

(2008) 09 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No. 5802 of 2001

L. Bhojan

APPELLANT

Vs

The Managing Director, the Nilgiris District Central Co-operative Bank Limited, (N.D.C.C.B.L.) and The Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Industrial Disputes Act, 1947 — Section 12(3)

Tamil Nadu Shops and Establishments Act, 1947 — Section 40(1)

Citation : (2008) 09 MAD CK 0096

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : T.R. Sathiyamohan, for the Appellant; M. Sriram, for (R1) and T. Seenivasan, Additional Government Pleader for (R2), for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. This writ petition has been filed praying for a writ of mandamus to direct the first and second respondents to implement the wage revision as per

the settlement, dated 21.2.1997, entered into between the management of the first respondent Bank and the employees association, u/s 12(3) of

the Industrial Disputes Act, 1947.

3. It has been stated that the petitioner had joined the services of the first respondent Bank in the year 1967 as a Group Clerk. Later, he was

promoted to the various posts and at the time of the filing of the present writ petition, he was holding the post of Assistant Manager. While so, the

petitioner had gone on leave and thereafter, the leave was extended on medical grounds. However, a charge memo, dated 16.7.96 and a suspension order, dated 12.7.96, were served on the petitioner by the Manager (Personnel), on 18.7.96. While the petitioner was on medical leave. The allegations levelled against the petitioner in the charge memo, dated 16.7.96, were false, frivolous and without any basis. The petitioner had been charged for misappropriating the funds of the first respondent Bank, while he was working as a Senior Assistant at the Head Office of the first respondent bank at Udhagamandalam. In spite of a detailed explanation submitted by the petitioner, a domestic enquiry had been conducted against him. The said enquiry was not conducted in a fair and proper manner and it had been conducted without following the principles of natural justice. Based on the findings of the enquiry, the petitioner was dismissed from service by an order, dated 24.4.97. Challenging the said order, the petitioner had preferred an appeal before the Deputy Commissioner of Labour, Coimbatore, the appellate authority, u/s 40(1) of the Tamilnadu Shops and Establishments Act, 1947. The said appeal had been numbered as TNSEA No. 4 of 1997 and the said appeal is still pending on the file of the appellate authority.

4. It has been further stated that prior to the order of dismissal passed against the petitioner, the first respondent Bank had entered into a settlement, on 21.2.1997, revising the scales of pay of the employees of the Bank. The said settlement had been entered into following the expiry of the earlier settlement and it was in accordance with the various Government Orders and the circulars and the recommendations of the streamlining committee, appointed by the Government of Tamilnadu. As per the said settlement all the employees of the first respondent Bank, were on the rolls of employment, as on 30.6.94, and thereafter, they were eligible for the pay revision. Accordingly, the petitioner is eligible for the revision of pay scales, as provided in the settlement, dated 21.2.1997. Even though the petitioner had been dismissed from service by an order, dated 24.4.97, he would be eligible for the revised scales of pay, in accordance with the concluded settlement, dated 21.2.1997, as the wage revision was made applicable to all the employees of the first respondent Bank, who were on the rolls of employment, as on 30.6.1994 and

thereafter. In such circumstances, the petitioner has preferred the present writ petition, under Article 226 of the Constitution of India.

5. Even though no counter affidavit has been filed on behalf of the respondents, the learned counsels appearing on behalf of the respondents had

submitted that the writ petition filed by the petitioner is not maintainable, since the prayer therein is mainly against the first respondent bank, which

is not an authority or body coming under the definition of "State" under Article 12 of the Constitution of India. Further, the petitioner has prayed for

the implementation of a settlement, dated 21.2.1997, concluded u/s 12(3) of the Industrial Disputes Act, 1947. A writ of Mandamus cannot be

issued to implement such a settlement, as it is a contract between the management of the first respondent Bank and its employees. Further, the

petitioner had been dismissed from service by an order, dated 24.4.1997. In such circumstances, the writ petition is liable to be dismissed.

6. In view of the averments made on behalf of the petitioner, as well as the respondents and on a perusal of the records available before this Court,

it is clear that the prayer sought for by the petitioner in the present writ petition cannot be granted. The petitioner has not been in a position to show

as to how he is eligible for the revised scales of pay, even though he had been dismissed from service, by an order, dated 24.4.97. A writ of

mandamus, under Article 226 of the Constitution of India, cannot be issued to implement the settlement, dated 21.2.97, concluded between the

management of the first respondent Bank and its employees, u/s 12(3) of the Industrial Disputes Act, 1947.

In such view of the matter, the writ petition is liable to be dismissed. Accordingly, it is dismissed. No costs.