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W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 10.08.2023**

**CORAM**

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

**W.P.Nos.23986, 28081 to 28083 of 2017  
and 103 of 2018**

**And**

**W.M.P.Nos.30178 to 30180 of 2017  
and 32546 & 32548 of 2018**

C.Pattamal ... Petitioner in W.P.23986/2017

The Management  
KK.127, Hosur Primary Agricultural  
Co-Operative Bank ... Petitioner in W.P.28081/2017

The Management  
KK.127, Hosur Primary Agricultural  
Co-Operative Credit Society Ltd.,  
Rep. by its President ... Petitioner in W.P.28082/2017

The Management  
KK.127, Hosur Primary Agricultural  
Co-Operative Credit Society Ltd.,  
Rep. by its President ... Petitioner in W.P.28083/2017

N.Kumari ... Petitioner in W.P.103/2018

**Vs.**

1.The Presiding Officer  
Labour Court  
Salem. ... Respondent in all the W.Ps.

2.The Management  
KK.127 Hosur  
Primary Agricultural Co-Operative Bank  
Hosur. ... Respondent in W.P.23986/2017



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

2.N.Kumari ... Respondent in W.P.28081/2017  
2.N.Krishnan ... Respondent in W.P.28082/2017  
2.C.Pattammal ... Respondent in W.P.28083/2017  
2.The Management  
KK.127 Hosur  
Primary Agricultural Co-Operative Bank  
Behind Gandhi Square  
Hosur,  
Krishnagiri. ... Respondent in W.P.103/2018

**Prayer in W.P.No.23986 of 2017:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the award passed by first respondent in I.D.No.190 of 2007 dated 09.03.2017, quash the same in so far as denying full back wages and consequently direct the respondents to pay full back wages and other allowances and consequential benefits from the date of suspension i.e. 16.08.2001 till the petitioner attained the age of superannuation.

**Prayer in W.P.No.28081 of 2017:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the award passed by the first respondent in I.D.No.166 of 2007 dated 09.03.2017 quash the same.

**Prayer in W.P.No.28082 of 2017:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the award passed by



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

the first respondent in I.D.No.165 of 2007 dated 09.03.2017 quash the same.

**Prayer in W.P.No.28083 of 2017:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the award passed by the first respondent in I.D.No.190 of 2007 dated 09.03.2017 quash the same.

**Prayer in W.P.No.103 of 2018:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the award passed by first respondent in I.D.No.166 of 2007 dated 09.03.2017, quash the same in so far as denying full back wages and consequently direct the respondents to pay full back wages and other allowances and consequential benefits from the date of suspension i.e. 16.08.2001 and reinstate the petitioner.

For Petitioners : Mr.C.Vigneswaran  
in W.P.Nos.23986/2017, 103/2018  
Mr.M.S.Palaniswamy  
in W.P.Nos.28081 to 28083/2017

For Respondents : R1 – Labour Court  
in all the W.Ps.  
Mr.M.S.Palaniswamy for R2  
in W.P.Nos.23986/2017, 103/2018  
Mr.C.Vigneswaran for R2  
in W.P.Nos.28081 and 28083/2017  
Mr.A.Praveen Kumar for R2  
in W.P.No.28082/2017



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

## **COMMON ORDER**

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W.P.No.23986 of 2017 has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the award passed by first respondent in I.D.No.190 of 2007 dated 09.03.2017, quash the same in so far as denying full back wages and consequently direct the respondents to pay full back wages and other allowances and consequential benefits from the date of suspension i.e. 16.08.2001 till the petitioner attained the age of superannuation.

2.W.P.Nos.28081 to 28083 of 2017 have been filed seeking issuance of Writ of Certiorari calling for the records of the award passed by the first respondent in I.D.Nos.166, 165 and 190 of 2007 respectively, dated 09.03.2017 and to quash the same.

3.W.P.No.103 of 2018 has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the award passed by first respondent in I.D.No.166 of 2007 dated 09.03.2017, quash the same in so far as denying full back wages and consequently direct the respondents to pay full back wages and other allowances and consequential benefits from the date of suspension i.e. 16.08.2001 and reinstate the petitioner.



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

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4. Since the issue involved in these writ petitions are interrelated, they are heard together and disposed of by way of a common order. For brevity, the petitioner in W.P.Nos.23986 of 2017, 103 of 2018 and the second respondent in W.P.No.28082 of 2017 would be hereinafter referred to as 'Workmen' and the petitioner in W.P.Nos.28081 to 28083 of 2017 would be hereinafter referred to as 'Management'.

5. The case of the Management is that the Workmen were working as Cashier, Assistant Secretary and Clerk in the Management and they misappropriated a sum of Rs.44,86,350/-. Hence, they were placed under suspension on 16.08.2001 and charge memo dated 23.08.2001 was issued to them. Thereafter, domestic enquiry was conducted and since the Enquiry Officer drawn proven minute as against the Workmen, they were issued with second show cause notice dated 06.02.2006 and were thereafter dismissed from service on 25.05.2006.

6. The further case of the Management is that challenging the order of dismissal, the Workmen raised industrial disputes before the first respondent and the first respondent ordered reinstatement with



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

continuity of service. Challenging the same, the Management has filed W.P.Nos.28081 to 28083 of 2017 and challenging the denial of backwages, W.P.Nos.23986 of 2017, 103 of 2018 have been filed.

7.The learned counsel appearing for the Management submitted that for the irregularities committed by the Workmen, they were placed under suspension and charge memo was issued to them. Thereafter, domestic enquiry was conducted and since the Enquiry Officer drawn proven minute as against the Workmen, they were issued with second show cause notice and were thereafter dismissed from service.

8.The learned counsel appearing for the Management further submitted that challenging the order of dismissal, the Workmen raised industrial disputes before the first respondent. Before the first respondent, the Workmen did not specifically plead that during the non employment period they were not gainfully employed and the first respondent ordered reinstatement with continuity of service and without backwages, however, for the misappropriation committed by them, the award of the first respondent directing to reinstate the Workmen that too with continuity of service is not sustainable one.



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

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9.The learned counsel appearing for the Management further submitted that pursuant to the findings of the Enquiry Officer, surcharge proceedings were initiated against the Workmen as against which the Workmen preferred CMA (Co-operative Societies) Nos.8 to 10 of 2008 before the Principal District Judge, District Co-operative Cases Appellate Tribunal and the Appellate Tribunal vide Judgment dated 17.02.2010 dismissed the appeals. Challenging the same, the Workmen filed CRP (NPD) Nos.1614, 2853 of 2010 and 2335 of 2012 before this Court and this Court vide order dated 10.04.2019 dismissed the civil revision petitions.

10.The learned counsel appearing for the Workmen submitted that the Workmen were dismissed from service on the allegation that they committed misappropriation, however, the first respondent passed award on the ground that misappropriation was not established, but the Management initiated surcharge proceedings and the entire amount was recovered from the Workmen and the same cannot be put against the Workmen. What is the requirement in the departmental proceedings is *preponderance of probabilities* and mere dismissal of the civil revision petitions filed by the Workmen does not



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

mean that the Workmen committed any fault. The first respondent after considering the factual aspects passed award in favour of the Workmen, however, the first respondent denied backwages, which is not sustainable one.

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

12. The facts in the present case is not in dispute. Admittedly, the Workmen were working as Cashier, Assistant Secretary and Clerk in the Management and they misappropriated a sum of Rs.44,86,350/. Hence, they were placed under suspension on 16.08.2001 and charge memo dated 23.08.2001 was issued to them. Thereafter, domestic enquiry was conducted and since the Enquiry Officer drawn proven minute as against the Workmen, they were issued with second show cause notice dated 06.02.2006 and were thereafter dismissed from service on 25.05.2006. Challenging the order of dismissal, the Workmen raised industrial disputes before the first respondent and the first respondent ordered reinstatement with continuity of service and without backwages.



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

13.It is also admitted that pursuant to the findings of the Enquiry Officer, surcharge proceedings were initiated against the Workmen as against which the Workmen preferred CMA (Co-operative Societies) Nos.8 to 10 of 2008 before the Principal District Judge, District Co-operative Cases Appellate Tribunal and the Appellate Tribunal vide Judgment dated 17.02.2010 dismissed the appeals. Challenging the same, the Workmen filed CRP (NPD) Nos.1614, 2853 of 2010 and 2335 of 2012 before this Court and this Court vide order dated 10.04.2019 dismissed the revision petitions.

14.For better appreciation, the relevant portion of the order of this Court dated 10.04.2019 made in CRP (NPD) Nos.1614, 2853 of 2010 and 2335 of 2012 is extracted hereunder:

*"9. Admittedly, all the three revision petitioners were working in the society at the relevant point of time. The specific charges against them are that in the names of fictitious persons, loans were sanctioned and the amounts have been misappropriated. The Secretary has also appeared before the enquiry officer and admitted that the above amounts have been misappropriated. Besides, all the revision petitioners also the beneficiaries from the misappropriated*



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W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

amount. The Cashier was responsible for handling the cash, similarly, the Assistant Secretary has responsibility to maintain the records properly and the Clerk shall make necessary entries. Admittedly, the loans have been sanctioned in the fictitious names, without disbursing the loans to the actual members and the accounts were also been created, as if the loans were disbursed. When such thing has been happened in the cooperative bank, it cannot be simply said that without fixing any duties and responsibilities, the revision petitioners cannot be fastened with liability. The creation of the records from Clerk, up to the President level, cannot be done simply by a direction of one person. Unless each of them have contributed their specific act, these records would not have been created. When the loan itself was fictitious and certain loans are inflated, every entries were made to show, as if the entire transactions were genuine and each of the servants working in the co-operative bank had a knowledge that they are acting against the duties and responsibilities and infact, they connived together to create such documents. Therefore, I do not accept the contention of the learned counsel for the revision petitioners



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

*that only when the duties and responsibilities have been fixed, the revision petitioners can be prosecuted. Such contention in my view, lead to the serious consequences.*

*[Emphasis added]*

*10. No doubt the Division Bench of this Court, in an earlier occasion, has held that without the by-laws fixing duties and responsibilities, surcharge proceedings cannot be initiated. But the above judgment is not applicable to the facts of this case, for the simple reason that all of them are given a responsibility, their responsibility is inherent in their service to maintain the documents. When all of them had knowledge that the loans were sanctioned to the fictitious persons and the amounts have been misappropriated, their act is nothing but conspiracy to each other to manipulate the documents. Therefore, I do not find any error or infirmity in the order passed by the appellant tribunal. The primary duty of a person, to whom given job to serve the society is to maintain proper accounts. When the accounts have been manipulated and made entires in every level, it cannot be said that there is no wilful negligence on the part of the revision petitioners and infact they committed*



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

*such act deliberately, within the knowledge of each other and certainly their act would come under the purview of willful negligence. Accordingly, I do not find any merits in the revision petitions."*

15.The dismissal of the civil revision petitions filed by the Workmen clearly shows that the Workmen have committed misappropriation. Further, in the present case, the award in I.D.Nos.166, 165 and 190 of 2007 respectively, has been passed on 09.03.2017, prior to the order of this Court dated 10.04.2019 made in CRP (NPD) Nos.1614, 2853 of 2010 and 2335 of 2012. The order passed by this Court is binding on the Authority who passed the Award. Hence, the award passed in I.D.Nos.166, 165 and 190 of 2007 respectively, dated 09.03.2017 are perverse and same are set aside.

16.In fine, W.P.Nos.28081 to 28083 of 2017 are allowed and W.P.Nos.23986 of 2017, 103 of 2018 are dismissed. No costs. Consequently, the connected miscellaneous petition are closed.

**10.08.2023**

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Speaking Order/ Non Speaking Order

12/14



W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

Index: Yes/ No  
Internet: Yes/ No

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To

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Labour Court  
Salem.

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KK.127 Hosur  
Primary Agricultural Co-Operative Bank  
Behind Gandhi Square  
Hosur,  
Krishnagiri.



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W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018

**M.DHANDAPANI,J.**  
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W.P.Nos.23986, 28081 to 28083 of 2017 and 103 of 2018