

TANCOF Vs Mr. David Karunakaran and The Presiding Officer, Labour Court, Cuddalore

Court: Madras High Court

Date of Decision: Feb. 10, 2012

Acts Referred: Tamil Nadu Co-operative Societies Act, 1961 " Section 137(1), 139(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: P. Anbarasan, for the Appellant; R. Govindaraj For Respondent-1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner is the Liquidator of Tamil Nadu Cooperative Oilseeds Growers Federation Ltd., (for short "TANCOF"). In this Writ Petition, the

Liquidator has challenged the award passed by the Labour Court, in I.D. No. 77 of 2002, dated 24.03.2007. By the impugned award, the Labour

Court set aside the termination of the first respondent, directing his reinstatement with backwages. It is the claim of the first respondent that he was

working as an Assistant in the petitioner-TANCOF from the year 1990. But, however, by order dated 1.8.2001, he was terminated from service,

contrary to the principles of natural justice. As against the order of removal from service, the petitioner raised an Industrial Dispute, before the

Conciliation Officer and as the Conciliation Officer could not bring out mediation, he gave a failure report, dated 5.4.2002. On the strength of the

failure report, the first respondent filed a claim statement before the Labour Court. The Labour Court, registered the dispute in I.D. No. 77 of

2002 and issued a notice to the Chairman of the TANCOF and the Assistant Manager, Agronomic Training, Center, Neiveli. A counter statement

was filed before the Labour Court, wherein, it was informed that the petitioner is working only as an agricultural labourer and not as a regular

worker and in a month, he used to work only for ten days and hence, the provisions of Industrial Disputes Act, 1947, will not apply.

2. In any event, the petitioner-TANCOF was not functioning at the relevant time. Notwithstanding the same, the Labour Court recorded the

evidence of the first respondent, as W.W.1 and through him, three documents were marked, viz., W.1 to W.3. It is on the basis of these materials,

the Labour Court directed reinstatement of the first respondent with backwages, together with all other benefits. But, it was not brought to the

notice of the Labour Court, that TANCOF wound up and proceedings were issued u/s 137 (1) of the Tamil Nadu Cooperative Societies Act.

3. The Commissioner of Agriculture/Registrar of Oil Seeds, Co-operative Societies, by his proceedings dated 22.12.2000, recommended

dissolution of the Society, as the Society could not be running profitably. Therefore, the Society was wound up by the orders of the aforesaid

Department. Subsequent to this, an Official Liquidator was appointed, viz., the Deputy Registrar of Oil Seeds, Office of the Commissioner of

Agriculture, Chempak, Chennai - 5, by the Commissioner of Agriculture, by proceedings dated 22.12.2004. The fact of the appointment of the

Liquidator was also published in Tamil Nadu Government Gazette, by a Gazette Notification, dated 30.03.2005. Therefore, when the Labour

Court proceeded to hear the case and passed final award, on 24.03.2007, the TANCOF was not in existence and the affairs were taken over by

the Liquidator in all fairness. If any relief is to be claimed against the Society, the first respondent should have impleaded the Official Liquidator as a

party to the proceedings. If any such impleadment was made, and if, the fact of liquidation is admitted and the question of reinstatement with

backwages does not arise. It is in that view of the matter, in the affidavit filed in support of the Writ Petition, it was contended that the Labour

Court has committed an error in passing the award in the teeth of liquidation of the Society. In the affidavit, it was also stated that the first

respondent appointment was not legal.

4. It is not necessary to go into the merits of the dispute, inasmuch as, the factum of liquidation was not brought to the notice of the Labour Court

and the Liquidator has not been made as a party, to defend the proceedings. u/s 139 (2) (a) of the Tamil Nadu Co-operative Societies Act, it is

only a liquidator, who could defend any suit or legal proceedings, on behalf of the Registered Society, by the name of his Office. Therefore, the

impugned award passed by the Labour Court does not stand a legal scrutiny.

5. Hence, the Writ Petition is allowed and the award passed by the Labour Court stands set aside. Further, when the Society has wound up, the

question of reinstatement of an employee will not arise. It is made clear that the Liquidator is a party to the proceedings and if any monetary

benefits is due to the first respondent, the first respondent shall make an appropriate application before the Liquidator. If any claim, as the first

respondent/worker has preferred, it has to be made only against the Liquidator and not against the erstwhile Society.
With these observations, the

Writ Petition is allowed. No costs. Consequently, connected M.P. is closed.