



W.P.(MD).No.8877 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.8877 of 2021

and

W.M.P(MD) No.6678 of 2021

The Management,
Kumbakonam Central
Cooperative Bank Limited,
Represented by its Managing Director/
Joint Registrar,
Kumbakonam,
Thanjavur District.

... Petitioner

Vs.

1. The Deputy Commissioner of Labour,
Appellate Authority under the
Tamil Nadu Shops and
Establishments Act, 1947,
Trichirappalli.

2. M.Rangaiyan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent vide த.கா.நி.ச. எண். 2/2012 நாள் : 21.01.2021 and quash the same.



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For Petitioner : Mr.D.Shanmugaraja Sethupathi

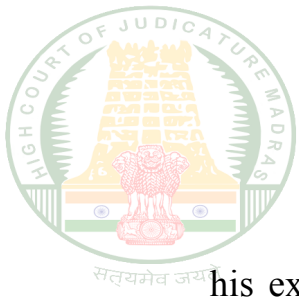
For R1 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

For R2 : Mr.A.Senthilkumar

ORDER

The Management of Kumbakonam Central Co-operative Bank has filed the present Writ Petition challenging the order passed by the first respondent herein, wherein, an appeal filed by the Secretary of the Co-operative Society has been allowed and his order of termination has been set aside. The first respondent had passed an order of reinstatement of the second respondent with 50% of back wages.

2. The second respondent herein, who was working as a Secretary of the petitioner Co-operative Bank was issued with a charge Memo on 25.10.1986, on various allegations. The second respondent herein has submitted his explanation on 15.04.1987. An enquiry Officer was appointed and he has submitted a report on 01.06.1988 stating that all the charges as against the second respondent stand proved. The Management has issued a second show cause notice to the second respondent on 04.01.1989 calling for



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his explanation why he should not have been terminated from service. The second respondent has submitted his explanation on 17.01.1989. Thereafter, an order of termination came to be passed by the petitioner Management on 27.01.1989.

3. Challenging the order of termination, the second respondent herein had raised industrial dispute before the Labour Court, Cuddalore, in I.D.No. 268 of 1992. The Labour Court was pleased to pass an award on 24.07.2001, setting aside the order of termination and issued a direction for reinstatement with full back wages. This order of the Labour Court put to challenge by the Management before this Court in W.P.No.43954 of 2002. This Court, by an order dated 06.10.2009, arrived at a finding that the Labour Court has no jurisdiction to entertain an industrial dispute arising out of an order passed by the Management of Central Co-operative Bank. This Court further found that only the appellate authority under the Tamil Nadu Shops and Establishments Act is the competent authority to consider the grievance of the workman. This Court has granted four weeks time to the workman to approach the competent authority. With the above said observation, the writ petition was disposed of.

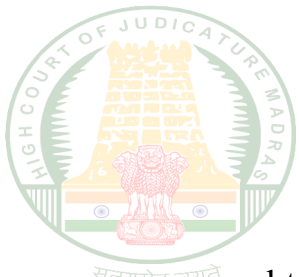


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4. In compliance with the order of this Court, the second respondent herein has approached the first respondent and has filed T.N.S.E.No.3 of 2011 seeking to set aside the order of termination. The appellate authority under the Tamil Nadu Shops and Establishments Act, 1947, after considering the submissions made on either side and perusing the documents filed, had set aside the order of termination and has directed to reinstatement of the second respondent with 50% back wages. Challenging this order, the present Writ Petition has been filed by the Management.

5. According to the learned counsel appearing for the writ petitioner/ Management, the second respondent/workman after having received several notices during enquiry has not chosen to appear before the Enquiry Officer. He has not chosen to cross examine the witnesses produced on the side of the Management. Therefore, the Enquiry Officer has rightly arrived at a finding that all the charges as against the writ petitioner have been proved. He further submitted that when the enquiry has been conducted in a fair manner and after strict compliance of principles of natural justice, the first respondent



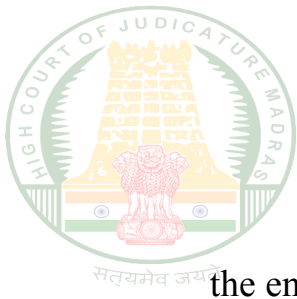
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ought not to have interfered in the order of termination issued by the petitioner/Management.

6. The learned counsel appearing for the petitioner further submitted that the workman himself had made his submission before the first respondent that he is not raising any objection with regard to the manner of conduct of the domestic enquiry and therefore, in such circumstances, the first respondent ought not to have set aside the order of termination passed by the Management. He further submitted that the Enquiry Officer has considered all the documents filed on the side of the Management and the witnesses, who were examined on the side of the Management and had arrived at an independent finding that the charges as against the second respondent has been proved.

7. Per contra, the learned counsel appearing for the second respondent/workman submitted that he was not paid the subsistence allowance throughout the period of enquiry. The workman has been continuously sending letters to the Enquiry Officer contending that he is not able to appear for enquiry due to the non-payment of the subsistence allowance. Therefore,



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the enquiry report and the order of termination get vitiated in view of the non-payment of subsistence allowance.

8. The learned counsel appearing for the second respondent further contended that though he had submitted an explanation to the charge Memo on 15.04.1987, the said explanation was not at all considered by the Enquiry Officer. The Enquiry Officer has arrived at a finding that the charges as against the workman have been proved merely based upon the documents and witnesses produced on the side of the Management, without even considering the explanation offered by the workman.

9. Heard both sides and perused the materials available on records.

10. A perusal of the charge Memo, dated 03.04.1987, reveals that three charges have been laid as against the second respondent. The first two charges relate to the alleged misappropriation of the funds of the Society by making wrong entries in the ledger books as if the fertilizer loan has been distributed to the members of the Society. The third charge relates to the non-submission of explanation to the Charge Memo dated 25.10.1986 which was



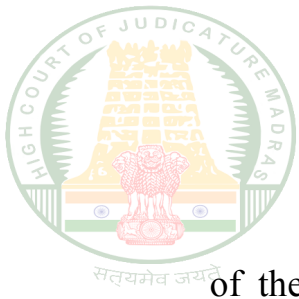
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considered to be an act of insubordination. The second respondent herein has submitted his explanation on 15.04.1987, stating that he would submit his further explanation after receipt of the documents which are called for by him.

11. From the records relating to the domestic enquiry it is clear that the workman had chosen to send letters seeking adjournments and he will not participate in the enquiry. The second respondent has sent the letters under Exs.W.6, W.7, W.8 and W.13 pointing out that due to huge medical expenses, he is not in a position to run his family and unless subsistence allowance is paid, it would be difficult for him to appear for the enquiry. Though these letters are part of the record, there is no response from the Management relating to payment of subsistence allowance. Therefore, it is clear that during the pendency of the domestic enquiry, even though the workman has expressed his inability to attend the enquiry due to non-payment of subsistence allowance, subsistence allowance has not been paid.

12. A further perusal of the domestic enquiry records reveal that the Enquiry Officer has taken into consideration the documents filed on the side

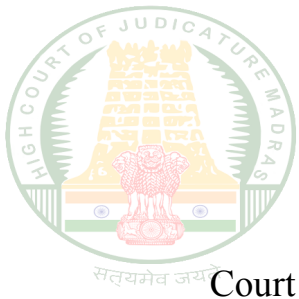


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of the Management as well as the witnesses examined on the side of the Management and has arrived at a finding that the charges as against the second respondent have been proved on the ground that the delinquent has not submitted his explanation. It should be pointed out that the second respondent has already submitted his explanation to the charge Memo on 15.04.1987 itself. However, the explanation has not been taken into consideration by the Enquiry Officer and has simply arrived at a finding that the charges have proved. Even though the delinquent has not appeared for enquiry and let in any oral evidence, the Enquiry Officer, is expected to consider the explanation submitted by the delinquent while considering the Management side documents and the oral evidence. However, the said aspects have not been followed.

13. The appellate authority under the Tamil Nadu Shops and Establishments Act 1947, namely, the first respondent herein has interfered with the order of termination, primarily on the ground that the Enquiry Officer has arrived at a finding that the charges have been proved as against the workman merely on the ground that the workman has not submitted his explanation and he has not chosen to appear before the Enquiry Officer. This



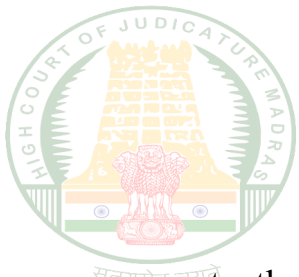
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Court has already found that the explanation offered by the delinquent has not been taken into consideration by the Enquiry Officer. Therefore, the appellate authority has rightly interfered with the order of termination passed by the petitioner Management.

14. The learned counsel appearing for the petitioner Management had made a contention that the termination order was passed on 27.01.1989 and the workman has challenged the termination order before the Labour Court only in the year 1992. Though this Court has passed an order dated 06.10.2009 in W.P.No.43954 of 2002, directing the workman to approach the authority under the Tamil Nadu Shops and Establishment Act, the workman has chosen to approach the competent authority after a delay of two years. In such circumstances, the workman would not be entitled to any back wages as directed by the authority.

15. A perusal of the records reveal that the workman had reached superannuation on 31.08.2007 itself. In such circumstances, any delay on the part of the workman in approaching the competent authority under the Tamil Nadu Shops and Establishments Act, 1947 could not cause any financial loss



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to the petitioner/Management. Therefore, the said contention is not legally sustainable.

16. Considering the fact that the explanation submitted by the workman has not been considered and the subsistence allowance was not paid to the workman during the domestic enquiry despite repeated requests, this Court is not inclined to entertain the writ petition. There are no merits in the writ petition. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

11.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
The Deputy Commissioner of Labour,
Appellate Authority under the
Tamil Nadu Shops and Establishments Act, 1947,
Trichirappalli.

10/11



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R.VIJAYAKUMAR,J.

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