

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WP Nos.23193 of 2001 and 12999 of 2002 &

WPMP No.18893 of 2016

The Management of Thiruvarur Consumer
Wholesale Co-operative Stores Ltd.,
39, Ellaiaimman Sannathi Street,
Thiruvarur - 610 001. ... Petitioner in WP.No.23193 of
2001

N.Murugaiyan ... Petitioner in WP.No.12999 of 2002
Vs

1. N.Murgaiyan,
2. The Labour Court,
Cuddalore. ... Respondents in WP.No.23193 of 2001

1. The Presiding Officer,
Labour Court, Cuddalore.
2. The Management,
Thiruvarur Consumer Co-operative
Wholesale Stores Limited,
Thiruvarur. ... Respondents in WP.No.12999 of
2002

Prayer: Petition filed under Section 226 of the Constitution
of India praying for issuance of a writ of Certiorari, to
call for the records relating to the award dated 16.07.2001,
passed in Claim Petition No.65/99 and quash the said order.

For Petitioner : Mr.M.Kalyanasundaram
in WP.23193/2001 Senior Counsel
For N.Thiripurasundari

For Petitioner
in WP.12999/2002: Mr.T.Dhanyakumar
For R1
in WP.23193/2001: Mr.T.Dhanyakumar
For R2
in WP.12999/2002: Mr.M.Kalyanasundaram
Senior Counsel
For Mr.G.Sethuraman

COMMON ORDER

These Writ Petitions have been filed seeking to call for
the records relating to the award dated 16.07.2001, passed in

Claim Petition No.65/99 and quash the said award.

2. For the sake of convenience, the parties are referred to by their name.

3. Murugaiyan was working as Measureman in Thiruvavur Consumer Co-operative Wholesale Stores Limited [for brevity "the Stores"] at Velankanni Branch. He was appointed on 31.03.1978. On 22.10.1982, he was suspended from the Stores for alleged misappropriation of Rs.19,000 and odd. After conducting domestic enquiry, he was dismissed from service on 24.01.1996. Challenging the dismissal, Murugaiyan raised Industrial Dispute in I.D.No.389 of 1986 before the Labour Court, Madras, wherein, an award was passed on 09.05.1990 in his favour, setting aside his dismissal from service and he was directed to be reinstated with backwages. The Stores filed WP No.493 of 1991 before this Court, challenging the award passed by the Labour Court and the same was dismissed on 04.12.1998. Murugaiyan filed C.P.No.65 of 1999 before the Labour Court, Cuddalore, under Section 33 (c) (ii) of the Industrial Disputes Act, 1947, claiming backwages. After hearing both sides, the Labour Court, by award dated 16.07.2001 directed the Stores to pay Rs.86,000/- [Rupees eighty six thousand only] to Murugaiyan, challenging which, the Stores has filed WP No.23193 of 2001 and Murugaiyan has filed WP No.12999 of 2002, challenging the same award.

4. Heard Mr.Kalyanasundaram, learned Senior Counsel appearing for the Stores and Mr.T.Dhanyakumar, learned counsel appearing for Murugaiyan.

5. Mr.Kalyanasundaram, learned Senior counsel submitted that in the Claim Petition in C.P.No.65 of 1999, Murugaiyan had built his claim on the premise that he was drawing Rs.2,120/- as monthly wages, which was negatived by the Labour Court, whereas, the Labour Court has reckoned his monthly wages at Rs.400/- merely on the ipse dixit in the witness box.

6. Per contra, Mr.Dhanyakumar, learned counsel for Murugaiyan submitted that the award of Rs.86,000/- ordered by the Labour Court deserves to be interfered with as the Labour Court had failed to take into consideration the fact that Murugaiyan was drawing Rs.2,120/- per month as wages.

7. This Court gave its anxious consideration to the rival submissions.

8. It is true that in the petition in C.P.No.65 of 1999, Murugaiyan has averred that he was drawing Rs.2,120/- per month as wages. However, during enquiry before the Labour Court, though witnesses were examined on behalf of both sides, no satisfactory evidence was placed before the Labour Court either by Murgayan or by the Stores to determine the monthly salary, that was drawn by Murugaiyan at the time when he was

suspended in the year 1992. The Stores had marked Ex.R1, which showed that Murugaiyan was drawing Rs.180/- during July 1981, whereas, the Stores had not filed the salary particulars of Murugaiyan, as on September 1982, though they would have been having the records in their custody. As regards the claim of Murugaiyan in the Claim Petition that he was drawing Rs.2,120/- per month, when Murugaiyan got into the witness box, he deposed that his last drawn salary was Rs.400/-.

9. In those circumstances, the Labour Court negatived the plea of Murugaiyan that he was drawing Rs.2,120/- and instead, fixed his monthly salary at Rs.400/-.

10. In the considered opinion of this Court, in the absence of both parties placing before the Labour Court, any document in support of their respective claims, the yardstick arrived at by the Labour Court cannot be faulted. The sum of Rs.400/- that was fixed by the Labour Court as against the claim of Rs.2,120/- cannot be said to be imaginary or illegal. Hence, this Court is of the view that this is not a fit case to interfere with the award passed by the Labour Court.

In the result, both the petitions are dismissed and the award dated 16.07.2001 passed by the Labour Court in C.P.No.65 of 199 is hereby confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

The Presiding Officer,
Labour Court, Cuddalore.

+1 cc to M/s.G.Sethuraman, advocate, sr.72266

+1 cc to M/s.T.Dhayakumar, advocate, sr.72090

mp(co)
krd 9/1

WP Nos.23193 of 2001 and
12999 of 2002