



WP(MD)No.9963 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.9963 of 2015

T.Paulaiyan

: Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Management / Special Officer,
Thalakulam Eraniel Farmers Service
Co-operative Society Ltd.,
Monday Market, Neyyur Post,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the award dated 12.11.2014 passed by the first respondent in I.D.No.8 of 2009, quash the same and direct the second respondent to pay the consequential and retireal benefits to the petitioner.



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For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.M.E.Ilango
for R.2

ORDER

The petitioner, erstwhile Secretary of Thalakulam Eraniel Farmers Service Co-operative Society Ltd., was dismissed by the second respondent, by proceedings dated 24.11.2000. As against the same, the petitioner raised a dispute in I.D.No.8 of 2009 u/s.2A(2) of the Industrial Disputes Act. The said dispute was rejected by the Labour Court, by its award dated 12.11.2014, on the following grounds:-

- the petitioner is not a workmen, as per Section 2(s) of the ID Act and as such, cannot maintain the petition;
- the petitioner approached the Court after a lapse of nine years from the date of superannuation;
- backwages cannot be granted due to delay in approaching the Court;
- doctrine of election – the petitioner had suppressed the earlier dismissal of revision petition; and



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- the petitioner had been convicted by the Criminal Court.

Aggrieved over the same, the petitioner has filed this writ petition.

2.Learned Counsel appearing for the petitioner submitted that the petitioner is only a workman. He joined the service as a Salesman and thereafter, promoted as a Secretary. He was working only as a workman and therefore, he is entitled to raise the dispute under the Industrial Disputes Act u/s.2A(2) of the ID Act. The finding of the Labour Court is perverse and he was, in fact, not provided with any subsistence allowance.

3.He further submitted that the Labour Court has initially passed a preliminary award on 07.08.2012 treating the petitioner as a workman, however, in the final award, the Labour Court has changed its view that the petitioner is not a workman, without any reasonings and without any materials. According to him, the Management of the Society is done by the Managing Director of the Society and that the petitioner is only a workman.



4.He has also relied upon the decision of Justice K.Chandru in *The Management, Murali Women Milk Producers Co-operative Society Ltd v. C.Shanmugasundaram and Another* [WP.No.18372 of 2009, dated 18.08.2011], wherein, His Lordship, following the decision of the Hon'ble Supreme Court in *Hussan Mithu Mhasvadkar v. Bombay Iron and Steel Labour Board and Another* [AIR 2001 SC 3290], held that the designation is immaterial, but the nature of the duties and power conferred must be gone into, while deciding as to whether he is workman or not. In the said decision, His Lordship has observed as follows:-

“11.In the present case, even assuming that the first respondent who was working as Secretary under the control of the Board of Directors was held to be exercising supervisory powers, since at the relevant time, he was drawing Rs.1200/- it comes within the exception provided to Section 2(s) of the ID Act. Therefore, the Labour Court had rightly come to the conclusion that the first respondent was a workman for the purpose of the ID Act and the Labour Court cannot throw out the dispute on the ground of non-maintainability.”

5.Learned Counsel appearing for the second respondent, on the other hand, relied upon yet another decision of Justice K.Chandru in *K.Pazhani*



v. Presiding Officer, Labour Court, Cuddalore and Another [WP.No.21014

of 2007, dated 05.01.2012], wherein, His Lordship has held that the Secretary of a Co-operative Society cannot be a workman, within the meaning of Section 2(s) of the ID Act and also u/s.2(a) of the Tamil Nadu Payment of Subsistence Allowance Act. The relevant portion is extracted as under:-

“7.The question whether a Secretary of a Co-operative Society is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and also Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 came up for consideration in several judgments of this Court, where it was held that the definition of 'employee' is similar to that of a workman under Section 2(s) of the Industrial Disputes Act.

8.In this context, it is necessary to refer to the judgment of this Court in the case of The Management, T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Society Ltd v. The Assistant Commissioner of Labour and Another reported in 2003 Writ Law Reporter 371, wherein, a similar claim was negated by this Court. Under the said circumstances, there is no infirmity in the award passed by the first respondent Labour Court.

9.Accordingly, the writ petition stands dismissed. However, the dismissal of the writ petition will not disentitle the petitioner from availing the statutory revisional remedy under Section 153 of the Tamil



Nadu Co-operative Societies Act, 1983 to the revisional authority. If any such revision is filed within a period of three weeks from the date of receipt of a copy of the order, the competent Revisional Authority shall entertain the same without reference to limitation prescribed under Section 153 of the Tamil Nadu Co-operative Societies Act and deal with the same on merits. No costs."

6.He further submitted that the Labour Court has observed that the petitioner was drawing a salary of Rs.4000/- and therefore, the decision relied upon by the petitioner would not come to his rescue. That apart, the duties of the Secretary, as defined in the bye-law, were also discussed by the Labour Court. The Labour Court has, in fact, extracted the duties of a Secretary in the Society from the document Ex.M23.

7.He further submitted that the Labour Court, in its award, has also recorded that the issue was raised by the petitioner after a lapse of nine years from the date of his superannuation. He has also relied upon a decision of the First Bench of this Court in *Registrar, Co-operative Society and Others v. M.Elango* [(2021) 1 CTC 465], wherein, it has been held as



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“29. Having traversed the entire law on the subject and the judgments, referred to above, the outcome is that the terms and conditions of the 1981 Act to pay subsistence allowance will not apply in the case of the respondent/writ petitioner. The second is that there is no Bye-law in the present case specifically indicating 25% subsistence allowance payable to a Secretary, as was in the case of K. Avanasiaappan v. The Management of Thekkalur Primary Agricultural Co-operative Bank (supra), as followed in the case of Special Officer, 5558, Vadugapatty Primary Agricultural Co-operative Credit Society v. T.R. Murugan (supra). Thirdly, suspension can also be a measure of punishment as defined in Bye-Law 28(1)(v) of the Bye-Laws applicable in the present case read with Bye-Law 31(3). We have been informed that the services of the respondent/writ petitioner have already been terminated on 25.8.2019. It is not known as to what are the terms of the said termination order and as to whether the period of suspension already undergone has been awarded as a penalty or not. Nonetheless, as per Bye-Law 31(2), the competent authority “may grant to the employee suspended, subsistence allowance”. However, the same says that it is to be in accordance with the provisions of the 1981 Act. As held above, the provisions of the 1981 Act clearly exclude the applicability thereof to a Secretary, who is not in the definition of employee under the 1981 Act.”



8.This Court considered the rival submissions made on either side and also perused the materials placed on record.

9.The case of the petitioner is that since he has formed a Union for the rights of the workers, who are working in the Co-operative Societies, he was victimized by imposing this order of suspension. The Management, on the other hand, claims that there was a surprise inspection in the month of December, 1992 and some misappropriation committed by this petitioner was found and therefore, three charge memos were issued by this petitioner on 22.01.1993, 13.02.1993, 29.03.1993. Enquiry was also conducted and based on the enquiry report, the petitioner was originally dismissed from service on 24.01.1994. As against that order of dismissal, the petitioner filed a revision petition before the Joint Registrar of Co-operative Societies u/s.153 of the Tamil Nadu Co-operative Societies Act. This revision petition was dismissed on 22.05.1996. As against the same, the petitioner has filed a writ petition before this Court in WP.No.16029 of 1996 and the same was allowed on 16.03.2000, by appointing an Enquiry Officer, namely, Suri, Treasurer of S.T.Hindu College, Nagercoil, for conducting a



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de-nova enquiry. The independent Enquiry Officer, as directed by this Court, has also completed his enquiry and submitted a report on 29.05.2000. In the meantime, the petitioner has attained the age of superannuation. Based on this enquiry report dated 29.05.2000, the second respondent has dismissed the petitioner from service on 24.11.2000.

10.The petitioner has raised a dispute before the Assistant Commissioner of Labour, Nagercoil, on 04.05.2001 and also raised the dispute before the Labour Court, in ID.No.8 of 2009. The Labour Court has dismissed this application and as against the same, the present writ petition is filed.

11.The Labour Court has rejected the petitioner's application that he is not a workman, as per Section 2(s) of the ID Act. Section 2(s) of the ID Act defines workman and the same is extracted as under:-

“2 (s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the



terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

12. Section 2(19) of the Tamil Nadu Co-operative Societies Act defines Officer in a Co-operative Society and the same is extracted as under:-

"2(19) "officer" includes a president, vice-president, managing director, secretary, assistant secretary, member of board and any other



person empowered under the rules or the by-laws to give directions in regard to the business of the registered society”

13.The duties of a Secretary, from the document Ex.M23, appears to be supervising the workers; verifying the loans issued by the Bank as to whether it was issued in a proper manner; to develop the functions of the Society in consultation with the Special Officer; verification of the expenditures and to sign the registers; to supervise the duties of the Society in the absence of Special Officer; to monitor the other functions of the Society, etc.

14.The definitions u/s.2(s) of the ID Act and Section 2(19) of the Tamil Nadu Co-operative Societies Act, coupled with the duties imposed on the petitioner, as per the bye-laws, would establish that this petitioner is in the supervisory cadre and he will not come under the category of workman. Therefore, the Labour Court is right in rejecting the application filed by this petitioner u/s.2A(2) of the ID Act.



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15.Learned Counsel for the petitioner submitted that he was not paid with any subsistence allowance and therefore, the dismissal order has to be set aside on this ground alone. However, the learned Counsel for the second respondent disputed the same. The petitioner has not raised this issue before the Labour Court. In the absence of any finding by the Labour Court with regard to the payment of subsistence allowance, this Court is not inclined to entertain this writ petition that the petitioner was not provided with any subsistence allowance. In the event, if the subsistence allowance is not paid to this petitioner, it is always open to him to file necessary application u/s.153 of the Tamil Nadu Co-operative Societies Act before the Joint Registrar.

In fine, this writ petition stands dismissed with liberty to raise the issue regarding payment of subsistence allowance before the Joint Registrar u/s.153 of the Tamil Nadu Co-operative Societies Act, if so advised. No costs.

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