

R. Sivakumar Vs The Deputy Registrar of Co-operatives Societies, The Special Officer and The Labour Officer

Court: Madras High Court

Date of Decision: Oct. 21, 2009

Acts Referred: Industrial Disputes Act, 1947 – Section 12(2), 12(3), 12(4), 18(1), 2A(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: N. Kolandaivelu, for the Appellant; R. Neelakandan, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioner was a clerk working in the 2nd respondent society. He raised an industrial dispute before the Government

Labour Officer at Cuddalore against his non-employment. When the matter came up on 02.07.2009, the third respondent Labour Officer gave

certain advice note stating that since the petitioner was not found guilty in terms of the enquiry u/s 81, he should be restored to duty. It was

thereafter, based upon the said advice, the petitioner sent a letter dated 30.07.2008 stating that he was willing to work. When the same was not

considered, the petitioner filed the present writ petition seeking for a direction to the first and second respondents to implement the order of the

third respondent dated 02.07.2008 and to reinstate the petitioner as a clerk with effect from the said date of advice.

2. However, a perusal of the records produced by the petitioner shows that the petitioner was charge sheeted for certain misconduct. After

conducting an enquiry, he was dismissed by the society by an order dated 30.09.2007. When that was the position, the petitioner had raised an

industrial dispute before the Government Labour Officer.

3. If according to him, the proceedings are pending before the third respondent, in O.Mu. No. 309/2008, it is for the petitioner to seek the

assistance of the Labour Officer for the grant of a failure report. The third respondent is only a Conciliation Officer. When a workman files a

complaint that he was not employed by the action of his employer, the Officer can initiate conciliation proceedings and can make efforts to induce

the parties for a compromise. If such compromise materializes ,he can enter into a settlement u/s 18(1) between the parties or if the settlement was

signed in his presence, he can make the settlement u/s 12(3) of the Industrial Disputes Act, 1947.

4. When a Conciliation Officer functions in terms of Section 4 r/w. Section 12(2), he has to only investigate the dispute and all matters affecting the

merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable

settlement of the dispute. If no settlement is possible, the Conciliation Officer has to give his failure report in respect of Section 12(4) of the

Industrial Disputes Act. On the basis of the report, the workman can file his claim statement before the appropriate Labour Court in terms of

Section 2(A)(2) of the Act. The said Labour court will then proceed to adjudicate the issue of non-employment of the petitioner.

5. When that is the legal position, it is not open for the petitioner to file a writ petition seeking to enforce the advice given by the Conciliation

Officer which is neither binding on the parties when no settlement was reached between the parties.

6. The writ petition is misconceived. Hence, the writ petition stands dismissed. It is for the petitioner to approach the third respondent and to seek

for a failure report and thereafter to proceed in accordance with law. No costs. Consequently, connected M.P. No. 1 of 2009 is closed.