4. During the pendency of this writ petition, the first respondent died and his legal heirs were substituted by an order dated 21.7.2023 in WMP.No.16817 of 2020.

5. The learned counsel for the respondents 3 to 7 submits that the first respondent is entitled to choose the forum to challenge the order of termination and the petitioner had not questioned the jurisdiction of the second respondent before deciding the appeal. More so, the second respondent has jurisdiction to entertain the appeal filed by the first respondent u/s.41 of the Act. In support of his contention he relied upon the decision rendered by this Court W.P.Nos.12828 of 2012 and 3434 of 2016 dated 11.03.2016. The relevant portion of the said order is extracted hereunder:

“7. In fact, the notification issued by the Government in No.II (2) / LE/5671/79 in exercise of powers conferred under Section 6 of the Act and in



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suppression of the earlier notifications exempts permanently all the societies registered or deemed to be registered under the provisions of the Tamilnadu Cooperative Societies Act, 1961 from the provisions of the Tamilnadu Shops and Establishments Act, 1947 except Sections 31, 41, 43, 50 and 51. In the instant case, the power exercised by the 2nd respondent is under section 41 of the Act. Therefore the 2nd respondent Deputy Commissioner of Labour has jurisdiction to entertain the matter and examine as to whether the order of dismissal was validly passed. As rightly pointed out, the 2nd respondent Deputy Commissioner of Labour has threadbare analysed the factual aspects, examined the documents marked by either side and then rendered factual findings and the same does not call for any interference as the reasoning given is cogent and legally tenable. Therefore the challenge in the impugned proceedings by the petitioner Co-operative Society has to necessarily fail. One more reason as rightly pointed out by the learned counsel for the 1st respondent that the delay in filing the writ petition has not been explained by the petitioner society.



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6. Heard the learned counsel for the petitioner, the learned Government Advocate appearing for the second respondent and the learned counsel appearing for respondents 3 to 7/legal heirs of the deceased first respondent.

7. Admittedly a charge memo was issued by the petitioner management on 09.08.1999, as against which, the first respondent raised the Industrial Dispute before the Labour Court, Salem in I.D.No.359 of 2000, which allowed the claim made by the first respondent on 10.01.2006. Aggrieved over the same, the petitioner filed a writ petition in W.P.No.27356 of 2007, wherein this Court vide order dated 05.06.2012 allowed the said petition on the ground that the Labour Court has no jurisdiction to adjudicate the matter, due to which, the first respondent preferred an appeal before the second respondent, wherein the second respondent vide order dated 04.04.2016 allowed the same, which is under challenge in the above writ petition.



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8. Though it is alleged by the petitioner management that the charge memo was issued by the petitioner management on the ground that the first respondent has not intimated the fact that one Sugumar and one Sakthivel, who are cashier and clerk respectively misappropriated the society fund to the tune of Rs.2,56,000/- and Rs.3,24,000/-, no such proof was adduced before the second respondent that the first respondent indulged in said misconduct. In the absence of any such allegation against the first respondent with regard to the said misappropriation, the first respondent cannot be mulcted with any liability on account of misappropriation of society funds.

9. The another issue with regard to jurisdiction is already decided by this Court in W.P.Nos.12828 of 2012 and 3434 of 2016 vide order dated 11.03.2016, wherein it was held that the second respondent is well within jurisdiction to entertain the appeal filed by the first respondent u/s.41 of the Act as against the order of dismissal passed by the petitioner management. In view of the aforesaid decision passed by this Court in W.P.Nos.12828 of 2012 and 3434 of 2016 dated 11.03.2016, the impugned order in TNSE



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No.07 of 2012 dated 04.04.2016, needs no interference of this Court. The petitioner management is directed to settle the terminal benefits in favour of the legal heirs of the first respondent within a period of twelve weeks (12) from the date of receipt of a copy of this order.

10. With the above direction and observation, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.8.2023

Rap

Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Deputy Commissioner of
Labour (Appellate Authority
under the Tamil Nadu Shops &
Establishments Act), Salem.



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