



W.P(MD)No.8165 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8165 of 2020

and

W.M.P.(MD)Nos.7574 & 7575 of 2020

The Management,
Virudhunagar District Central Cooperative Bank Limited,
Rep. By its Managing Director / Joint Registrar,
No.104/1, Madurai Road,
Virudhunagar.

... Petitioner

Vs.

K.Subramanian

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed in C.P.No.1 of 2015 dated 17.11.2016 by the Labour Court, Madurai and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondent : Mrs.M.Nandhini Priyadharshini



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ORDER

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Heard the learned counsel on either side.

2. The Management of the Cooperative Bank is the writ petitioner herein. The petitioner challenges the impugned order dated 17.11.2016 made in C.P.No.1 of 2015 on the file of the Labour Court, Madurai. By the impugned order, the Management has been directed to pay a sum of Rs.2,41,486/- towards earned leave salary and group savings life insurance amount. Interest has also been awarded. The primary ground on which challenge has been mounted is that the claimant is not a workman.

3. The learned counsel appearing for the petitioner draws my attention to the definition set out in Section 2(s) of the Industrial Disputes Act, 1947 and points out that the respondent was employed as manager which is in supervisory capacity and that he was earning more than Rs.21,000/- and that therefore, the Labour Court did not have jurisdiction to even entertain the claim petition. He also would point out that the respondent by sanctioning ineligible loans had caused loss to the society and that therefore, the Management was entitled to set off the said amount from what is payable to him. The stand of the Management is that special byelaws permit such deduction to be made. He also



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reiterated all the other contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. I am not able to accept the submission advanced by the learned counsel appearing for the petitioner. The Hon'ble Supreme Court of India as well as this Court had held that the Labour Court will have the jurisdiction to adjudicate the service disputes between a cooperative society and its employees. There is no bar. However, the claimant will have to satisfy that he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. To disqualify a person from invoking the labour Court's jurisdiction, two conditions will have to be met.

(i) He has to be in supervisory capacity and

(ii) He should be drawing wages in excess of Rs.10,000/-.

In this case, the respondent was earning salary in excess of Rs.10,000/- . Therefore, the second condition is met. It is also pointed out that the claimant was working as manager and therefore, this Court ought to infer that he was working in a supervisory capacity.

5. I am not persuaded by this argument. It is well settled that nomenclature or designation of the post by itself cannot lead to the conclusion that the person concerned was engaged in a supervisory capacity. This is



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essentially a question of fact. The Management has not taken this plea before the Labour Court. As rightly pointed out by the learned counsel appearing for the respondent, the special byelaws were also not produced. If a pure question of law having jurisdictional implications is raised, this Court is obliged to consider the same. In this case, it is a mixed question of law and fact. Since this plea has not been raised before the Court below, this Court declines to go into the issue.

6. In the case on hand, the Management has not questioned the jurisdiction of the Labour Court by contending that the respondent was not a workman. Having failed to contest the jurisdictional issue before the Court below, I decline to permit the management to raise the issue for the first time before this Court. That apart, the amount directed to be paid is only a sum of Rs.2,41,486 /-. I wanted to know from the learned counsel appearing for the petitioner if any independent enquiry was held against the employee and formal order was passed quantifying the loss said to have been caused. It is fairly admitted that there is only a file noting in this regard. An independent enquiry was not held. For these three reasons, I decline to interfere.



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7. The learned counsel appearing for the Management raised too many contentions. According to him, the Management had taken a conscious decision to withhold certain amount from the employee's terminal benefits. It is not for the labour court to direct the Management to release the withhold amount by exercising jurisdiction under Section 33-C(2) of the Industrial Dispute Act.

8. The learned counsel impressed upon this Court the nature of the proceedings initiated under the said provision. Since such proceedings are akin to execution proceedings, without there being adjudication of the primary order passed by the Management, the labour court could not have granted relief. In the alternative, he submitted that since substantial loss would be caused, this Court can permit the Management to now hold enquiry and decide the issue. He assures the Court that enquiry will be held with open mind and in an impartial manner and the Management will not adopt an attitude of pre-determination. He submitted that he is making such plea considering quantum of loss caused to the Management.



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9. I am not in a position to accept the additional submission of the learned counsel appearing for the petitioner. It is true that the proceedings under Section 33-C(2) of the Industrial Dispute Act are akin to execution proceedings. But in this case, the Management did not hold any enquiry before quantifying the loss allegedly caused to the management by the conduct of the employee. Therefore, the question of setting aside any primary order or adjudicating its validity did not arise at all. Even if such an order had been straight away passed and the same is available in the note file, the Court was entitled to ignore the same as having no legal consequence. The labour court was essentially deciding whether the claim of the employee was justified. Once it comes to the conclusion that the employee's claim was justified, it can straight away pass an order and the same cannot be faulted. I am not inclined to give fresh opportunity to the management. The employee retired way back in the year 2009. Admittedly, he was allowed to retire. Once the employee was allowed to retire, the employee-employer relationship snaps and thereafter, the Management cannot hold any enquiry. Without holding an enquiry and without adjudicating the fault of the employee, there cannot be a direction for withholding his amount or recovering any amount from him. More than 14 years have elapsed and it would not be proper for this Court to permit the management to hold an enquiry against the employee at this point of time.



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10. The order impugned in the writ petition is sustained. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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G.R.SWAMINATHAN, J.

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