



W.A.(MD).No.1111 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.08.2024

CORAM :

**THE HON'BLE MRS. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

W.A.(MD).No.1111 of 2018
and
C.M.P.(MD).No.7977 of 2018

The Management,
Q-308, Perunkarai Primary Agricultural
Cooperative Bank, Now called as
Q-308, Perunkarai Primary Agricultural
Cooperative Credit Society,
Keela Perunkarai, Paramagudi Taluk,
Ramnad District. ... Appellant

Vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.R.Alagarsamy ... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent,
praying this Court to set aside the order dated 23.03.2018 passed in W.P.
(MD).No.2673 of 2014.



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For Appellant : Mr.R.Saravanan
for M/S.C.G.Pethanaraj

For Respondents : Labour Court

: Mr.S.M.Mohan Gandhi for R2

JUDGMENT

[Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**]

The above intra Court writ appeal has been filed under clause 15 of Letter Patent Act, challenging the impugned order of the writ Court in W.P.(MD).No.2673 of 2014, dated 23.03.2018, wherein the writ Court confirmed the award passed by the Labour Court in I.D.No.97 of 2002, dated 24.07.2013.

2. Earlier, appellant society is Perunkarai Primary Agricultural Co-operative Bank. The second respondent was appointed as a peon on the basis of daily wages by appointment order dated 03.10.1997. Subsequently, in order to fill the permanent vacancy the appellant society



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called for the interview of the eligible candidate through the employment exchange. The employment exchange department also sponsored the second respondent's name on the basis of the seniority. The second respondent also attended the interview on 05.02.2001. The second respondent attended the interview on 05.02.2001 and then the appellant Management passed a resolution in his favour on 07.02.2001 and selecting him to the post of peon. From the said date onwards, he was working as a peon and he was continuously working in the society without any blemish and misconduct. That being the situation, the appellant society served the show cause notice dated 14.09.2001 and the dismissal order dated 27.09.2001 on 17.11.2001 in person. In the said show cause notice dated 14.09.2001, it is stated that the erstwhile officer of the second respondent appointed the second respondent without following the existing rules and without any sponsorship from the employment exchange and hence, they sought for explanation within 7 days. In the dismissal order dated 27.09.2001, it is stated that the second respondent failed to give explanation and hence he was liable to be terminated from the service on the ground that the appointment was made on the basis of the irregular resolution of the previous board and consequentially the said appointment was irregular. The same was



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challenged by the second respondent before the Labour Court. The conciliation proceedings also ended in failure and thereafter, the Labour court after the trial, passed the order on 26.07.2013 setting aside the said dismissal order. Challenging the same, the society filed writ petition in W.P.(MD).No. 2673 of 2014 and writ court also confirmed the same by passing the impugned order dated 23.03.2018, challenging the same, the present writ appeal is filed.

3.The learned counsel appearing for the appellant submitted that the appointment was made beyond the cadre strength. Hence, the appointment was illegal. Therefore, the show cause notice was issued and the termination order was passed and the same is in accordance with law. Both the Labour Court as well as the writ Court failed to appreciate the same. Hence, he seeks to allow this appeal

4.The learned counsel appearing for the second respondent submitted that there was no substance in the argument of the learned counsel for the appellant. He specifically stated that he was appointed through the employment exchange and the same was admitted in the counter and also both the Labour Court and the writ Court also



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considered the same. The cadre strength is concerned, there was no pleadings and also there was no charge. The charge memo was issued only on the premise that the second respondent was not appointed through the employment exchange and for his appointment was beyond cadre strength, there was no charge. Hence, as per the findings of the learned Labour Court that the department took a different stand at different times, to suit the convenience, which is not appreciable and hence, he seeks for the dismissal of this writ appeal.

5.This Court considered rival submission made on either side and perused the records.

6. The specific pleading of the second respondent before the labour court in the I.D.No. 97 of 2002 is that the show cause notice dated 14.09.2001 and dismissal order dated 27.09.2001 were served upon the second respondent on 17.11.2001. The said pleading and his evidence has not been repudiated by the appellant society either through the oral evidence or the documentary evidence. Hence, the termination order passed without issuing show cause notice and obtaining the explanation and framing the charges and conducting the domestic enquiry and getting



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the enquiry officer report is wrong.

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6.1. In the show cause notice and the termination order the submission made before the labour Court are not in uniform. Earlier, they mainly contended that the second respondent's appointment was made illegally through back door entry i.e., without obtaining the employment seniority, the previous management appointed him. From the records, it is clear that the said allegation is not correct. Under Ex.W2, the District Employment office forwarded the seniority list of 5 persons eligible for selection as a peon. The second respondent was the one among the persons. The interview card was sent to the second respondent under Ex.W3 to attend the interview on 07.02.2001. He was selected on 05.02.2001 and the appellant bank had passed the resolution on 07.02.2001 selecting the second respondent for the post of peon at a consolidate fee of Rs.1300/- as per month under Ex.W4 and the appointment order was issued under Ex.P5. In the said circumstances, the allegation that the petitioner was appointed without following the employment seniority is not correct. The said factual aspect was properly appreciated by the labour court and the same was reconsidered by the writ court and this court also perused the records and finds no error in the



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said finding of the both labour court and the writ court. Therefore, the argument of the appellant counsel that the appointment of the second respondent is illegal cannot be accepted.

6.2. The Learned counsel for the appellant's further submission that the appointment was beyond cadre strength and hence his appointment was illegal is without pleadings and without evidence. In this aspect, admittedly no domestic enquiry was conducted by issuing such charge memo. Even as per the unchallenged evidence of the second respondent, it is found that the termination order and show cause notices were issued on the same day. In the show cause notice, it is only stated that the appointment was not made by calling the eligible candidates from the district employment exchange. But, before this Court, they made a different submission. It is settled principle that disciplinary proceedings should be commenced with issuance of charge memo with specific allegation, framing of the charges with specific imputations and prove the said imputation with adequate evidence and on the proof of the same proper punishment to be rendered. They cannot be allowed to make a submission different from the charge memo, in the higher forum. Therefore, this Court is unable to accept the argument.



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6.3. Apart from that either before labour court, writ court or before this court during the course of the hearing of this writ appeal, they have not produced any material including bye laws and order to substantiate their contention that the appointment was made beyond cadre strength. Therefore, mere submission without pleadings and evidence cannot be accepted.

6.4. In the said circumstances the labour court thoroughly gone into all aspect, set aside the termination order dated 27.09.2001 passed against the second respondent. Considering the principle lay down by the Hon'ble Supreme Court, the labour court only awarded 25% backwages. The writ court also accepted the same and dismissed the second respondent's writ petition seeking full backwages. Hence, in all aspect this court finds no merits in the writ appeal and the same is liable to be dismissed.

7. Accordingly, this writ appeal is dismissed with direction to the appellant to settle the entire due amount of the second respondent within a period of four weeks from the date of receipt of the copy of this order.



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No costs.

Consequently, the connected civil miscellaneous petition is closed.

[P.V.J.] & [K.K.R.K.J.]

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NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To:

The Presiding Officer,
Labour Court, Madurai.



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