



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

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CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.22575 of 2004
and
WMP.Nos.19374/2017, 2252, 27301,
41936 & 41937 of 2004

The Management of Kancheepuram
Central Cooperative Bank Ltd.,
Kancheepuram.

... Petitioner

Vs.

1.The Principal Labour Court
Chennai.

2.S.Kuppan

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order of the first respondent made in I.D.No.643 of 1998 dated 11.02.2004 and quash the same.



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For Petitioner : Mr.R.Balasubramaniam
for Ms.B.N.Sivagamasundari

For Respondents : Mr.M.Ramamoorthy for R2
Labour Court for R1

ORDER

This Writ Petition is filed challenging the award of the Labour Court made in I.D.No.643 of 1998 dated 11.02.2004.

2. The brief facts leading to the filing of the Writ Petition are that the respondent Workman joined the services of the petitioner Management as Junior Assistant in the year 1973. While so during the period from 1979 to 1982 he was deputed and was functioning as Secretary of one Kavanur Co-operative Society Ltd. During that period, it is alleged that he along with others indulged in misappropriation of the society's funds. By virtue of four different charge memorandums, as many as 15 charges were levelled against him. Based on the said charge memorandums, a domestic enquiry was conducted in common for all the charges and by an order dated 24.03.1984



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the Workman was terminated from the Services. Simultaneously, he was also being prosecuted for the very same allegations and by the judgment dated 17.07.1997 made in CC.Nos.826 to 839 of 1986 he was acquitted by the learned Judicial Magistrate No.I, Chengalpattu. Thereafter, the petitioner raised the present dispute and the conciliation failed. The claim petition is taken on file as I.D.No.643 of 1998. As per the claim petition of the Workman, the entire domestic enquiry proceedings are not fair and proper and no proper opportunity was granted to him. According to him, he has been acquitted for the very same charges by the Criminal Court and therefore the order of punishment could not have been passed on the self same charges. In any event, the charge is too harsh and discriminatory, considering the fact that the then President and the Inspector of Cooperative Societies were all let go scot-free.

3. A counter affidavit is filed by the management resisting the claim. It is the claim of the management that the charges were duly proved in the domestic enquiry and the domestic enquiry was conducted as per the Rules. In any event, it was pleaded on behalf of the management that if for



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any reason the Court comes to the conclusion that the domestic enquiry is not fair and proper, opportunity should be given to the management to prove the charges before the Labour Court itself. With the said pleadings, the Labour Court proceeded to conduct the enquiry. The Workman examined himself as *W.W.1* and *Ex.W.1 to Ex.W.24* were marked. One R.Rajagopal was examined as *M.W.1* and *Ex.M.1 to Ex.M.28* were marked as exhibits.

4. The Labour Court, found that the domestic enquiry was not fair and proper in as much as the Workman was not provided with an opportunity to cross examine the witness examined on behalf of the management to prove the charges. Thereafter, the Labour Court, considered the fact that the other employees were also allowed to go scot-free and considered that the Workman was facing the charges for the past 15 years and ordered reinstatement with 50% of backwages and continuity of service and other benefits. Aggrieved by the same, the Management is before this Court.

5. Heard Ms.B.N.Sivagamasundari, learned counsel appearing on behalf of the petitioner Management and Mr.M.Ramamoorthy, the learned



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counsel appearing on behalf the respondent Workman.

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6. Ms.B.N.Sivagamasundari, learned counsel appearing on behalf of the petitioner Management would submit that firstly, in this case the dispute is not maintainable as the Workman has resorted to the remedies under the Cooperative Societies Act. Secondly, he is the Secretary of the Society and therefore he is not a Workman as per the Industrial Disputes Act. Thirdly, when the management has pleaded that an opportunity should be given to the management to prove the charges on merits, the approach of the Labour Court not passing a preliminary award and thereafter, giving further opportunity to the management is erroneous in law. Finally she would submit that the acquittal in the Criminal Court is only by granting the benefit of doubt and when the management has let in evidence amply to prove the charge before the Labour Court, the Labour Court ought not to have passed the award in favour of the Workman. She would submit that it is the present petitioner who has paid the sum of Rs.11,727.98/- which is said to be misappropriated by them. The other persons namely the President etc., were



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also not allowed to go scot-free. They were prosecuted and surcharge proceedings were initiated against them. In any event, the Workman, was terminated in the year 1984 and he did not raise any dispute whatsoever. But belatedly only after the Criminal Court acquitted him in the year 1997, the present dispute was raised and as such, in view of the delay and laches on the part of the Workman, the Labour Court ought to have dismissed the claim.

7. Per contra, Mr.M.Ramamoorthy, the learned counsel for the Workman would submit that when the Workman is facing the criminal case on the same charge, there is nothing erroneous in filing the industrial dispute immediately after the judgment of the Criminal Court. Therefore, the delay should not be put against the workman. The domestic enquiry was certainly not fair and proper. No opportunity of cross examination was given to the Workman. At this point of time, it would not be equitable for this Court to remand the matter back to the Labour Court for letting in evidence on merits.

8. As a matter of fact, the Workman had subsequently attained the age of superannuation in the year 2007. It can be seen that the Criminal



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Court has acquitted the Workman and he has already faced the trial for the very same charges. It can be further seen that with reference to the non payment or not bringing the money paid by the member to the account, the primary accountability is on the then President and the other office bearers of the society. The Inspector of Society has also periodically done inspections. Therefore, when the petitioner was only a secretary on deputation and when everyone else has not been punished, at this belated point of time prosecuting the petitioner alone would be unfair. The Labour Court considered the same and also considered the overall facts and circumstances of the case and passed the award. He would submit that already the Labour Court, has ordered only 50% of the backwages. In any event, this Court can consider even further moulding the relief and the claim of the management cannot be agreed in toto at this point of time.

9. I have considered the rival submissions on merits and perused the material records of the case.

10. The first contention of the learned counsel for the



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Management with reference to the maintainability of the industrial dispute stands rejected as it is a departmental appeal under the special by-laws and therefore will not defeat the right of the Workman to approach the Labour Court under the Industrial Disputes Act.

11. The second contention of the learned counsel for the management that the petitioner is a Secretary and therefore, cannot approach the Labour Court is also rejected. Though the Secretary is considered to be an Officer of the society and as such is not a Workman, in this case, the substantial post in which the Workman was working and dismissed from service was that of the Junior Assistant and he was only made as a Secretary incharge on deputation and his substantial post is not that of a Secretary and he remains to be workman and therefore, the second contention also stands rejected. The third contention on behalf of the learned counsel for the Management that the claim petition should be rejected on the ground of delay and laches is concerned, when the jurisdiction is under a beneficial provision for labourers and when the Workman has been facing the criminal case, altogether the Workman cannot be non suited merely on the ground of delay.



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12. Coming to the award passed by the Labour Court, it can be seen from the counter statement filed on behalf the management that in case if the Labour Court finds the domestic enquiry is not fair and proper, the management should be given an opportunity to let in evidence to prove the charge. In view of the said fact, when the Labour Court in this case had found that the Enquiry Officer has not specifically recorded that the Workman did not want to cross examine the witness and therefore no opportunity has been granted and therefore the domestic enquiry is vitiated, then ought to have passed the preliminary award and ought to have permitted the management to let in evidence on the merits of the charge. Such an exercise was not done by the Labour Court and as such the award of the Labour Court is not sustainable. Once the award of the Labour Court is not sustainable, in the normal course, this Court can remand the matter back to the Labour Court for giving an opportunity to the management to prove the charge on merits. But it has also been held that the jurisdiction under Article 226 of the Constitution of India can also be exercised to consider the merits of the charge by this



Court itself. When the dismissal relates to the year 1984, at this point of time, remanding the matter back to the Labour Court would be impracticable, inequitable and would amount to miscarriage of justice for both the parties. Therefore, this Court itself proceeds to consider the merits of the charges with the available evidence. Though predominantly the management has let in evidence only bringing on record the enquiry proceedings, in *Ex.M.28*, the Audit report is also marked. The management witness was also cross examined on in that regard. It has been categorically mentioned in *Ex.M.28* Audit report, that the monies were actually collected but were not accounted for and misappropriated.

13. As a matter of fact in the cross examination, with reference to each and every charge and how much was not accounted for has been brought out by the Workman himself. Therefore, I am of the view that there is evidence on record to the level of preponderance of probability that the members repaid amounts in various transactions and the same were collected. They were issued receipts but however it was not accounted for in the society accounts and therefore categorically amounts to misappropriation. As far as the



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contention of Mr.M.Ramamoorthy, learned counsel relating to the criminal case is concerned, a perusal of each and every judgement of the criminal case, it can be seen that the prosecution had examined as much as 15 witnesses. All the concerned members who paid the amount were given a receipt, and their amounts which were not brought to the accounts of the society were all examined.

14. After extracting all their evidence, only on the ground that 81 Enquiry Officer has not been examined and giving the benefit of doubt the Workman has been exonerated. Though it is shocking in any event since the prosecution has not filed further appeal, the same had become final. But however, the findings in the said criminal case cannot be pressed into service for the purpose of the proof or otherwise of the charges in the domestic enquiry. The Criminal Court has gone on a hyper technical basis and does not render any finding with reference to the merits of the charge.

15. I find that there is ample evidence to prove the charges against the workman which is let in by the management and I am of the view



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that the management has proved the charges against the workman which is including the charge of misappropriation and therefore, I hold that the award punishment of termination from service is justified and I am inclined to interfere with the award of the Labour Court.

16. In view thereof, this Writ Petition is allowed on the following terms;

The award passed by the Principal Labour Court, Chennai, dated 11.02.2004 in I.D.No.643 of 1998 is set aside and the order of termination passed by the petitioner Management stands upheld.

No costs. Consequently, connected Miscellaneous Petitions are closed.

03.12.2024

Neutral Citation : Yes

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To

The Principal Labour Court
Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

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