



W.P.No.935 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.935 of 2014

and

W.M.P. No.1 of 2014

The Management,
A.A.99, Kovai - Erode District,
Co-Operative Pal Jaggery Federation Limited,
Kunnathoor,
Kunnathoor Post,
Perundurai Taluk,
Erode District - 538 103

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2. K.Thangaraj

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India pleased to issue a Writ of Certiorari calling for the records in I.D.No.597 of 2000 dated 06.03.2013 on the file of the first respondent herein and quash the same.



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For Petitioner : Mr.P.S.Sivashanmugasundaram
For R1 : Court
For R2 : Mr.R.Thirugnanam
for M/s.S.Umapathy

ORDER

Unhappy with the order passed by the first respondent Labour Court, Salem, the petitioner management has preferred this writ petition. The short facts are that the second respondent was employed as an Assistant in the petitioner Co-operative Society.

2. According to the petitioner, the second respondent indulged in misappropriation and therefore he was given a charge memo on 22.04.1996 containing three counts of charges. According to the petitioner, the second respondent accepted the charge filed, gave an undertaking that he would reimburse the said amount. However, the second respondent would not make good the loss. The petitioner appointed an enquiry officer and the enquiry officer gave a report that the charges stood proved. The second respondent was terminated by the petitioner vide order dated 30.06.1993. Aggrieved by the dismissal, the second respondent raised an industrial dispute before the first respondent. The Labour Court on an analysis of the evidence placed

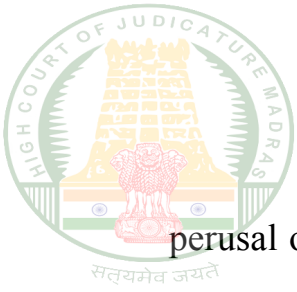


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before it, held that the second respondent cannot be held to have misappropriated any amount and at best he could be said that he was lethargic or inadvertent in his job and set aside the order of dismissal. The Labour Court directed the petitioner to reinstate the second respondent and as regards backwages held that the second respondent should suffer stoppage of increment with cumulative effect for a period of three years from the date of suspension and that he would be entitled to only 40% of the backwages. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the Society submitted that the second respondent himself has admitted that he had indulged in misappropriation and has given an undertaking marked as Ex.M16 to the effect that he would repay the amount of misappropriation to the petitioner. Having admitted his mistake and not returned the money, the second respondent should not have been given any indulgence by the Labour Court. The learned counsel submitted that the Labour Court has shown the undue sympathy to the second respondent and ordered reinstatement. The learned counsel therefore submitted that the order of Labour Court deserves interference.

4. The learned counsel for the second respondent submitted that a



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perusal of the award passed by the Labour Court would show that the Labour Court had taken into consideration all the facts and circumstances of the case and arrived at a finding that the punishment of dismissal is disproportionate to the charge levelled against the second respondent and set aside the same. The Labour Court had not granted entire backwages but had withheld increment for a period of three years with cumulative effect and awarded only 40% of the backwages. The learned counsel therefore submitted that the order of the Labour Court does not require any interference and the same may be sustained.

5. This Court had perused the evidence available on record. Though the learned counsel for the petitioner was harping on the so called admission letter given by the second respondent namely Ex.M.16, the learned Tribunal has analysed the same and held that the said letter cannot be said to be a letter of admission.

6. The second respondent in his evidence has accepted that he has signed in the said letter and he has also deposed that his signature was obtained under coercion. In the said letter, the second respondent has stated names of persons to whom he has given loan and has undertaken to get loan



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repaid by them. The petitioner has charged the second respondent for misappropriation. Misappropriation can be accused only on a person who has no answer to whom he has given the money; in other words, the accused person should have swindled the money for his own use. In this case, the second respondent has given the names of persons to whom he has lent money. The Labour Court has clearly held that the second respondent has only lent money over and above the prescribed loan limit. For example, if only ten persons would be given loan, the second respondent has given loan to fifteen persons. This cannot be said to be an act of misappropriation. It can at best be said that the second respondent was either lethargic or lent the loan inadvertently. The names of the persons to whom the loan was given is very much available with the petitioner. The said loans would very well be collected from the debtors. The act of inadvertence on the part of the second respondent does not warrant an order of dismissal by the petitioner. As rightly observed by the Labour Court, the second respondent would at best be given lesser punishment. Accordingly, the Labour Court has ordered reinstatement of the second respondent with lesser backwages. This Court is in complete agreement with the findings arrived at by the Labour Court.

7. The learned counsel for the petitioner submitted that till date they



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could not collect the loan amount from the persons to whom the second respondent has lent the loan. In that case, the petitioner Society cannot be allowed to suffer loss. Therefore, the award of the Labour Court is modified to the following extent.

8. It is seen that even on the date of the award i.e. in the year 2013, the second respondent was aged around 61 years i.e. he would have crossed the age of superannuation. Whereas, in 2025, the second respondent should approximately be 73 years. Therefore, the question of reinstatement would not arise. The petitioner is therefore directed to settle the terminal benefits for a period of two weeks from the date of receipt of the copy of this order. However, the petitioner is entitled to deduct a sum of Rs.3,89,760/- from the terminal benefits payable to the second respondent.

9. With this modification in the award, this writ petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

05.03.2025

RAP

Index : Yes / No

NCC:Yes/No

To

The Presiding Officer,



Labour Court,
Salem.

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M.DHANDAPANI, J.

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