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W.P.No.35195 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2025

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.35195 of 2024
and W.M.P.Nos.38110 of 2024 and 10605 of 2025

The Management,
K.1471 Velandipalayam Urban,
Co-operative Credit Society,
Rep.by its Secretary i/c,
No.11/43, Sastri Street,
Kovilmedu, Velandipalayam Post,
Coimbatore-641 025.

...Petitioner

Vs.

P.Radhamani

...Respondent

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the preliminary award dated 30.05.2023 and final award dated 25.09.2024 made in I.D.No.1 of 2022 on the file of the Labour Court, Coimbatore and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.K.V.Shanmuganathan



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ORDER

The present petition has been directed against the final award dated 25.9.2024 made in I.D. No.1/2022, in and by which, the Labour Court, Coimbatore, set aside the order of dismissal of the respondent and further directed the reinstatement of the respondent with 25% backwages and other benefits.

2. It is the case of the petitioner that the respondent was working as clerk/jewel appraiser and in the course of his employment, the respondent, colluding with other employees, misappropriated several crores of rupees from the society, which irregularities, upon coming to light in the statutory enquiry u/s 81 of the Co-operative Societies Act, led to the initiation of enquiry and a report was recommending actions against the various employees, including the respondent herein. Pursuant to the said report, charge memo was issued to the respondent and other employees and after conduct of departmental proceedings following the procedures laid down, the respondent was dismissed from service.



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3. It is the further case of the petitioner that the respondent raised a dispute in I.D. No.1/2022 and the Labour Court, without application of mind, unilaterally passed a preliminary order on 30.05.2023 holding that the enquiry has not been conducted in a fair and proper manner and directed the petitioner to prove the same in the pending dispute. It is the further averment of the petitioner that pursuant to the enquiry report, the Deputy Registrar of Co-operative Society, Coimbatore Circle filed a criminal complaint before the CCIW, Coimbatore in Crime No.1 of 2020, which was taken on file by the learned Judicial Magistrate-IV, Coimbatore in C.C.No.2147 of 2022. As the criminal case and the disciplinary proceedings were based on the same set of documents, in view of the criminal prosecution, all the documents were seized of by the law enforcing authorities and produced before the criminal court. Though this fact was brought to the notice of the Labour Court, the Labour Court without taking note of the criminal case had passed the aforesaid preliminary order on 30.05.2023.



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4. It is the further averment of the petitioner that the Deputy Registrar of Co-operative Societies, Coimbatore Circle, prior to the award of the Labour Court, passed the surcharge order dated 8.10.2020 against the respondent and others for Rs.10,45,82,048/- and against the said surcharge proceedings, the respondent and others took the matter before the Co-operative Tribunal in CMA (CS) No.30/2020, which is pending disposal. In spite of the charge of misappropriation established during the domestic enquiry and surcharge order and the criminal case is pending, the Labour Court, without considering the same, passed the final award directing reinstatement of the respondent with 25% backwages, which is impugned in the present writ petition.

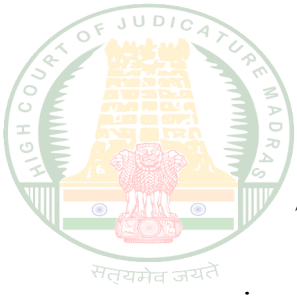
5. Learned counsel appearing for the petitioner submitted that the impugned order is perverse and arbitrary, as it overlooked the basic fact that the enquiry was conducted properly and the respondent fully participated in the enquiry and gave her statement. It is the further submission of the learned counsel that all the documentary evidence form part of the criminal



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prosecution in C.C.No.2147 of 2022 and the petitioner sought time to produce the same to establish the charges, but the Labour Court hastily set aside the order of dismissal without affording an opportunity to the petitioner to establish the same, which vitiates the order.

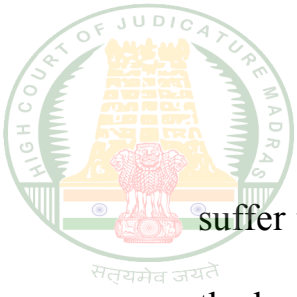
6. It is the further submission of the learned counsel that the charges in the domestic enquiry and the criminal case are one and the same and the Labour Court ought to have awaited the verdict in the criminal case before pronouncing orders, as the orders in the criminal case, though not binding on the departmental proceeding, but would have a direct impact on the course of the departmental proceeding. It is further submitted that if really the Labour Court was keen to adjudicate the matter, the court below ought to have called for the records from the criminal court to adjudicate the matter and passing the award without the materials is grossly unsustainable and perverse and the same deserves to be interfered with.



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7. It is the further submission of the learned counsel that the seriousness of the charge has not been gone into by the court below and as a matter of routine, the court below has passed an award of reinstatement with 25% backwages, inspite of the fact that the enquiry was held and the report was against the respondent leading to the dismissal of the respondent from service.

8. Per contra, learned counsel appearing for the respondent submitted that the domestic enquiry and criminal prosecution are different proceedings though on the same set of facts and the manner in which the disciplinary proceedings was conducted was gone into by the court below, which found that there is violation of principles of natural justice in the enquiry, as the materials, which are material to proving the charges against the respondent have not formed part of the enquiry nor were they placed before the Labour Court inspite of the Court calling upon the petitioner to prove that the domestic enquiry was conducted in a fair and proper manner. Therefore, holding that the enquiry has not been conducted properly, the Labour court has set aside the order of dismissal and passed the award, which does not



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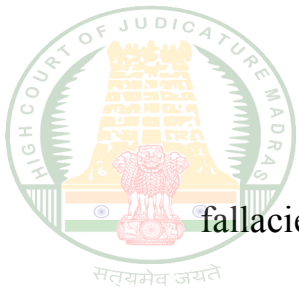
suffer the vice of illegality and the same does not warrant any interference at the hands of this Court.

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9. This Court gave its careful consideration to the materials available on record and the contentions advanced by the learned counsel appearing on either side.

10. Charges were framed against the respondent and other employees with regard to the misappropriation alleged to have taken place and simultaneously, criminal machinery was also set in motion by filing of complaint and taking cognizance thereof by the criminal court. Upon taking cognizance of the matter, the Law Enforcing Agency had produced the material records, which are necessary to establish the case before the criminal court. The said factum is not in dispute.

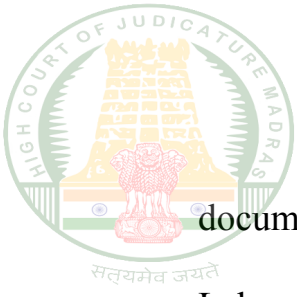
11. The Labour Court, at the preliminary stage, had passed an award holding that the enquiry was not held in a fair and proper manner and had called upon the petitioner to establish that the enquiry was properly held. The



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fallacies pointed out by the Court below pertain to non-payment of sustenance wages during the period of suspension, certain questions, which are alleged to have not been put forth to the delinquent, certain omissions in the conduct of the enquiry. One other aspect which had weighed with the court below is that certain documents have not been given to the delinquent and that requisite opportunity was not given to the delinquent to put forth the case.

12. However, it should not be lost sight of that in the departmental enquiry, the documents, which formed the basis of the criminal prosecution, were held by the criminal court at the instance of the law enforcing agency and were not available with the department. If really, the court below was inclined to see that the enquiry did not provide opportunity and documents to the delinquent, it ought to have called for the documents from the criminal court to peruse the same to find out the truthfulness in the case. However, without doing so, the Labour Court has set aside the order of dismissal, which is grossly perverse. The non-placement of any evidence by the petitioner is on account of the criminal court being entrusted with the



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documents and the same cannot be put against the petitioner alone. The Labour Court ought to have called for the documents before deciding the issue, which alone would have been the proper course, considering the seriousness and gravity of the offence alleged to have been committed by the respondent in connivance with the other employees, more particularly relating to public money. Therefore, the impugned order of the Labour Court suffers the vice of perversity, illegality and arbitrariness and the same deserves to be set aside.

13. In the result, the impugned award dated 25.09.2024 passed by the Labour Court, Coimbatore in I.D.No.1 of 2022 is set aside and the matter is remanded to the Labour Court, which is directed to take up the case on file and after affording opportunity for the petitioner and the respondent to lead evidence, consider the issue and pass appropriate orders in accordance with law as expeditiously as possible.



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14. This Writ Petition is allowed with the aforesaid observations and directions. No costs. Connected miscellaneous petitions are closed.

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ssb

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

The Labour Court, Coimbatore.



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