

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1076 of 2016

and

C.M.P.Nos.14018 of 2016 and 21415 & 21416 of 2017

The Management,
The Salem District Co-operative
Milk Products Union Limited,
Sithanur, Thalavaipatti (Post),
Salem-636 302.
Rep.by its Managing Director ... Appellant/Petitioner

-vs-

1.Labour Inspector
Authority under the Tamil Nadu Industrial
Establishment (Conformment of Permanent
Status to Workmen) Act, 1981,
Salem-636 007.

2.S.Balachandran ... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent, against the
order passed by this Court in W.P.No.24801 of 2014 dated
30.09.2015.

PRAYER IN WP.24801 OF 2014: Petition Under Article 226 of the
Constitution of India for a writ of certiorari call for the
records pertaining to the award of the 1st respondent dated
01.02.2014 passed in I.D.No.109/2009 and quash the same

For Appellant :: Mr.V.Raghupathi
For Respondents :: Ms.N.S.Thanvi for
Ms.D.Nagasaila for R2

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant is a District level Co-operative Society
involved primarily in procurement and distribution of milk and
milk Products. Originally, the second respondent herein was

employed under the appellant as a casual labourer. The second respondent filed an application under Section 5 of the Tamil Nadu Industrial Establishments (Conferment of Permanent & Status of Workman) Act, 1981, seeking permanent status on the ground that he has completed 480 days of service in 24 continuous calendar months, and the said application was ordered by the Labour Inspector on 15.05.2001 directing the appellant Management to confer permanent status on the second respondent from 21.08.1999. Aggrieved against the order, the appellant has filed a writ petition in W.P.No.23842 of 2001 before this Court and by order dated 13.04.2010, the same was dismissed. The name of the second respondent was recommended and included in the list for regularizing the casual labourers and sent to the Commissioner of Milk Production and Dairy Development, Chennai.

2.Earlier, on 03.06.2007, it was found that the second respondent was keeping excess milk packets in his vehicle which was more than intended for delivery. In view of the said incident, the second respondent was not permitted to work from 08.06.2007 and it was informed on 20.06.2007 to the Commissioner of Milk Production and Dairy Development, Chennai that his name was not recommended to the Government. Aggrieved by the same, the second respondent has raised an Industrial Dispute and the same was referred for adjudication in I.D.No.109/2009, and the first respondent has passed an Award dated 01.02.2014, directing the appellant/Management to reinstate the second respondent with 50% of back wages. Hence, a writ petition was filed before this Court in W.P.No.24801 of 2014 by the Management and this Court, by order dated 30.09.2015, dismissed the writ petition with a direction to the appellant Management to comply with the order dated 01.02.2014 passed by the first respondent, within a period of eight weeks, subject to deduction of earlier payment deposited before the Labour Court. Challenging the said order, the present appeal has been filed by the appellant-Management.

3.The learned counsel for the appellant has submitted that the learned single Judge ought to have taken into consideration of the fact that the appellant lost confidence on the second respondent and hence keeping the second respondent in the work, who was only a casual labourer, will be a further loss to the appellant and it would also be detrimental to the interest of the appellant-Society. Stating so, he prayed for allowing this writ petition.

4.The learned counsel for the second respondent has submitted that the learned single Judge has dealt with the matter in proper perspective and has passed the impugned order, taking note of the fact that the Management had not framed any charges against the second respondent and not conducted any enquiry. Stating so, the learned counsel has submitted that the

order passed by the learned single Judge does not require any interference.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It appears that the appellant was originally recruited as a casual labourer and when he was recommended to be made permanent, due to certain misconduct, he was terminated from service and thereafter, by the order passed in W.P.No.24801 of 2014, this Court confirmed the order passed by the first respondent, wherein he was directed to be reinstated in service with 50% of backwages and continuity of service. The allegation levelled against the second respondent was that he was keeping excess milk packets in his vehicle more than what was intended for delivery on 03.06.2007. Taking into consideration the said charge, we are not inclined to fully uphold the order passed by the learned single Judge, and it requires modification. It appears that as per the order passed by this Court in the writ petition, granting interim stay on condition to deposit 50% of the backwages, the same has been complied with by the Management by depositing a sum of Rs.1,50,990/- being 50% of the backwages. In these circumstances, the second respondent is permitted to withdraw Rs.50,000/- (Rupees Fifty Thousand Only) from the amount deposited by the appellant, along with proportionate accrued interest. The balance amount shall be withdrawn by the appellant Management. As of now, since the second appellant already attained the age of superannuation, the question of reinstating him into service, does not arise. However, he is entitled to continuity of service till the date of his original retirement, had he not been terminated, only for the purpose of calculating the terminal benefits.

7. The writ appeal is partly allowed. Consequently the connected miscellaneous petitions are closed. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-viii)

//True Copy//

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Sub Assistant Registrar

KM

To

2.The Managing Director,
The Management,
The Salem District Co-operative
Milk Products Union Limited,
Sithanur, Thalavaipatti (Post),
Salem-636 302.

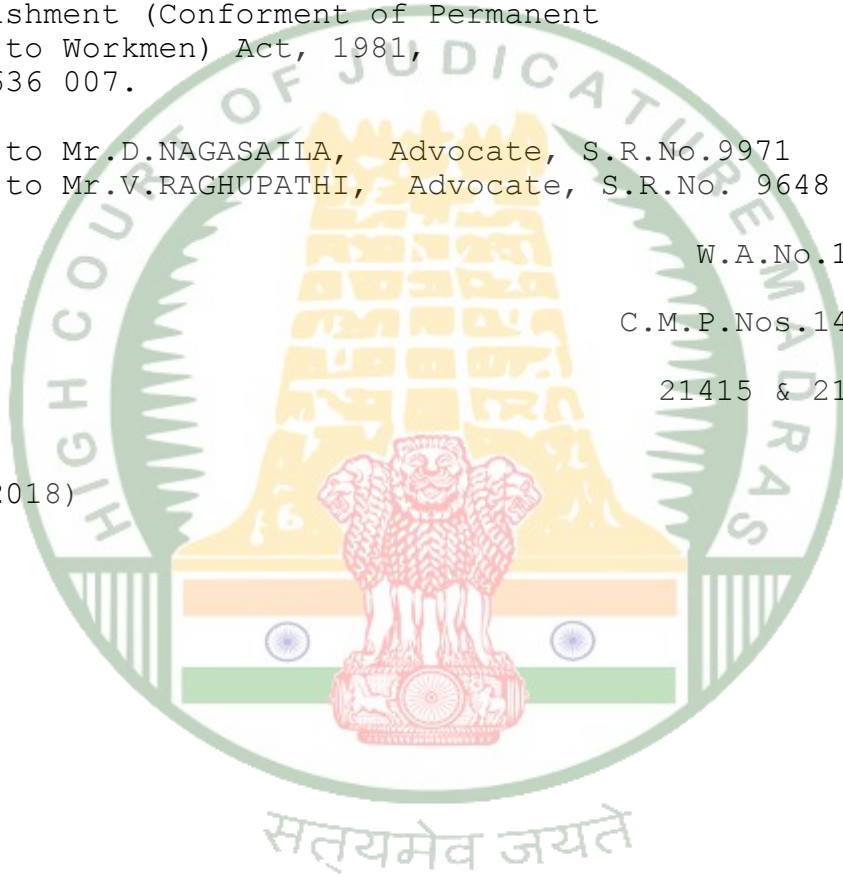
2.Labour Inspector
Authority under the Tamil Nadu Industrial
Establishment (Conformment of Permanent
Status to Workmen) Act, 1981,
Salem-636 007.

+1cc to Mr.D.NAGASAILA, Advocate, S.R.No.9971

+1cc to Mr.V.RAGHUPATHI, Advocate, S.R.No. 9648

W.A.No.1076 of 2016
and
C.M.P.Nos.14018 of 2016
and
21415 & 21416 of 2017

SJ(CO)
TR(28/02/2018)



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