

**(2009) 10 MAD CK 0253**

**Madras High Court**

**Case No:** Writ Petition No. 11710 of 2009 and M.P. No. 1 of 2009

R. Sivakumar

APPELLANT

Vs

The Deputy Registrar of  
Co-operatives Societies, The  
Special Officer and The Labour  
Officer

RESPONDENT

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**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

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### **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.