

In the High Court of Judicature at Madras

Dated : 18.2.2015

Coram :

The Honourable Mr. Justice V. RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. R. SHIVAKUMAR

Writ Appeal No. 2494 of 2012

Mr. K. Ramadoss

... Appellant

Vs

1. The Management of Thirunallar,
Village Coop. Agricultural Credit
Society Ltd., Thirunallar, Karaikal.

2. The Presiding Officer, Labour
Tribunal, Karaikal.

... Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 13.6.2012 made in W.P.No.9064 of 2008.

This Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records connected with the award dated 30/03/07 in ID No.8 of 2005 on the file of the 2nd respondent Labour Tribunal, Karaikal and quash the same.

For Appellant : Mr. G. Justin

For Respondent-1 : Mr. S. Sai Prasad for M/s. Sai Raj Associates

R2 : Court

Judgment was delivered by V. Ramasubramanian, J

The appellant was employed as a tractor driver in the Thirunallar Village Cooperative Agricultural Credit Society Limited. Subsequently, due to the sale of the tractor, he was posted as a salesman in the Fair Price Shop No.44 of the same society.

2. Fair Price Shop Nos.44, 53 and 54 of the Thirunallar Village Cooperative Agricultural Credit Society Limited, were transferred by the District Administration to another Cooperative Society by name Karaikal Fair Price Shop Employees Cooperative Society Limited. The said society was prepared to take the services of the appellant as a fresh recruit. However, not accepting the same, the appellant raised an industrial dispute in I.D.No.8 of 2005 impleading only his former employer. In the said industrial dispute, the Labour Tribunal,

Karaikal passed an award on 30.3.2007 directing the reinstatement of the appellant as a salesman with backwages and all attendant benefits.

3. Aggrieved by the award of the Labour Court, the management of the Thirunallar Village Cooperative Agricultural Credit Society Limited filed a writ petition in W.P.No.9064 of 2008 on the file of this Court. The said writ petition was partly allowed by a learned Judge by an order dated 13.6.2012, modifying the award of the Labour Tribunal into one of compensation to the extent of Rs.1,25,000/-. Aggrieved by the said order of the learned Judge, the workman is on appeal before us.

4. We have heard Mr.G.Justin, learned counsel for the appellant and Mr.S.Sai Prasad, learned counsel appearing for the first respondent society.

5. At the outset, what happened before the Labour Tribunal was that the Labour Tribunal proceeded on the erroneous presumption that there was a transfer of undertaking from one society to another and that the provisions of Section 25-FF of the Industrial Disputes Act, 1947 were attracted. But, the learned Judge found that there was no transfer of undertaking and that only three fair price shops were transferred from one society to another.

6. However, on the question as to whether the provisions of Section 25-F of the Industrial Disputes Act, 1947 were followed or not, the learned Judge approved the finding of the Labour Tribunal and held that the mandatory requirement was not satisfied.

7. But nevertheless, the learned Judge found that reinstatement with backwages, into a society, whose fair price shops have already been transferred, was not feasible and that reinstatement need not necessarily follow as a matter of right. The appellant having been given employment in another society as a new recruit, was found by the learned Judge to be not entitled to reinstatement into services of the old society. It is only in that view that the learned Judge modified the award of reinstatement into one for payment of compensation. We find nothing wrong in the view taken by the learned Judge.

8. Mr.G.Justin, learned counsel for the appellant contended, relying upon the decision of the Supreme Court in Principal, Ayurvedic College Vs. Sushil Chandra Misra [2006 (12) SCC 703], that reinstatement with full or at least part of the backwages ought to have been awarded.

9. But, we do not think that the said decision is of any application to the facts of the present case. In the case on hand, the appellant already had one rehabilitation. He was originally appointed only as a tractor driver. After the tractor got into

trouble, it was sold and the appellant was appointed as a salesman. The fair price shop, in which he was employed, was transferred along with two other fair price shops. Therefore, the learned Judge rightly found that the question of reinstatement did not arise.

10. One more point that was taken note of by the learned Judge was that the new society was also not impleaded in the industrial dispute, despite the appellant having taken a plea that there was a transfer of undertaking. Therefore, we find no illegality or infirmity in the order of the learned Judge warranting interference.

11. Accordingly, the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar
Dated:25.2.15

True Copy

Sub Assistant Registrar

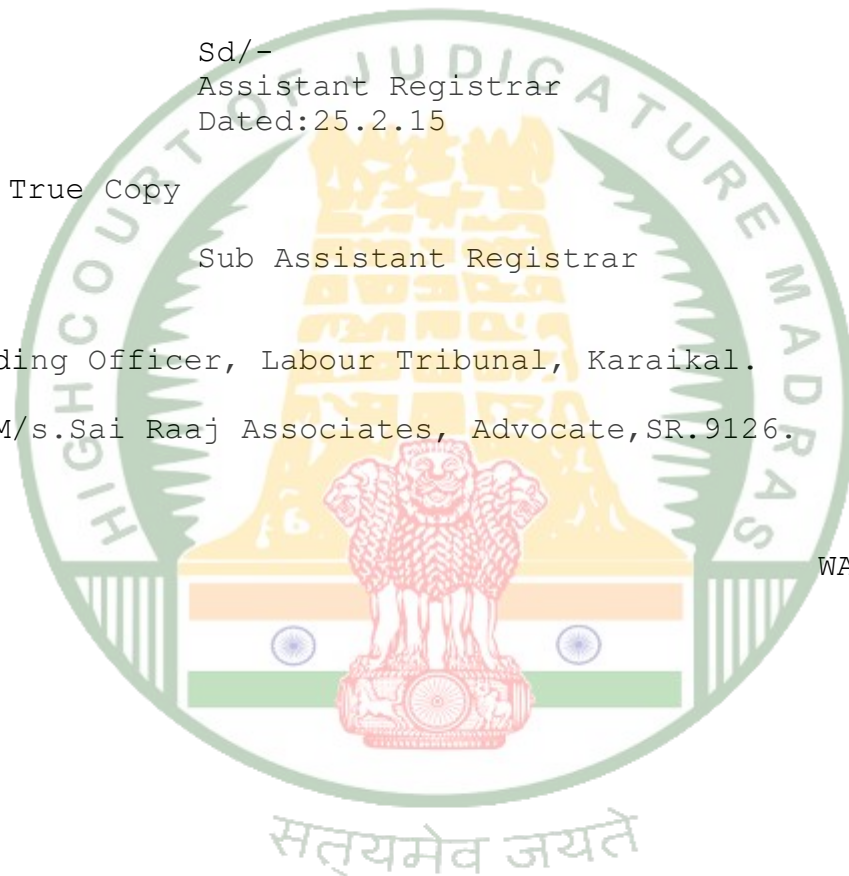
To

The Presiding Officer, Labour Tribunal, Karaikal.

+1 cc to M/s.Sai Raaj Associates, Advocate,SR.9126.

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