

(2012) 02 MAD CK 0116
In the Madras High Court
Case No : Writ Petition No. 27082 of 2007

D. Vetrithingal

APPELLANT

Vs

Management Tiruvarur Consumer Cooperative Wholesale
Stores Ltd., No. 39, Ellaammankoil Sannadhi
Tiruvarur-610001 and Presiding Officer Labour Court
Cuddalore

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4), 11A

Citation : (2012) 3 LLJ 878 : (2012) LLR 500

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Anbarasan, for the Appellant; E.M.S. Natarajan for R1, for the Respondent

Judgement

K. Chandru

1. The petitioner was employed as an Accounts Manager of the first respondent Cooperative Society. He has filed the present writ petition seeking

to challenge the award passed by the Labour Court, Cuddalore in I.D.No.48/2003 dated 17.04.2007. By the impugned award, the Labour Court

dismissed the Industrial Dispute, without giving any relief to the petitioner.

2. The writ petition was admitted on 14.08.2007. Despite Notice being served on the 1st respondent Society as early as 24.8.2007, the Society

has not chosen to represent before this Court either through their office or counsel.

3. It is seen from the records that the petitioner was employed with effect from 1.1.1976 in the 1st respondent society. He was given a charge

memo dated 15.5.2001 by the Special Officer of the 1st respondent society. The

petitioner gave his explanation. Subsequently, a domestic enquiry was conducted and on the basis of the enquiry report, his further explanation was called for. He also gave explanation on 12.8.2002. He was given a personal hearing. Thereafter by an order dated 26.8.2002, he was dismissed from service.

4. Thereafter, the workman raised a dispute before the Conciliation Officer and the Conciliation Officer after notice to the society, as he could not bring about mediation submitted his failure report dated 31.1.2003. On the strength of the failure report, the workman filed his claim statement dated 2.3.2003. The said claim statement was taken on file and registered as I.D.No.48 of 2003 and notice was ordered to the Society. The petitioner in his claim statement apart from contending on the merits of the dispute also raised a preliminary objection with reference to the legal authority of the Special Officer to pass order of dismissal. According to the petitioner, the Special Officer is not authorised to pass an order of dismissal and he has no jurisdiction.

5. The 1st respondent society filed a counter statement dated 29.9.2003. In the counter statement, it was contended that after the dissolution of the Board of Directors, the functions of the Board of Directors vest with the Special officer as per the provisions of the Tamil Nadu Cooperative Societies Act. Therefore, he has jurisdiction to pass such an order in the place of the Board of Director.

6. Before the Labour Court, the writ petitioner examined himself as W.W.1 and on his side 5 documents were marked as Ex.W.1 to Ex.W.5. On the side of the management, one S. Vetrithingal was examined as M.W.1 and on their side, enquiry proceedings were filed and marked as Ex.M.1 to M.12. The workman also gave a written brief before the Labour Court through his counsel and referred to several case laws. The management also gave their reply in brief before the Labour Court.

7. However, the Labour Court concentrated more on the jurisdiction of the Special Officer to initiate action against the petitioner but did not deal with the merits of the charges levelled against the workman as to whether the enquiry conducted was fair and proper and in case the enquiry was held to be proper, whether the charges levelled against the workman were proved. In assuming that the charges were proved and the punishment

was proportionate to the gravity of the charges, after discussing on the jurisdiction of the Special Officer, the Labour Court in one sentence held

that on the basis of the Society's bye-laws and the other relevant case laws, the power to take action by the Special Officer has been proved and

the dismissal was justified and the workman was not entitled for any relief, thus dismissed the industrial dispute.

8. It is aggrieved by the impugned award, the Writ Petition came to be filed. In paragraph 4(c) of the affidavit, the workman had contended as

follows:

C. The Labour Court has erred in heavily relying upon the point that the disciplinary authority had no jurisdiction. The Labour Court has failed to

consider and pass orders on the various other valid points raised by the petitioner. The impugned order is clearly unreasonable and irrelevant and

convincing materials have unjustifiably eliminated from judicial review though there were compelling reasons for interference in the order of the

disciplinary authority.

9. It is rather unfortunate that the Labour Court which derives power has to comprehensively answer all issues and cannot contend itself only on

the question of preliminary issue relating to the jurisdiction of the Special Officer to pass orders against an employee of the Cooperative Society.

10. A perusal of the claim statement and the written brief submitted clearly shows that before the Labour Court arguments were also addressed on

the merits of the allegation made against the petitioner. Thus the Labour Court failed to discharge its obligations vested in terms of Section 10(4)

read with Section 11-A of the Industrial Disputes Act. However, this Court is not inclined to accept the stand of the worker that the Special

Officer lacks jurisdiction in taking disciplinary action against any one of the members of the society. As rightly held by the Labour Court, the power

so far vested on the Board of Directors is now vested on the Special Officer by the Act created by the Tamil Nadu Legislature in appointing the

Special Officer. But, at the same time, the Labour Court has got bounden duty to decide the justifiability of the non-employment of the petitioner

by going into the merits of the case for which the enquiry proceedings have been filed by the 1st respondent society.

11. Under the said circumstances, the impugned award insofar as dismissing the

Industrial Dispute without any discussion on the merits of the non-employment of the petitioner hereby stands set aside on finding that the Special Officer has got powers to impose penalty. At the same time, as the Labour Court has not passed any comprehensive award, this Court is obliged to remand the matter in I.D.No.48 of 2003 to the Labour Court, Cuddalore for disposal in terms of law.

12. The Labour Court shall proceed to give notice to both sides and dispose of the Industrial Dispute on the merits of the case in terms of the powers vested u/s 11-A of the Industrial Disputes Act. The Writ Petition stands allowed to the extent indicated above.

13. Since the dispute is of the year 2003 and more than 9 years have elapsed, the Labour Court shall give preference for the disposal of the industrial dispute and in any event after due notice to the parties shall dispose of the same within a period of six months from the date of receipt of this order. However, the parties are allowed to bear their own costs.