



SA(MD)No.973 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/02/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.973 of 2005

Manikadan : Appellant/Plaintiff

Vs.

1.Paraicode Primary Agricultural
Co-operative Bank Limited,
Rep. by its Secretary,
Paraicode,
Mulagumoodu Post,
Kanyakumari District.

2.The Secretary,
Paraicode Primary Agricultural
Co-operative Bank Ltd.,
Paraicode,
Kanyakumari District.

: Respondent/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in AS No.41 of 2003 on the file of the Sub Court, Nagercoil (Camp at Padmanabhapuram), dated 12/03/2005 confirming the the judgment and decree in OS No.245 of 2001 on the file of the Principal District Munsif Court, Padamanabhapuram, Kanyakumari District, 15/03/2003.

For Appellant : Mr.C.K.M.Appaji

For Respondent : Mr.D.S.Nedunchezian
Government Advocate



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JUDGMENT

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This second appeal is filed against the judgment and decree passed in AS No.41 of 2003 by the Sub Court, Nagercoil (Camp at Padmanabhapuram), dated 12/03/2005 confirming the the judgment and decree in OS No.245 of 2001 passed by the Principal District Munsif Court, Padamanabhapuram, Kanyakumari District, dated 15/03/2003.

2.The plaint averments:-

The Plaintiff was appointed as Appraiser in the first defendant's Society on 30/06/2000. He joined duty on 01/07/2000. He is entitled for 60% of the charges on the valuation. He received the fees on 03/07/2001. On 12/07/2001, he was orally informed by the the second defendant that he need not attend the duty thereafter. Without following the procedure and rules, the above said oral direction was issued. So, the suit is laid for permanent injunction and costs.

3.The statement:- The suit itself is barred under section 156 of the Tamil Nadu Cooperative Societies Act. There was no intention on the part of the first defendant to terminate the service of the plaintiff. Even if any necessity arises, the first defendant can use that power. More over, the plaintiff is only an Agent getting



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commission, working on the commission basis. He is not a permanent employee. Before him, some other person was the Agent. Since he was not attending the duty properly, the plaintiff was appointed in that place. One Kumaresan also filed a suit for permanent injunction and obtained a decree. As a counter suit, this suit is filed by the plaintiff.

4. On the basis of the pleadings, the trial Court formulated the following issues:-

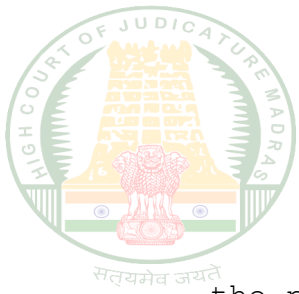
(1). Whether the order, dated 30.6.2000 appointing the plaintiff as a appraiser in the defendant's bank valid?

(2). Whether the plaintiff is working in the defendant bank continuously for more than the statutory period?

(3). Whether the defendants have the right to dismiss the plaintiff?

(4). Whether the plaintiff is entitled for permanent injunction as prayed for in the plaint? and

(5). To what other reliefs, the plaintiff is entitled to?



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5.The following Additional issue was framed before the pronouncement of the judgment by the trial court:-

"Whether the suit is barred under section 156 of the Tamil Nadu Cooperative Societies Act?"

6.To substantiate the contention on the part of the plaintiff, one witness was examined and marked 2 documents on his side. On the side of the defendants, no oral or documentary evidence was adduced.

7.At the end of the trial process, the trial court dismissed the suit without any costs. Against which, A.S No.41of 2003 was preferred by the plaintiff before the Sub Court, Nagercoil. The appellate Court also dismissed the appeal.

8.Against which, this second appeal has been preferred by the plaintiff.

9.At the time of admission, the following substantial question of law was framed by this court:-



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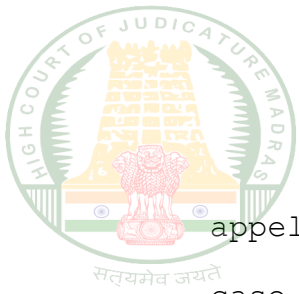
(1)Whether the courts below are justified in law in rejecting the claim of the appellant since the respondents have illegally prevented the appellant from discharging his duties and also without cancelling his appointment order E.A1?

(2)Whether the courts below are justified in law in holding that the appellant is not entitled to the relief of injunction since he was illegally prevented from discharging his duties?

(3)Whether the courts below are justified in law in rejecting the relief of injunction since the respondents without terminating the services of the appellant prevented the appellant from discharging his duties?

10.Heard both sides.

11.Only a short point arises for consideration whether the suit itself maintainable? Because the



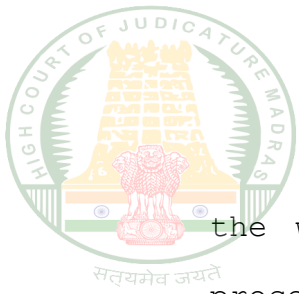
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appellant is not a regular workman or employee as the case may be of the respondents society. The order, dated 30/06/2000 does not even indicate that he is the permanent employee. He was asked to join the duty on 01/07/2000 as Appraiser. He must pay Rs.5,000/- as security deposit. The terms of the employment is not before this court. As per the procedure, he was paid 60% of the valuation made by him in respect of the jewels pledged by the customers. This is not denied and disputed by the appellant. He would say during the course of the cross examination that only on commission basis, he was appointed. Before him, one Kumaresan was working as Appraiser. He was removed from service. In his place, he was appointed. He was not issued with any notice. Apprehending that he may be removed from the service, he has filed the suit.

12.The suit was filed on 17/07/2001. He was examined on 10/01/2003. Till that date, he was not terminated from the service. So, this itself shows the apprehension of the appellant is not well founded.

13.He would further say that he filed a writ petition before this court and that was dismissed. In the plaint, he has not stated anything about the dismissal of



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the writ petition. Even during the course of the trial process, he has not chosen to file those documents. What was the order passed in the writ petition is not known. More over, it appears that he is not a permanent employee.

14.Now the position of the Appraiser was elaborately considered by the Hon'ble Supreme Court in the judgment reported in **General Manager, Indian Overseas Bank Vs. Workmen, All India Overseas Bank (AIR 2006 SUPREME COURT 1699)**, which was followed by this court in **Indian Bank, Represented by its General Manager, Chennai Vs. The Presiding Officer, Central Government Industrial Tribunal, Chennai and another (WP No.24963 of 2004, dated 18/09/2019)**, which is of similar in nature. It is held that Appraiser will not be come under the definition of workman under the provision of the Industrial Dispute Act as defined under section 2(s) of the Act, which is extracted hereunder:-

..(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



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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 ([45 of 1950](#)), or the Army Act, 1950 ([46 of 1950](#)), or the Navy Act, 1957 ([62 of 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."

15.More-over, contract of employment cannot be specifically enforced. In this context, section 41(e) of the Specific Relief Act can be extracted hereunder:-

"...(e)to prevent the breach of a contract the performance of which would not be specifically enforced.'

16.More-over, even if we consider that the appellant will come under the definition clause of section 2(s) of



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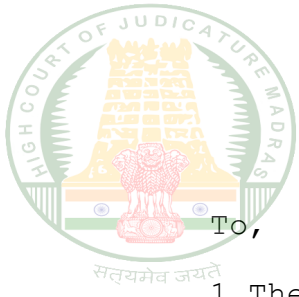
the Industrial Dispute Act, unless any action of termination is initiated against him, he cannot resort to any sort of proceedings under the provisions of Industrial Dispute Act.

17.As mentioned above, mere apprehension or fear in his mind, the suit has been filed. As on date of his examination, he was not terminated from service. The suit itself is unwarranted, based upon the misconception of facts and law.

18.On that sole ground, I find absolutely none of the substantial question of law arise in this second appeal. Accordingly, this second appeal fails and the same is **dismissed** without costs.

25/02/2025

Index:Yes/No
Internet:Yes/No
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To,

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- 1.The Principal Sub Judge,
Nagercoil.
- 2.The Principal District Munsif,
Padmanabhapuram,
Nagercoil.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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