



W.P.No.28523 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16.02.2024

ORDER PRONOUNCED ON : 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.28523 of 2019
and W.M.P.No.28252 of 2019

The Management of Semmandampalayam Primary
Agricultural Co-operative Credit Society, K.4218,
Rep. by its Secretary (Incharge),
Semmandampalayam Post,
Via Somanur,
Coimbatore.

... Petitioner

/Vs./

S.Santhi

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, calling for the records in I.D.No.17/2011 dated 12.11.2018
on the file of the learned Principal Labour Court, Coimbatore and quash the same.

For Petitioner : Mr.A.S.Balaji

For Respondent : Mr.Premkumar

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ORDER

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This writ petition is filed by the Secretary of Semmandampalayam Primary Agricultural Co-operative Credit Society to call for the records in I.D.No.17/2011 dated 12.11.2018 on the file of the learned Principal Labour Court, Coimbatore and quash the same.

2.The respondent was employed as a clerk on 20.01.1993 in the petitioner society. The respondent was made permanent and subsequently promoted as Senior Clerk in the petitioner Society. While so, the respondent was temporarily removed from service. She was arrested and sent to Judicial custody in pursuance of FIRs in Crime Nos.298 and 299 of 2006. On 11.06.2007 a charge memo was issued to the respondent which was served on her on 24.06.2007. Two charges were framed against the respondent with five and three accusations under each of the charges. The said charges were framed stating that when she was working as a Senior Clerk during 22.03.2002 to 31.11.2005, she along with the then Secretary misappropriated Rs.29,15,371/-, by way of forging the signature of the members of the Society, as if they had availed crop loans, that while she was working in the petitioner Society as Senior Clerk during 21.02.2002 to 30.03.2005, she along with the then Secretary



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misappropriated Rs.3,86,541/-, by creating false records in the name of the deceased members, as if they had availed crop loans, that when she was working as a Senior Clerk during 02.01.2002 to 25.02.2002 she abetted the then Secretary in misappropriate Rs.42,24,364/-, by availing crop loans under KCC Scheme in the name of the members, without their knowledge and that she was instrumental along with the then Secretary in misappropriating Rs.13,78,033/- by availing bogus loans in the name of the members. The respondent was charged for actively conniving with the then Secretary in misappropriating Rs.92,76,751/- and causing wrongful loss to the petitioner society. A domestic enquiry was conducted on the aforesaid charges, but the enquiry report was set aside by the learned III Fast Tract Court Judge, Coimbatore on the ground that the statement of witnesses were not served to the respondent. On 02.04.2008, a second show cause notice was issued to the respondent, to which she replied, but as her explanation was found to be unsatisfactory, she was dismissed from service on 10.04.2008. Challenging the dismissal order, the respondent raised a dispute in I.D.No.17 of 2011. The Labour Court vide the impugned Award dated 12.11.2018 partly allowed the claim petition, directing the petitioner society to reinstate the respondent in service with continuity of service along with 50% backwages and with all monetary benefits. Aggrieved by the Award of the Labour Court, the petitioner Society has filed the above writ petition.



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3.The learned counsel appearing for the petitioner submitted that the respondent along with the then Secretary misappropriated Rs.92,76,751/-, by forging documents in the names of the members of the Society, both deceased as well as the present members without their knowledge. The learned counsel submitted that during the relevant time the respondent along with the then Secretary and two others was fully responsible for the affairs of the Society and therefore the involvement of the respondent in the fraud committed by the Secretary could not be ruled out. The learned counsel further submitted that the Labour Court failed to consider Ex.M43 & Ex.M44 filed by the petitioner in support of it's case. The learned counsel therefore submitted that the award of the Labour Court deserved to be set aside.

4.The learned counsel for the respondent on the other hand submitted that the Labour Court appreciated the evidence on record in proper prospective and there was absolutely no perversity in the findings of the Labour Court. The learned counsel further submitted that unless and until the petitioner established that there was an error apparent, or there was perversity in the findings of the Labour Court the same could not be interfered with. The learned counsel relying on the Judgment of the High Court of Himachal Pradesh in the case of *State of Himachal Pradesh and Ors.*



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Vs. Rajinder Singh reported in ***2016 (3) LLN 124 (DB) (HP)*** submitted that as the award of the Labour Court was based on the appreciation of the evidence, this Court could not sit as an Appellate Court and scrutinise the facts. The learned counsel therefore submitted that the writ petition was without merits and the same deserved to be dismissed.

5.I have heard both the learned counsels and I have perused the entire materials placed on record.

6.It is no doubt true that the respondent was charged with grave misconduct of misappropriation of the Society's funds to the tune of Rs.92,76,751/- in connivance with the then Secretary of the Society. The Society issued a charge memo and after conducting a domestic enquiry and on the basis of the enquiry report dismissed the respondent vide dismissal order dated 10.04.2008 after following due procedure. The said dismissal order was challenged by the respondent in I.D.No.17 of 2011. The Labour Court allowed the dispute vide the impugned Award dated 12.11.2018 and therefore, the Society has preferred the above writ petition challenging the same.

7.It is seen that the Labour Court vide order dated 22.09.2017 held that the



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domestic enquiry was not conducted in a fair and proper manner and therefore the

petitioner Society was permitted to let evidence before the Labour Court. The

respondent examined herself and the petitioner Society examined seven witnesses on

their side. The respondent marked 15 documents under Ex.W1 to Ex.W15 and the

respondent marked Ex.M1 to Ex.45. The Labour Court considered the evidence

thread bare and concluded that the charges against the respondent were not proved.

The Labour Court relying on Ex.M30 and the By-laws found that the

Secretary of the Society was solely responsible for the Management and

Administration of the Society and its property. The Labour Court on the basis of the

evidence on record found that the respondent had not sanctioned, disbursed or

recovered the loans, that the respondent had not issued the receipts, vouchers etc. and

she neither signed or initialed the Savings Bank Account Pass book, FDs' of the

members. The Labour Court also found that there was no evidence to prove that the

respondent had forged the signature of the members of the Society as none of the

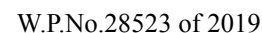
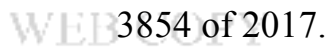
Society's witnesses spoke of the same. The Labour Court hence found that none of

the charges framed under Ex.M5 were proved by the petitioner Society. The

submission of the petitioner that Ex.M43, Ex.M44 would clearly establish that the

respondent was guilty of misappropriation was rejected by the Labour Court on the

premise that in the Writ Petitions challenging the orders in Ex.M43 and Ex.M44 stay



order dated 23.08.2009 was passed by the Hon'ble High Court in W.P.Nos.3853 and 3854 of 2017.

8. From the above discussion it is clear that the Labour Court has appreciated the evidence on record in proper prospective and as the finding of the Labour Court is based on the evidence on record. In the absence of proof of perversity and also that the Labour Court made patent mistakes in admitting evidence this Court under Article 226 of the Constitution cannot upset the factual findings of the Labour Court by reappreciating the evidence merely because a different view is possible. In this regard, the Judgment of the Hon'ble Supreme Court in the case of ***Bhuvanesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd.***, reported in ***2014 AIR SCW 3157*** can be gainfully referred to. In paragraph No.18 of the Judgment it is held as follows:

“18.A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that



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the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under [Articles 226](#) and [227](#) of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant.”

I am therefore of the view that there is absolutely no infirmity or illegality in the Labour's Court Award and hence, the same does not call for any interference by this Court.

9.In view of the above discussion, I find no merits in the writ petition and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

19.03.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To

- 1.The Principal Labour Court,
Coimbatore.
- 2.The Management of Semmandampalayam Primary
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N.MALA, J.

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**PRE-DELIVERY ORDER IN
W.P.No.28523 of 2019**

19.03.2024