



W.P. No.6405 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

**W.P. No.6405 of 2013
and W.M.P.No.17753 of 2023**

HH518, Padavedu Primary Agricultural
Co-operative Credit Society Limited,
represented by its The Special Officer,
A.K. Padavedu, Polur Taluk, Tiruvannamalai.

.. Petitioner

Vs.

1. The Presiding Officer,
Principal Labour Court, Vellore.

2. P.Subbarayan (Deceased)

3. Rajeswari

4. Parameswari

5. Vijayalakshmi

6. Sangeetha

7. Srinivasan

.. Respondents

(R3 to R7 are substituted as legal heirs
of deceased R2, as per order dated 22.11.2024
in WMP.No.17753 of 2023 in
WP.No.6405 of 2013 by PDBJ)

PRAYER: The Writ petition filed under Article 226 of the Constitution of
India seeking to issue a Writ of Certiorari calling for the records of the award



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passed in I.D. No.34/2011 dated 31.08.2011 on the file of the 1st respondent and to quash the same.

For Petitioner : Mr. M.S. Palanisamy
For Respondents : R1 – Court.
Mr.R.Arumugam for R3 to R7

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed in I.D. No.34 of 2011 dated 31.08.2011 on the file of the 1st respondent police and to quash the same.

2. The short facts of the case necessary to dispose of this Writ petition are as follows:-

The petitioner is the Padavedu Primary Agricultural Co-operative Credit Society and the 2nd respondent, joined service in the petitioner Society on 14.03.1976 as a clerk. Thereafter, he was promoted as Assistant Secretary from 1990 onwards. The 2nd respondent was working in Pallakollai Mahalir Fair Price Shop run by the petitioner Society. He was put in more than 35 years of continuous and unblemished record of service. For certain misconduct committed by the second respondent, the petitioner issued a charge sheet dated 27.02.2010 against the 2nd respondent alleging 5 charges, as



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follows:

- i) He caused loss of Rs.27,950/- to the society by not bringing the same to the accounts of the society colluding with the cashier Ravi.
- ii) He committed fraud by not bringing the same sale amount of fertilizers of Rs.10,356.75 in the society accounts.
- iii) He committed fraud of falsifying the accounts to the tune of several lakhs by colluding with the cashier Ravi.
- iv) He committed the irregularity in not bringing the cheque amount of Rs.1,00,000/- to the society account by colluding with the cashier Ravi and he is responsible for the loss of interest.
- v) He committed irregularity in saving A/c 532 by making false entries by colluding with the cashier Ravi to the tune of Rs.1,03,890/-.

Pursuant thereto, the petitioner was placed under suspension by order dated 22.03.2010.

3. After due enquiry, the enquiry officer found guilty of charges framed against the 2nd respondent and the enquiry report was duly served to the 2nd respondent and called for explanation and after receipt of his explanation, the punishment of removal from service was imposed by the disciplinary authority. Thereafter, the 2nd respondent has raised industrial dispute before



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the Labour Court in I.D. No.34 of 2011 and the same was allowed and termination order passed by the disciplinary authority was set aside and he was reinstated into service with full backwages, continuity of service and all other attendant benefits. Against which, the present writ petition is filed by the Management Society.

4. The learned counsel appearing for the petitioner would submit that the 2nd respondent misappropriated the amount and also failed to remit the amount immediately after the collection of amount. The 2nd respondent himself admitted the misappropriation of amount by remitting back the same. The 1st respondent / Labour Court failed to consider the above said aspects and erroneously held that charges levelled against the 2nd respondent have not been proved. The charges levelled against the 2nd respondent are serious in nature and he misappropriated the public funds of the Society. Moreover, the 2nd respondent was working as Assistant Secretary and Industrial Dispute Act is not applicable to him as he was in the officer cadre. Therefore, the order passed by the Labour Court are liable to be set aside. While pending



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the above writ petition, the 2nd respondent died on 20.01.2023. The respondents R3 to R7 are the legal heirs of the second respondent.

5. No representation for the 2nd respondent.

6. This Court heard both sides and perused the entire materials available on record.

7. This Writ petition is filed as against the order passed by the Industrial Tribunal / Labour Court, Vellore, wherein, the termination of the 2nd respondent from service, due to his delinquencies that he misappropriated the funds of the Society, was set aside. According to the petitioner, the 2nd respondent admitted the guilt, but the Labour Court failed to consider the same. According to the 2nd respondent, he has not committed any misappropriation of funds, thereby he raised an industrial dispute before the Labour Court. On the side of the 2nd respondent, he was examined as WW1 before the Labour Court and marked Ex.P.1 to Ex.P.19 and on the side of Management Society, MW1 was examined and Ex.M1 to Ex.M.35 were marked. The Labour Court, after considering the evidence and documents, found that the charges levelled against the 2nd respondent / petitioner have not been proved and thereby, directed to reinstate the 2nd respondent / petitioner



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into service with full backwages, continuity of service and other attendant benefits.

8. The main contention of the appellant is that the 2nd respondent is an 'officer' defined under the Co-operative Societies Act, thereby the Industrial Dispute Act will not be applicable to him as he was not a workman. In this context, the Labour Court relied the Ex.W.13, the Board Resolution dated 05.04.2007, wherein the duties and responsibilities of the Assistant Secretary are mentioned as maintenance of various registers and ledgers, cash book, day book etc., preparation of Form-34 for inspection, collection of loan, assisting the Secretary, but no supervisory power of functions have been mentioned. Moreover during cross examination of the witnesses the Society has not even suggested that the 2nd respondent was holding supervisory powers. As per evidence of WW1, the work of the 2nd respondent is only clerical, thereby he comes within the purview of definition of Workman under Section 2(5) of Industrial Disputes Act. Therefore, the Labour Court based on the records and oral evidences, came to a fair conclusion, hence the order of Labour Court warrants no interference in respect of applicability of Industrial Dispute Act to the 2nd respondent. Moreover, during the pendency of the Writ petition, the 2nd respondent died and his legal heirs were impleaded and the petitioner also admitted that the 2nd respondent was reinstated and then superannuated.



Therefore, at this stage it is not appropriate to reject the claim of the 2nd respondent, on the ground of maintainability.

9. The charges levelled against the 2nd respondent / petitioner are as follows:

i) He caused loss of Rs.27,950/- to the society by not bringing the same to the accounts of the society colluding with the cashier Ravi.

ii) He committed fraud by not bringing the same sale amount of fertilizers of Rs.10,356.75 in the society accounts.

iii) He committed fraud of falsifying the accounts to the tune of several lakhs by colluding with the cashier Ravi.

iv) He committed the irregularity in not bringing the cheque amount of Rs.1,00,000/- to the society account by colluding with the cashier Ravi and he is responsible for the loss of interest.

v) He committed irregularity in saving A/c 532 by making false entries by colluding with the cashier Ravi to the tune of Rs.1,03,890/-.

10. The allegations levelled against the petitioner in charge 1 to 5 is that the petitioner in collusion with the Cashier Ravi failed to bring the challans signed by them in the day book and thereby showing reduced cash



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balance in the account and caused loss to the society. In order to prove the contention of the Management, there is no oral or documentary evidence to show the collusion of petitioner with cashier. Hence, the charge 1 to 5 are not proved in the enquiry.

11. As far as charge No.1 is concerned one Vijaya of Karpagam Mahalir Kuzhu has paid Rs.27,950/- to the Society on 14.09.2009 but the said amount was not entered into sub day book and only entered into Savings Account and thereby, colluded with Cashier and caused loss to the Society, in order to prove the said collusion between the Cashier and the 2nd respondent, there is no evidence. Mere failure to enter the amount in to sub day book itself is not sufficient to prove the collusiveness. As far as the 2nd charge that the 6 fertilizer sale bills for Rs.10,356.75 were not entered into the sub day book and only written in the sale chitta is concerned, no sufficient evidence adduced to prove the misappropriation and the collusiveness between the Cashier and the 2nd respondent. Mere omission to mention in the sub day book alone is not sufficient to prove the misappropriation. As far as the other charges are concerned, the 2nd respondent did not mark entries in the relevant registers and the same is only due to negligence, but the Cashier Ravi himself admitted that he has not given receipts to the sales, thereby the 2nd respondent without receipts, cannot make entries in the relevant registers. This aspect



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was admitted by the Society witnesses. Therefore, the Management Society has failed to prove the charges levelled against the 2nd respondent. Moreover, the 2nd respondent had worked for 35 years without any blemishes.

12. The Labour Court, after analysing both sides evidences and the documents marked as exhibits, held that the above said charges levelled as against the 2nd respondent / petitioner delinquent, have not been proved by giving adequate reasons. The learned Presiding Officer of the Labour Court has elaborately discussed about the evidences and came to the fair conclusion and there is no any infirmity or illegality found in the order of the Labour Court. Moreover, during the arguments, the learned counsel appearing for the petitioner also admitted that the 2nd respondent was reinstated into service and he retired from services on superannuation. Therefore, in view of the above said discussions, this Court is of the opinion that the order passed by the Principal Labour Court, Vellore is in order and there is no any perversity



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or infirmity found in the order of the Labour Court and hence this Writ petition has no merits and deserves to be dismissed.

13. Accordingly, the Writ petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

26.11.2024

Index : Yes/No
Speaking order/non-speaking order
drl

To

1.The Presiding Officer,
Principal Labour Court, Vellore.

P.DHANABAL, J.,



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