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W.P.(MD)Nos.22303 of 2015 and 2966 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.22303 of 2015 and 2966 of 2016,
M.P.(MD)No.1 of 2015 and
W.M.P.(MD)No.2615 of 2016

W.P.(MD)No.22303 of 2015:

The Management,
O.265, Thenthiruperai Primary Agricultural
Co-operative Credit Society,
Thenthiruperai, Tuticorin District,
represented by its Secretary.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.K.Perumal

... Respondents



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W.P.(MD)Nos.22303 of 2015 and 2966 of 2016

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned award, dated 09.07.2015, passed by the 1st respondent Labour Court in I.D.No.42 of 2012.

For Petitioner	: Mr.M.E.Ilango
For R1	: Labour Court
For R2	: Mr.R.Kumar

W.P.(MD)Nos.2966 of 2016:

- 1.The Special Officer/Joint Registrar,
TC-85, Thoothukudi District,
Central Cooperative Bank Limited,
Ettayapuram Road,
Thoothukudi- 628 002.
- 2.Branch Manager,
TC-85, Thoothukudi District,
Central Cooperative Bank Limited,
Thiruvaikundam Branch,
Thiruvaikundam Ambala Street,
Thiruvaikundam.



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3.The Management,
TC-85, Thoothukudi District,
Central Cooperative Bank Limited,
Ettayapuram Road,
Thoothukudi-628 002.

4.The Management,
TC-85, Thoothukudi District,
Central Cooperative Bank Limited,
Thiruvaikundam Branch.

... Petitioners

vs.

1.K.Perumal

2.The Special Officer / Cooperative
Sub-Registrar,
O-265, Thenthirupporai Primary Agriculture
Cooperative Credit Society Limited,
Sivan Koil Street, Thenthirupporai-628 623.

3.Joint Registrar of Cooperative Societies,
Thoothukudi Region,
TR Naidu Street, Thoothukudi.

4.The Management,
O-265, Thenthirupporai Primary Agriculture
Cooperative Credit Society Limited,
Thenthirupporai,
Thenthirupporai-628 623.



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5.The Presiding Officer,
Labour Court, Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award passed in I.D.No.42 of 2012, dated 09.07.2015, by the Labour Court, Tirunelveli, the 5th respondent herein and to quash the same, so far as relates to the 2nd direction issued to the petitioners is concerned.

For Petitioners : Mr.D.Shanmugarja Sethupathi
For R1 : Mr.S.Kumar
For R2 and 4 : Mr.M.E.Ilango
For R3 : Mr.A.Baskaran
For R5 : Labour Court.

COMMON ORDER

The writ petition in W.P.(MD)No.2966 of 2016 is filed for issuance of a writ of Certiorari, to quash the award passed in I.D.No.42 of 2012, dated 09.07.2015, by the Labour Court, Tirunelveli, the 5th respondent herein, so far as



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relates to the 2nd direction issued to the petitioners is concerned. The writ petition in W.P.(MD)No.22303 of 2015 is filed by the Special Officer and its management of the O-265 Society challenging the same I.D. order.

2. The 1st respondent employee in W.P.(MD)No.2966 of 2016, was appointed in the 2nd respondent Society. Since the post has become surplus, the 1st respondent employee was posted to the petitioner bank through deputation order dated 26.08.2009. Any deputation order will be valid for three years and thereafter, it has to be reviewed. While serving in the Central Cooperative Bank Limited, the 1st respondent employee unauthorized absented from 16.07.2010 to 19.07.2010. Subsequently he had submitted application dated 20.07.2010 seeking medical leave from 20.07.2010 to 03.08.2010. In the meanwhile, the 1st respondent submitted a request letter dated 22.07.2010 to transfer to the parent department itself. The 1st petitioner communicated to the Head Office 3rd



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respondent that the employee has not come to the office since 16.07.2010. The management of the petitioner bank had sent a letter dated 26.08.2010 to the 4th respondent society stating that the employee though submitted leave application for the period from 20.07.2010 to 03.08.2010, even thereafter had not turned up to duty. Subsequently the petitioner bank had passed proceeding dated 30.07.2010 requesting the 3rd respondent to cancel the deputation order and repost the employee to the parent Society itself. However, the said communication has not evoked any response.

3. In the meanwhile, the 1st respondent submitted several representations to the 1st petitioner to revert him to the original position. Until the deputation order is cancelled, the 1st respondent sought permission to continue in the said post. The 1st petitioner did not allow him to continue in the said post and did not allow him to join. Left with no other option, the 1st respondent could not join the said



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post. Based on the request, the 1st respondent was transferred to the original place after a lapse of five years. Now, the 1st respondent is seeking salary for the non-employment period along with continuity of service.

4. The 1st respondent filed a petition before the Labour Court and the Labour Court has allowed the petition by directing the 1 to 4 petitioners to pay 50% of the salary from 04.08.2010 to 02.09.2012. The respondents 2 and 4 were directed to pay 50% of the salary from 03.09.2012 till the date of the order passed by the Labour court. The respondents 2 and 4 were also directed to grant continuity of service with other benefits. Aggrieved over the same, the present writ petitions are filed.

5. Since both the writ petitions are filed challenging the same order, both the writ petitions are taken up together for hearing and a common order is passed.



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6. Heard Mr.M.E.Ilango, learned Counsel appearing for the petitioner and Mr.R.Kumar, learned Counsel appearing for the 2nd respondent in W.P.(MD)No. 22303 of 2012, Mr.D.Shanmugarja Sethupathi, learned Counsel appearing for the petitioners, Mr.S.Kumar, learned Counsel appearing for the 1st respondent, Mr.M.E.Ilango, learned Counsel appearing for respondents 2 and 4 and Mr.A.Baskaran, learned Counsel appearing for 3rd respondent in W.P.(MD)No. 2966 of 2016 and perused the records.

7. The contention of the 1st respondent employee in W.P.(MD)No.2966 of 2016 is that he was transferred on deputation to the Central Cooperative Bank Limited along with eleven others, vide order, dated 26.08.2009. He had applied for medical leave from 20.07.2010 to 03.08.2010. After the lapse of the leave, the petitioner sought to rejoin the petitioner Bank but the respondent has not allowed the petitioner to join since the petitioner was absent from 16.07.2010 to



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19.07.2010 without leave application. The 1st petitioner has communicated the absence of the 1st respondent to the 2nd respondent, vide communication, dated 22.07.2010, informing that the 1st respondent has not attended duty.

8. The contention of the 1st respondent employee is that even though he did not attend the duty from 16.07.2010 to 19.07.2010, he has submitted an application of leave letter on 20.07.2010 seeking medical leave from 20.07.2010 to 03.08.2010 and on 04.08.2010, he sought to rejoin. However, the 1st petitioner did not allow the 1st respondent to join the service instead, directed the 2nd respondent to take back the 1st respondent and the Central Cooperative Bank is ready to relieve the 1st respondent from his duties. The 2nd respondent Society was not financially viable and they were not inclined to take the 1st respondent back into service when these communications were sent by the society and the bank. In the meanwhile, the 1st respondent employee has submitted before the 3rd



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respondent to relieve him from the Society and post him in any other Society. Even the 3rd respondent has not responded to the 1st respondent's claim. For all these reasons, the Labour Court has fixed the liability of paying salary to both the Cooperative Bank as well as the original Corporative Society 50% each.

9. The learned Counsel appearing for the Central Cooperative Bank Limited vehemently stated that the Bank is not liable to pay any salary, since the 1st respondent is not his employee and the entire liability is only on the 2nd respondent.

10. However, the learned Counsel appearing for the Cooperative Society submitted that since the 1st respondent has already been deputed to the Central Cooperative Bank Limited, the liability is only on the 1st petitioner.

11. After hearing the rival submissions, this Court is of the considered



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opinion that the 1st petitioner has written a letter to the 2nd respondent to take back the 1st respondent employee. The 2nd respondent has not responded to the said communication. Until the 1st respondent was taken back by the 2nd respondent Society, it is the responsibility of the 1st petitioner to retain the 1st respondent employee until the deputation order is cancelled and the 1st respondent is properly posted elsewhere. The 1st petitioner cannot deny its responsibility. Therefore, this Court is of the considered opinion that the 1st petitioner is liable to pay salary.

12. As far as the 2nd respondent Co-operative Society is concerned, the Society has not responded to the letters of the 1st petitioner. Even though the 2nd respondent Society is having surplus strength, the Society ought to have approached the 3rd respondent and sought permission to transfer the 1st respondent to some other Society. Since the 2nd respondent Society has not carried out its responsibility properly, the 2nd respondent is also liable to pay the salary.



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13. The learned Counsel for the 1st respondent also submitted that a letter was also sent to the 3rd respondent to resolve the entire issue. Since both the 1st petitioner and the 2nd respondent had not taken back the 1st respondent employee, both of them had made the 1st respondent employee to remain out of employment. If the 3rd respondent had taken action at appropriate time without wasting any time, the 1st respondent would have served in any other Society and received the salary. Therefore, this Court is fixing the responsibility on the 3rd respondent as well.

14. The Labour Court has fixed 50 % salary payable by both the Cooperative Bank as well as the Cooperative Society. Therefore, this Court is inclined to pass the following orders:

i) The petitioners bank, 2nd respondent and the 3rd respondent in W.P.



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(MD)No.2966 of 2016 are liable to pay 50% of the salary of the 1st respondent (K.Perumal) from 04.08.2010 to 02.09.2012 (1/3rd of 50% each).

ii) As far as the salary from 03.09.2012 till the date of order of Labour Court is concerned i.e. 09.07.2015, the 2nd respondent (2 and 4 are considered as one unit) and 3rd respondent in W.P.(MD)No.2966 of 2016 are liable to pay 50% salary ($\frac{1}{2}$ of 50% each).

iii) The 2nd respondent in W.P.(MD)No.2966 of 2016 is directed to grant continuity of service to the 1st respondent (K.Perumal).

iv) The directions stated supra shall be completed within a period of eight weeks from the date of receipt of the copy of the order.



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15. With the above said modifications, the writ petitions are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

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To

The Presiding Officer,
Labour Court,
Tirunelveli.



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S.SRIMATHY, J

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