



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) Nos.21306 and 21967 of 2016

and

WMP(MD)No.15244 and 15705 of 2016

1. M.Alaguraman ... Petitioner in W.P.(MD)No.21306/2016
2. THE PRESIDENT
A1248, SRI MEENAKSHI MILLS THOLILALARGAL
COOPERATIVE STORES LTD.,
THROUGH ITS PRESIDENT,
DOOR NO.32/1B J.R.ROAD,
SUNDARAJAPURAM,
MADURAI-11. ... Petitioner in W.P.(MD) No.21967/2016

-vs-

1. THE JOINT REGISTRAR OF COOPERTIVE SOCIETY,
MADURAI REGION,
MADURAI-2.
2. THE DEPUTY REGISTRAR OF COOPERTIVE SOCIETY,
MADURAI ZONE, MADURAI.
3. THE PRESIDENT
A1248, SRI MEENAKSHI MILLS THOZHILALARS
COOPERATIVE STORES LTD.,
NO.61-A V.P.COMPLEX, THIRUPPARANKUNDRAM ROAD,
VASANTHA NAGAR,
MADURAI-3. ... Respondents (in W.P.(MD) No.21306/2016)

1. THE DEPUTY COMMISSIONER OF
LABOUR (THE APPELLATE AUTHORITIES UNDER THE
TAMIL NADU SHOP AND ESTABLISHMENT ACT)
RACE COURSE COLONY ROAD, MADURAI.
2. M.ALAGURAMAN ... Respondents in W.P.(MD) No.21967/2016

Prayer in W.P.(MD) No.21306/2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 01.10.2016 passed by the 1st Respondent in his proceedings in Na.Ka.No.759/2013/NuKu and quash the same as



illegal and consequently direct the Respondents to reinstate him in service with consequential benefits vide order dated 04.06.2015 passed in TNSE No.13 of 2014 on the file of the Assistant Commissioner of Labour, Tamil Nadu Shops and Establishment, Madurai within the stipulated time.

WEB COPY

Prayer in W.P. (MD) No.21967/2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the order passed by the Deputy Commissioner of Labour, Madurai, made in TNSE Appeal No.13/2014 dated 04.06.2015 and quash the same as illegal.

For Petitioners : Mr.K.Kulanthai Vikram
(in W.P. (MD) No.21306/2016)
Mr.C.G.Pethanaraj
(in W.P. (MD) No.21967/2016)

For Respondents : Mr.K.P.Krishna Doss, Govt. Advocate,
(For R1 & R2 in W.P. (MD) No.21306/2016 &
For R1 in W.P. (MD) No.21967/2016)
: Mr.R.Saravanan
(For R3 in W.P. (MD) No.21306/2016)
Mr.K.Kulanthai Vikram
(For R2 in W.P. (MD) No.21967/2016)

C O M M O N O R D E R

The writ petition in W.P. (MD) No.21306 of 2016 has been filed by the employee, seeking to quash the impugned order dated 01.10.2016 passed by the 1st respondent in Na.Ka.No.759/2013/NuKu, by which, he has been disengaged on the ground that his services were not regularized. The petitioner also sought a direction to the respondents to reinstate him in service with consequential benefits vide order dated 04.06.2015 passed in TNSE No.13 of 2014 on the file of the Assistant Commissioner of Labour, Tamil Nadu Shops and Establishment, Madurai within the stipulated time.

2. In W.P. (MD) No.21967 of 2016, the challenge is to the order of the authority under the Tamil Nadu Shops and Establishment Act, filed by the Society, whereby the 1st respondent / Appellate Authority has set aside the order of termination dated 16.11.2013 passed by the petitioner.

3. For the sake of brevity, the parties to these writ petitions are referred to as the "employee" (denoting "person employed") and "employer".

4. The employee was disengaged, on the ground that his services were not regularized. It is appropriate to extract Section 41(1) of the Tamil Nadu Shops and Establishment, Madurai as under:

<https://hcservices.ecourts.gov.in/hcservices/>

"41. Notice of dismissal -



1) No employer shall dispense with the services of a person employed continuously for a period of not less than 6 months, except for a reasonable cause and without giving such person at least 1 months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose."

5. It is not in dispute that the employee had joined the services of the employer in the year 1998; that he was disengaged from the service by order dated 30.09.1999 and that he has not challenged the said order, which has subsequently attained finality. However, he was again given employment on 01.04.2013 and after seven months of his service, he was once again disengaged from the service on 16.11.2013. Since the petitioner has completed more than six months of service, it is the duty cast upon the employer to give either one month notice or one month pay in lieu thereof. In the appeal filed before the Appellate Authority by the employee, the dismissal order dated 16.11.2013 was set aside, holding that no material has been produced on the side of the employer to show that the employee had not worked for more than six months.

6. The case of the employer is that the employee is trying to claim all the benefits from the date of so called entry into service from 1998; that the employee is not entitled to any relief and that non payment of wages for the period of one month can be ratified by giving one month notice. However, this contention was negatived by this Court in the case of **State Bank of India vs. Mylsami**, reported in **1987 (2) LLN 301**, holding that the liability to pay wages subsequent to the date of termination subsists till a notice as contemplated by the section or wages in lieu of notice is given.

7. The Hon'ble Division Bench of this Court in the case **The Tata Iron And Steel Co., Ltd. vs G. Ramakrishna Ayyar and another**, reported in **(1950) LLJ 1043 Mad** had clearly held with regard to the circumstances for reinstatement of an employee as under:

"4.....Actually the legal position is this. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher authority. That authority reverses the decision of the employer and the result is that the order of the employer is set aside. It is no longer in existence. It follows that the effect of the original order of the employer also disappears and it is as if the order is non-est. Though, therefore, it may not be quite accurate to say that the



employee will entitled to reinstatement in service, yet the result of the order of the appellate authority is virtually the same. Probably, the result of the appellate order is even better than an order of reinstatement. It is as if the employee had never been properly dismissed from service."

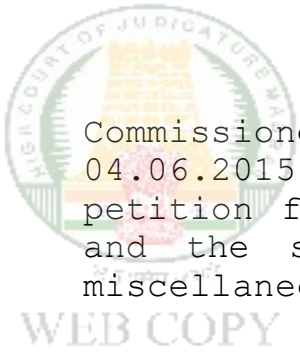
8. Once an order of dismissal is set aside by the Appellate Authority, reinstatement is in-built in the said order. In this case, the fact remains that no one month notice or wages in lieu thereof has been paid and therefore, the order of the Appellate Authority in setting aside the order of termination is perfectly valid, warranting no interference by this Court and the petitioner is entitled to the benefits, as if there is no order passed. The earlier order dated 30.09.1999 has become final and that he has been reinstated/reemployed on 01.04.2013. The impugned order dated 01.10.2016 is apparently illegal, because in view of the previous order being set aside, he is deemed to be in service from that date, namely, 01.04.2013 and moreover, as rightly pointed out by the employee, the impugned order dated 01.10.2016 does not refer to any provisions of law, based on which power has been exercised by the Joint Registrar in divesting of the services of the petitioner.

9. It is represented by the employee that at the relevant point of time, more than 25 persons were employed in the Society, in which case, the employee is deemed to have attained permanent status in view of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act (in short "the Permanent Status Act") and the period of his service from 01.04.2013 till 30.09.2016 is deemed to have been taken into account and during that period, he is deemed to have completed 480 days in a 24 calendar months. Section 3 of the Permanent Status Act reads as under:

"3.Conferment of permanent status to workmen:-

1) Notwithstanding anything contained in any law for the time being in force every workman, who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent."

10. Taking note of all the above stated position, the writ petition filed by the employee [W.P.(MD) No.21306 of 2016] is allowed and the impugned order dated 01.10.2016 is set aside. The respondents are directed to reinstate the employee in service within 45 days from the date on which a copy of this order is made ready and the order of Appellate Authority / the Deputy



Commissioner of Labour, Madurai in TNSE Appeal No.13 of 2014 dated 04.06.2015 is upheld. In view of the above, obviously, the writ petition filed by the employer (W.P.(MD) No.21967 of 2016) fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

1. THE JOINT REGISTRAR OF COOPERTIVE SOCIETY,
MADURAI REGION,
MADURAI-2.
2. THE DEPUTY REGISTRAR OF COOPERTIVE SOCIETY,
MADURAI ZONE, MADURAI.
3. THE DEPUTY COMMISSIONER OF
LABOUR (THE APPELLATE AUTHORITIES UNDER THE
TAMIL NADU SHOP AND ESTABLISHMENT ACT)
RACE COURSE COLONY ROAD, MADURAI.

+1cc to Mr.K.Kulanthai Vikram, Advocate Sr.No.3819
+1cc to Mr.P.Banuprasath, Advocate Sr.No.3818
+1cc to Mr.R.Saravanan, Advocate Sr.No.4189
+2cc to M/S THE SPECIAL GOVERNMENT PLEADER,Copy Application
SR.NOs.3783 & 3792

W.P. (MD) Nos.21306 and 21967 of 2016
23.01.2017

ar
MS-PM-PN-SAR 3/14.2.2017/5p-9c