

W.P.(MD).Nos.13165 and 12621 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.13165 and 12621 of 2019

and

W.M.P(MD) Nos.9808 and 9378 of 2019

W.P(MD) No.13165 of 2019:

The Management,
Madurai District Central Cooperative
Bank Limited,
North Veli Street,
Madurai – 625 001.

... Petitioner

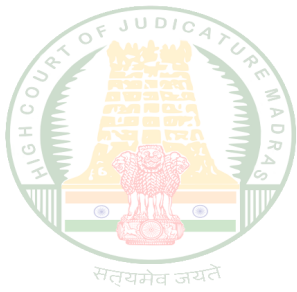
Vs.

1. The Appellate Authority under
Tamil Nadu Shops and
Establishment Act 1947,
The Joint Commissioner of Labour,
Madurai.

2. Radhakrishnan

... 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 relating to the impugned order passed by the first respondent in T.N.S.E.No.04/2015 dated 26.12.2018 and quash the same.



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For Petitioner : Mr.S.Balamurugan
For Mr.D.Senthil

For R1 : M/s.D.Farjana Ghoushia
Special Government Pleader

For R2 : Mr.H.Mohammed Imran
for M/s. Ajmal Associates

W.P(MD) No.12621 of 2019:

D.Radhakrishnan

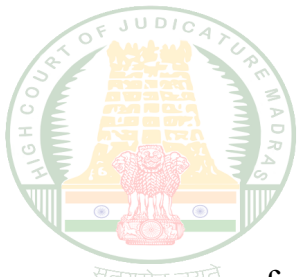
... Petitioner

Vs.

1. The Joint Commissioner, (Labour),
(An appellate authority under the
Tamil Nadu Shops and Establishment Act, 1947)
Office of the Joint Commissioner,
Madurai.
2. The Registrar of Co-operative Societies,
Tailors Road,
Kilpauk, Chennai – 600 010.
3. The Managing Director/
Joint Registrar,
No.975, Madurai District Central
Co-operative Bank Limited,
187, North Veli Street,
Madurai – 1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the second respondent to permit the petitioner to retire from service w.e.f. 31.05.2019 and disburse all his retirement benefits including the arrears of salary in



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conformity with the order dated 26.12.2018 made in case No.TNSE 4 of 2015 passed by the first respondent.

For Petitioner : Mr.H.Mohammed Imran
For M/s. Ajmal Associates

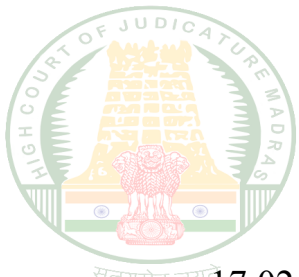
For R1 and R2 : M/s.D.Farjana Ghoushia
Special Government Pleader

For R3 : Mr.S.Balamurugan
For Mr.D.Senthil

COMMON ORDER

W.P(MD) No.13165 of 2019 has been filed by the Management of the Madurai District Central Co-operative Bank challenging the order passed by the first respondent herein in T.N.S.E.No.04/2015, dated 26.12.2018, wherein the order of dismissal passed by the Management has been set aside by the appellate authority.

2. The second respondent herein, was employed as a Branch Manager in the petitioner's Bank. He was issued with a charge Memo on 29.05.2010 on various allegations including the allegation that he had disbursed the loan without following the procedures of the Bank. The delinquent has submitted his explanation on 28.06.2010 and an Enquiry Officer was appointed on

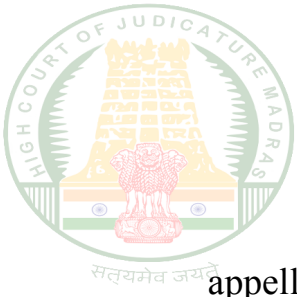


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17.02.2011. The domestic enquiry was concluded and enquiry report was submitted on 29.08.2011 stating that the charges as against the delinquent have been proved. A second show cause notice was issued to the delinquent on 07.09.2011 and punishment of dismissal was imposed on 23.11.2011. Challenging the punishment, the delinquent has preferred an appeal under Section 41 of Tamil Nadu Shops and Establishments Act, before the first respondent on various grounds. The appellate authority after going through the documents filed on the side of the Management, has arrived at a finding that no documents have been filed before the appellate authority to establish as to whether the enquiry was conducted in a fair manner or not. On the basis of the above said finding, the order of dismissal was set aside by the appellate authority. Challenging the same, the present Writ Petition has been filed by the Management.

3. According to the learned counsel appearing for the writ petitioner/ Management, 16 documents were filed before the appellate authority. The documents relating to appointment of enquiry officer, notifying enquiry and the domestic enquiry report have been marked before the appellate authority. Without considering or appreciating of those documents, the order of the

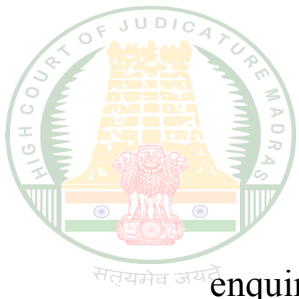


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appellate authority has been passed. He further submitted that the delinquent has committed misappropriation to a tune of Rs.8,22,938/- and admitting the delinquency he has remitted the entire amount to the Bank. In such circumstances, there cannot be any dispute that the Management has proved the delinquency of the workman. He further submitted that, in case, if the appellate authority has arrived at a finding that some documents touching upon the enquiry have not been filed, an opportunity should have been given to the Management. He further submitted that in case, if this Court arrives at a finding that some documents ought to have not been filed by the Management before the appellate authority, the order of the appellate authority may be set aside and the matter may be remitted back to the appellate authority to enable the Management to file those documents.

4. Per contra, the learned counsel appearing for the delinquent submitted that during the enquiry proceedings, opportunity was not given to the workman to cross examine the witnesses produced on the side of the Management. When such a ground was raised, the appellate authority has given a categorical finding that only the enquiry report was marked before him and not the entire file relating to the enquiry proceedings. Unless the



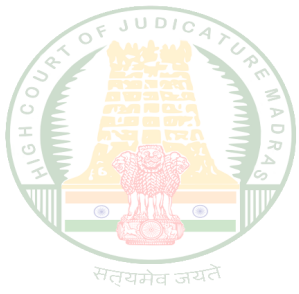
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enquiry proceedings are placed on record, the appellate authority would not be in a position to arrive at a finding that the enquiry has been conducted in a fair manner. When the Management had an opportunity before the appellate authority and they have not utilised such an opportunity, they cannot raise such a plea before the High Court under Article 226 of the Constitution of India. He relied upon the judgment of the Hon'ble Supreme Court reported in ***(1999) 1 SCC 517 (Neeta Kaplish Vs.Presiding Officer, Labour Court and another)*** in support of the contentions.

5. The learned counsel appearing for the respondent further submitted that the entire funds of alleged misappropriation have already been remitted by the delinquent. He further submitted that the criminal proceedings initiated as against the delinquent on the same set of charges has ended in acquittal. Therefore, for the same set of charges, the punishment cannot be imposed on the delinquent.

6. Heard the learned counsel appearing on either side and perused the materials available on record.



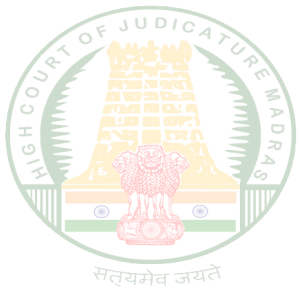
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7. The order of dismissal passed by the management has been set aside by the appellate authority primarily on the ground that records relating to the enquiry proceedings have not been marked before him. There is a dispute as to whether the delinquent was permitted to cross examine the witnesses produced on the side of the Management. Unless, the file relating to the enquiry proceedings are marked, the Management would not be in a position to establish before the appellate authority whether the enquiry was conducted in a fair manner or not. Even though the Management had an opportunity before the appellate authority to file the enquiry proceedings, the Management has not chosen to mark those documents.

8. As rightly pointed out by the learned counsel appearing for the respondent, the Hon'ble Supreme Court in the judgment reported in **(1999) 1 SCC 517 (Neeta Kaplish Vs.Presiding Officer, Labour Court and another)** in paragraph No. 24 has held as follows:

“24. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the



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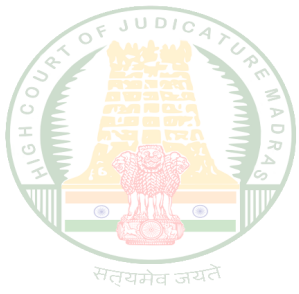


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workman and to show by fresh evidence that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.”

9. Considering the fact that the delinquent has attained superannuation on 31.05.2019 and the entire alleged misappropriated amount has been paid back to the Management, this Court is not inclined to remit the matter back to the appellate authority to enable the Management to restart the enquiry proceedings.

10. W.P(MD) No.12621 of 2019 has been filed by the delinquent seeking a Mandamus to disburse the retirement benefits including the arrears of salary.



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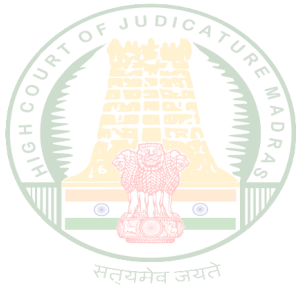
11. Considering the fact that this Court has already upheld the order of the appellate authority in reversing the order of dismissal, this Court is inclined to pass the following order.

a) W.P(MD) No.13165 of 2019 stands dismissed.

b) W.P(MD) No.12621 of 2019 stands allowed with a direction to the respondent Management to disburse the eligible terminal benefits within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

28.07.2025

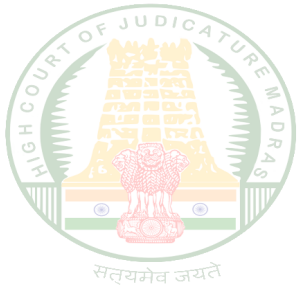
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R.VIJAYAKUMAR,J.

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