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W.P. No. 13520 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON	02132025
PRONOUNCED ON	12/03/2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. No.13520 of 2020

and

W.M.P. Nos. 16731 of 2020 and 9385 of 2021

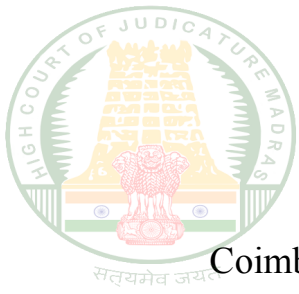
K-1758, Rudhrapalayam Primary
Agriculture Co-operative Credit Society,
Represented by its President,
Rudhrapalayam, Madathukulam Taluk,
Tirupur District ...Petitioner

Vs.

D.Ambi,
S/o. Dharmaraj,
No.4/142, Gandhipuram,
Gandhi Nagar (Post),
Udumalpet,
Tirupur District. ...Respondent

Prayer in W.P.

To issue a Writ of Certiorari or any other writ or appropriate order or direction, calling the records of the learned Additional Labour Court



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Coimbatore, relating to the award dated 20.01.2020 and made in ID.No.9/2016 on the file of the learned Additional Labour Court Coimbatore setting aside the order of the petitioner society dated 13.05.2014 dismissing the respondent from the service of the petitioner society and quash the same as illegal and without jurisdiction.

Prayer in W.M.P. No. 16731 of 2020

To stay the operation of the award passed in ID. No.9/2016 dated 20.01.2020 on the file of the learned Additional Labour Court Coimbatore, pending disposal of above writ petition.

Prayer in W.M.P. No. 9385 of 2021

To direct the Writ Petitioner to pay him the last drawn wages from the date of award to till date and to pay 17-B wages every month till the disposal of the above writ petition.

Appearance of Parties:

For Petitioner: M/s. G.Nagarajan and Mr. P. Suresh Babu, Advocates.

For Respondent: Mr. R. Balaramesh, Advocate

For M/s. B.Jijaa and R.Senthamil Selvi, Advocates.

J U D G M E N T



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Heard.

2. The writ petitioner, a primary co-operative society, has filed the present writ petition challenging the order passed by the Additional Labour Court, Coimbatore, in I.D. No. 9 of 2016 dated 20.01.2020. By the impugned award, the Labour Court set aside the dismissal order dated 13.05.2014 issued against the respondent workman and directed his reinstatement with continuity of service. However, the court denied back wages, granting only notional annual increments for the period of non-employment.

3. In the writ petition, notice was ordered on 25.09.2020. Although the management sought an interim stay in W.M.P. No. 16731 of 2020, no order was passed. The respondent, upon entering appearance, filed an application under Section 17-B of the Industrial Disputes Act in W.M.P. No. 9385 of 2021, seeking payment of last drawn wages as per the provision. In response, the management of the society filed a counter affidavit, contending that the workman was employed in another society



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and was gainfully engaged, thereby rendering him ineligible for any payment under Section 17-B.

4. The management contended that a charge memo dated 21.02.2014 (Ex.M4) was issued to the respondent workman, containing two charges. The first charge alleged that, as a senior clerk of the society, the respondent had failed to discharge his duties. The second charge accused him of misappropriating funds entrusted to him. Regarding the first charge, it was stated that he had remained absent from 16.09.2012 to 07.03.2013 and again from 12.08.2013 to 24.09.2013. As per the society's byelaws, habitual absence without leave or absence exceeding ten consecutive days constituted serious misconduct.

5. Regarding the charge of misappropriation, it was alleged that when a temporary salesperson of the fair price shop went on casual leave, she entrusted Rs. 9,494 to the respondent workman. However, he misappropriated the amount and subsequently absented himself. Additionally, it was stated that on 12.09.2012, one Subramaniam had paid



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Rs. 23,400 to redeem jewellery pledged against a loan. However, the respondent failed to remit the amount on 14.09.2012 or 15.09.2012 and then proceeded on casual leave, after which he continuously remained absent. To safeguard the reputation of the society, another workman paid the amount and returned the jewellery to Subramaniam.

6. The respondent submitted his reply dated 03.03.2014 (Ex.M5), denying the charges. Following the issuance of an enquiry notice, an enquiry was conducted, and the Enquiry Officer, in his report dated 27.03.2014 (Ex.M8), found that the respondent was a habitual absentee and that the charge of unauthorized absence was proved. However, regarding the allegation of misappropriating Rs. 23,400 and failing to remit the amount to the society, the Enquiry Officer concluded that the charge was not proved. Based on the enquiry report, a second show-cause notice dated 28.03.2014 (Ex.M9) was issued to the respondent, to which he submitted his reply on 04.04.2014 (Ex.M10). Subsequently, by an order dated 13.05.2014, the petitioner management dismissed him from service.

7. The respondent raised a dispute before the Government Labour



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Officer, Tiruppur, challenging his non-employment. However, as the labour officer was unable to secure the respondent's attendance, he issued a failure report dated 30.11.2015. Based on this failure report, the workman filed a claim statement in January 2016. The dispute was then taken on file as I.D. No. 9 of 2016. The petitioner management filed a counter statement dated 26.03.2018. During the proceedings before the Labour Court, the management submitted the enquiry proceedings along with supporting documents for the charges, which were marked as Ex.M1 to Ex.M13.

8. Although the workman initially challenged the fairness of the enquiry, he later made an endorsement on 31.12.2019, stating that he was no longer disputing the enquiry and would confine his arguments to the scope of Section 11A of the Industrial Disputes Act. Upon analyzing the evidence, the Labour Court, in Paragraph 13 of its order, observed that the workman had submitted leave applications and that the reasons for his absence were reflected in Ex.M5 and Ex.M10. Considering this, along with the finding that the charge of misappropriation was not established, and taking into account his 25 years of service without any prior misconduct, the Labour Court passed the final award dated 20.01.2020. It

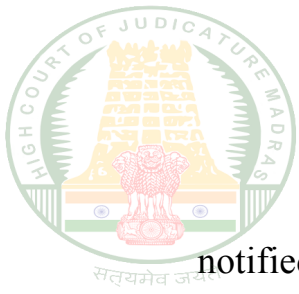


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directed the reinstatement of the workman with continuity of service and the notional calculation of annual increments for the intervening period, while denying back wages. Aggrieved by this award, the management has approached this Court.

9. Although the management, while opposing the claim for last drawn wages under Section 17-B, contended that the workman was employed in another society and gainfully engaged, no evidence was produced to substantiate this claim. Furthermore, no order under Section 17-B has been passed. In the affidavit filed in support of the 17-B application, the workman categorically asserted that he was not employed elsewhere. The only remaining question for consideration is whether the impugned award warrants interference.

10. As noted earlier, the Enquiry Officer himself disallowed the charge of misappropriation, and the termination was solely based on unauthorized absence. However, the Labour Court, after considering the doctor's evidence along with Ex.M5 and Ex.M10, concluded that it was not a case of unauthorized absence, as the management had been duly

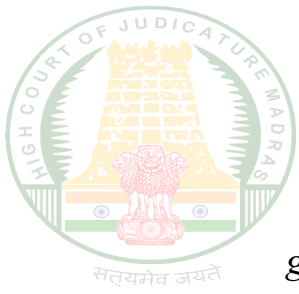


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notified. This finding is purely factual, arrived at by the Labour Court, and under Section 11A of the Industrial Disputes Act, the Labour Court has the authority to reach a different conclusion if warranted.

11. The power of this Court to interfere with a Labour Court's award under Article 226 is highly limited. In *Management of Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan*, reported in 2005 (3) SCC 193, the Supreme Court held as follows:

“Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings



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given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court. The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as by the learned Single Judge and disagreed with the finding of the learned Single Judge.”

12. In light of the foregoing, the writ petition in W.P. No. 13520 of 2020 stands dismissed. However, there shall be no order as to costs. Consequently, W.M.P. Nos. 16731 of 2020 and 9385 of 2021 are also dismissed.

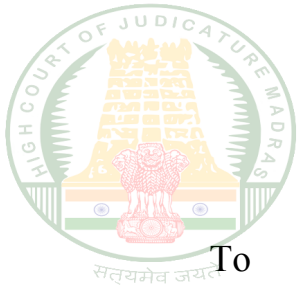
12.03.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No



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To

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The Presiding Officer,
Additional Labour Court,
Coimbatore.
(with records if any)



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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