



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**
AND
THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

W.A. (MD) No.764 of 2011
against
W.P. (MD) No.1005 of 2009

P.Rethinam : Appellant/Petitioner
Vs.

1. State of Tamil Nadu,
represented by
The Secretary to Government,
Co-operative Food and Consumer Protection
Department, Fort St.George,
Chennai.
2. The Joint Registrar of Co-operative Societies,
Pudukottai Region,
Pudukottai.
3. Y.P.602, Dhekshinapuram Primary Agricultural
Co-operative Bank,
Venkitakulam Post,
Pudukottai District. : Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to modify the order dated 06.04.2011 in W.P.(MD)No.1005 of 2009 by directing the third respondent to pay the back wages and subsistence allowance payable to the petitioner and allow this appeal.

Prayer in WP(MD). 1005/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the G.O.(2d) No. 130 dated 18/11/2008 passed by the first respondent and quash the same in so far as it imposes the punishment of stoppage of increment for a period of three years and denies the back wages to the petitioner and consequently direct the third respondent to pay the back wages to the petitioner for the period 06/05/2006 till the date of his reinstatement.



For Appellant

: Mr.I.Irulappan

For Respondents 1 and 2

: Mr.M.Murugan
Government Advocate

For Respondent 3

: Mr.P.Chandrabose

J U D G M E N T

[Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

This appeal is directed against the order of the learned single Judge in so far as the back wages alone is concerned. It appears that originally order of dismissal was passed against the appellant. Appeal against the dismissal order was rejected. However, on revision, the punishment of dismissal was converted into one of stoppage of increment for a period of three years without cumulative effect.

2.The learned single Judge was pleased to allow the writ petition filed by appellant, holding in as much as the charges levelled against the appellant was not proved, there is no question of modifying the punishment from one of dismissal to stoppage of increment. However, the prayer for payment of back wages was not considered and hence, the present writ appeal.

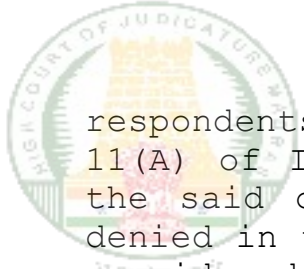
3.The learned counsel appearing for the appellant contended that the charges against the appellant are not proved, hence, the appellant is entitled for back wages. The learned counsel appearing for the respondent submitted that back wages is not a matter of right. As the appellant is not a workman, he is not entitled for the same. Reliance has been made on the following judgment of the Hon'ble Apex Court.

1.Uttar Pradesh State Brassware Corporation Ltd, and another and Udai Narain Pandey, reported in 2006 (1) L.L.N.125.

2.The Managing Director, U.P. Warehousing Corporation and others Vs. Vijay Narayan Vajpayee, reported in AIR 1980 SC 840.

4.On perusal of the order passed by the learned single Judge, we find that the said issue has not been considered at all. However, findings rendered by the learned single Judge has become final to the interested parties to the effect that is found by the revisional authority that the charges levelled against the appellant are not proved.

5.In such view of the matter, we are of the view that it is not the case in which appellant can be denied the back wages in toto. The decisions relied upon by the learned counsel for the



respondents are on exercise of discretionary power under Section 11(A) of Industrial Disputes Act, given to the Tribunal. Even in the said decisions it is nowhere stated that back wages can be denied in toto under the Industrial Disputes Act, and it has to be considered as to whether the workman or employee is gainfully employed elsewhere or not and it is not the case of the respondents that the appellant is gainfully employed.

6.The learned counsel appearing for the third respondent submitted that the third respondent is in debt and not in a position to make payment to the existing employees.

7.Considering the above, we are of the view that in the interest of justice, the appellant will have to be paid 50% of the back wages by the third respondent. Such compliance shall be made with in a period of twelve weeks from the date of receipt of a copy of this judgment.

8. With the above direction the writ appeal is allowed. No cost.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Co-operative Food and Consumer Protection
Department, Fort St.George, Chennai.
2. The Joint Registrar of Co-operative Societies,
Pudukottai Region,Pudukottai.

+1 cc to Mr.T.Irrullappan , Advocate in SR.No. 78907
+1 cc to Mr.P.Chandrabose , Advocate in SR.No. 78589
+1 cc to The Special Government Pleader in SR.No.78814

dsk/tsg

AE/KP/SAR2/26.09.2017/3P/6C

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W.P. (MD)No.1005 of 2009
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