



WP.No.904/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

**CORAM:
THE HONOURABLE MS.JUSTICE R.N.MANJULA**

W.P.No.904 of 2024

and

WMP.No.927 of 2024

The Dharmapuri District Central
Cooperative Bank, Employees Cooperative
Thrift & Credit Society Ltd,
Rep. by its President,
18/1, 1st floor, Nedumaran Nagar,
Dharmapuri -01. ...

Petitioner

versus

1. The Appellate Authority/
Joint Commissioner of Labour,
The Tamil Nadu Shops & Establishment Act,
Salem.

2.Vasumathi ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorari, calling for the records of the order
passed by the 1st respondent in T.S.A.No.01/2020 dated 20.09.2023 and
quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : M/s.M.Jayanthi, AGP for R1
: No appearance for R2



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ORDER

WEB COPY This Writ Petition has been filed challenging the order passed by the 1st respondent in T.S.A.No.01/2020 dated 20.09.2023.

2. Heard Mr.M.S.Palaniswamy, learned counsel for the petitioner and M/s.M.Jayanthi, learned Additional Government Pleader for the first respondent and perused the materials available on record. There is no representation for the 2nd respondent, despite notice was served upon her.

3. The petitioner is a co-operative society. The second respondent is a secretary working in the petitioner's co-operative society. For certain charges raised against the 2nd respondent, proceedings have been initiated under Sec. 153 of the by-laws of the Co-operative Societies Act and an order was passed holding that the charges against the 2nd respondent have been proved and she was punished with dismissal. The 2nd respondent has also preferred a revision before the appropriate authority under Section 153 of the Tamil Nadu Co-operative Societies Act. While the said proceedings are pending before the revisional authority, the 2nd respondent has once again filed another proceeding before the 1st respondent challenging the order of dismissal. Hence the petition.



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4. The learned counsel for the petitioner submitted that the petitioner had raised the issue before the Appellate Authority by way of preferring an appeal against the order of dismissal dated 06.01.2020 and invoked the jurisdiction under Sec.153 of the Tamil Nadu Co-operative Societies Act and hence the 1st respondent does not have any jurisdiction to pass the impugned order for setting aside the order of dismissal.

5. It is not in dispute that the Government has given a notification under the Tamil Nadu Shops Establishment Act declaring the petitioner's Cooperative Society as an 'establishment' covered under the Act. As per Sec.2(6) of the Tamil Nadu Shops and Establishment Act, the term 'establishment' is defined as under:

" 2...

(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theater, or any place of public amusement or entertainment and includes such establishment as the [state] government may, by notification, declare to be an establishment for the purposes of this Act; "

6. According to Sec. 41(2) of the Act, the employee had the right to appeal, if at all, he has any grievance on the order of dismissal by making out a plea that he was not found guilty for misconduct. The petitioner cannot dispute the entitlement of the 2nd respondent to file a proceeding



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before the 1st respondent by invoking Sec.41(2) of the Act.

WEB COPY 7. The only point that is now raised is that the 2nd respondent got a remedy only through under Section 153 of the Tamil Nadu Co-operative Societies Act and when the same was pending, she cannot invoke the other jurisdiction of the 1st respondent by preferring an appeal under Section 41(2) of the Act.

8. So far as Section 153 Revision under the Tamil Nadu Co-operative Societies Act is concerned the Registrar on his own motion or on an application, can revise the order passed by any of the officers subordinate to her by calling upon the records. The 2nd respondent herself has filed the revision under Section 153 of the Act, and it is not a suo moto revision taken up by the revisional authority. It is upto the 2nd respondent, after availing her remedy under Section 41(2) of the Tamil Nadu Shops Establishment Act not to press her revision petition filed under Section 153 of the Tamil Nadu Cooperative Societies Act.

9. Now the learned counsel for the petitioner submitted that the 1st respondent appellate authority has passed the impugned order without granting any opportunity to the petitioner's society and that it is a non-speaking order.



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10. On perusal of the impugned order dated 20.03.2023 of the 1st respondent, it is seen that the appellate authority has described the contentions of both sides and passed the order on the observation that the petitioner's co-operative society did not come forward to prove that the inquiry has been conducted only after giving sufficient opportunity to the 2nd respondent. Only on that score, the order of dismissal has been set aside.

11. In view of the same, I feel it is appropriate to give a fair opportunity of hearing to the petitioner in order to enable the appellate authority to pass an order on merits. I feel the impugned order is liable to be set aside and the matter has to be remitted back to the 1st respondent to hear the matter afresh by giving sufficient opportunity to both sides and pass orders afresh.

12. In the result, the Writ Petition stands **allowed**, the impugned order passed by the 1st respondent in T.S.A.No.01/2020 dated 20.09.2023 is set aside, and the matter is remitted back to the file of the 1st respondent to hear the matter afresh by ensuring that both parties are given sufficient



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opportunity to present their case. The 1st respondent is directed to pass a reasoned and speaking order on merits after considering all aspects of the case. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

jrs



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To

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R.N.MANJULA, J.

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