



W.P.(MD)Nos.879 and 2729 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.879 and 2729 of 2018
and
W.M.P(MD)No.2892 of 2018

W.P(MD)No.879 of 2018:

A.Shanmugam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Co-operative Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai – 600 009.
 - 2.The Registrar,
Co-operative Societies,
Kilpauk,
Chennai – 600 010.
 - 3.The Deputy Registrar,
Kumbakonam Co-operative Society,
Kumabakonam.
 - 4.The General Manager,
Kumbakonam Central Co-operative Bank,
Kumbakonam.
- ... Respondents



W.P.(MD)Nos.879 and 2729 of 2018

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the third respondent to consider the petitioner's representation dated 05.07.2017 and 12.09.2017.

For Petitioner : Mr.V.Sasikumar

For R-1 to R-3 : Mr.A.Baskaran,
Additional Government Pleader

W.P(MD)No.2729 of 2018:

The General Manager,
Kumbakonam Central Cooperative Bank Limited,
Kumbakonam,
Thanjavur District.

... Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Kumbakonam,
Thanjavur District.

2.A.Shanmugam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the learned Principal District Court, Thanjavur (Cooperative Tribunal) in C.M.A.(C.S)No.32 of 2016 dated 24.05.2017 and quash the same and consequently, direct the second respondent to pay the decree amount to the petitioner bank with interest at the rate of 18% till the realization.

For Petitioner : Mr.D.shanmugaraja Sethupathi



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For R-1

: Mr.A.Baskaran,
Additional Government Pleader

For R-2

: Mr.V.Sasikumar

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, these writ petitions are disposed of by way of this common order.

2. W.P(MD)No.879 of 2018, has been filed by the petitioner employee to direct the third respondent to consider his representations dated 05.07.2017 and 12.09.2017.

3. W.P(MD)No.2729 of 2018, has been filed to quash the impugned order, dated 24.05.2017, passed by the learned Principal District Court, Thanjavur (Cooperative Tribunal) in C.M.A.(C.S)No.32 of 2016 and consequently, direct the second respondent employee to pay the decree amount to the petitioner management with interest at the rate of 18% till the realization.



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4. The facts of the case are as follows:

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The petitioner in W.P(MD)No.2729 of 2018 is a Society registered under the Tamil Nadu Cooperative Societies Act and the Rules made thereunder and the Society have registered by-laws and Rules. The petitioner in W.P(MD)No.879 of 2018 was appointed as Assistant in the Society. While he was serving in the Society in the Dispatch Section, he committed falsification of accounts and thereby, committed misappropriation of funds. For which, arbitration proceedings under Section 90 of the Tamil Nadu Cooperative Societies Act, was initiated at the instance of the management claiming a sum of Rs.51,412/- after adjusting the amount of Rs.10,345/- already paid to the petitioner employee along with interest of Rs.17,488/-. After concluding the proceedings, the Deputy Registrar of Cooperative Societies, Kumbakonam, passed an award holding that the petitioner employee is liable to pay a sum of Rs.16,575/- towards misappropriated amount along with interest at the rate of 18% including the amount already paid by the petitioner employee. As against the said award, the third respondent Deputy Registrar filed C.M.A(CS)No.30 of 1997 before the Cooperative



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Tribunal. The Cooperative Tribunal set aside the order passed by the Deputy Registrar and remand the matter back to the Deputy Registrar. In pursuant to the same, the Deputy Registrar reopened the proceedings and after hearing both sides, passed an award holding that the petitioner employee is liable to pay a sum of Rs.54,467/- along with interest at the rate of 18% from the date of loss till the realization of the amount. It is further ordered that the petitioner employee has to pay a sum of Rs. 44,122/- after adjusting the amount of Rs.10,345/- paid by the petitioner employee with interest at the rate of 18%. As against the said award, the petitioner employee filed an appeal before the Tribunal in C.M.A. (CS).No.32 of 2006. The said appeal was allowed on 24.05.2017. Challenging the same, the petitioner management has filed W.P(MD)No.2729 of 2018.

5. Similarly, the petitioner employee has filed W.P(MD)No.879 of 2018, to refund the amount withheld by the Society by considering his representation dated 05.07.2017 and 12.09.2017.



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6. The learned counsel appearing for the petitioner in W.P(MD)No.879 of 2018, would submit that he has already given change of vakalat and reports no instructions before this Court.

7. The learned counsel appearing for the petitioner management in W.P(MD)No.2729 of 2018, would submit that all the facts were clearly established before the Deputy Registrar of Co-operative Societies in the first round of litigation. However, without considering the same, the Tribunal has passed the present impugned order. Further, the Tribunal has not given clean chit to the petitioner employee with regard to the misappropriation done by him and therefore, it is a fit case for remanding the matter for fresh consideration.

8. Heard the learned counsel appearing on either side and perused the materials available on record including the impugned order passed by the Tribunal.

9. A perusal of the impugned order reveals that the Tribunal arrived at a conclusion that as there was a labour Union in the Society, the Superintendent is also responsible for the misappropriation and



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therefore, held in favour of the petitioner employee, which is *per se* not sustainable one and the said order is bereft of any details. Hence, the order impugned in W.P(MD)No.2729 of 2018 is liable to be set aside and the matter is liable to be remanded back to the Tribunal for fresh consideration.

10. Accordingly, W.P(MD)No.2729 of 2018 is allowed and the impugned order, dated 24.05.2017, passed by the learned Principal District Court, Thanjavur (Cooperative Tribunal) in C.M.A.(C.S)No.32 of 2016, is hereby set aside and the matter is remanded back to the Tribunal for considering the matter afresh and on merits. No Costs. Consequently, connected miscellaneous petition is closed.

11. In view of the order passed in W.P(MD)No.2729 of 2018, the writ petition filed by the petitioner employee in W.P(MD)No.879 of 2018, stands disposed of. No Costs.

03.02.2023

PM
NCC:Yes/No



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Index: Yes/No

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To

- 1.The Judge,
Principal District Court, Thanjavur (Cooperative Tribunal).
- 2.The Secretary to Government,
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Co-operative Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 3.The Registrar,
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M.DHANDAPANI, J.

pm

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