

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.2263 of 2004

and

W.P.No.36951 of 2004

Vellore District Consumers
Co-operative Wholesale Stores Limited,
Vellore Represented by its Managing Director

....Petitioner in
W.P. No.2263 of 2004 /
1st Respondent in
W.P. No.36951 of 2004

Vs

1. The Presiding Officer
Labour Court,
Vellore.

... 1st respondent in
W.P. No.2263 of 2004/
2nd Respondent in
W.P. No.36951 of 2004

2. A.K.Vaikunta Raja,

... 2nd Respondent in
W.P. No.2263 of 2004/
Petitioner in
W.P. No.36951 of 2004

Prayer in W. P. No.2263 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for the records in C.P.No.277 of the 1999 on the file of Labour Court, Vellore the first respondent herein and quash the order dated 25.08.2003.

Prayer in W. P. No.36951 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus after calling for the records relating to the order dated 26.8.03 in C.P. No.277 of 1999 of the 2nd respondent in so far as depriving the petitioner Rs.3,46,806.15 and quash the same.

For Petitioner in

W.P. No.2263 of 2004 : Mr. M.R.Raghavan

For Respondent No.2.
in W.P. No.2263 of 2004 : Mr. V.Ajay Khose

Petitioner in
W.P. No.36951 of 2004 :Mr. V.Ajay Khose

For 1st Respondent in
W.P. No.36951 of 2004 :M/s.Gupta & Ravi

O R D E R

Both these petitions have been filed challenging the legality and or validity of the Order dated 25.08.2013 passed in C.P. No. 277 of 1999 on the file of Labour Court, Vellore the first respondent herein.

2. The short facts which are required to be noticed for the disposal of these two cases are as follows:

a) The petitioner in W.P.No.2263 of 2004 is a Cooperative Society registered under the Tamil Nadu Co-operative Societies Act. The second respondent in that writ petition, i.e. the petitioner in W.P.No.36951 of 2004 was the employee of the Society, who joined in service on 07.07.1962 as temporary Clerk and thereafter, he had been made permanent and had been working as such in that Society.

b) For the sake of convenience, the petitioner in W.P.No.2263 of 2004 who is the respondent in W.P.No.36951 of 2004 will be called as "Society" and the petitioner in W.P.No.36951 of 2004 and the second respondent in W.P.No.2263 of 2004 will be called as "employee".

c) While the employee was working as such at the Society, he was suspended in the year 1966 and he had been in continuous suspension for several years. Though it was claimed by the employee, the said issue of prolonged suspension had been agitated by the employee, the fact remains that he approached the Labour Court by raising the Industrial Dispute against the said suspension only in the year 1983.

d) Thereafter, it seems that the issue had come to this Court by filing writ petition in the year 1984, where, an order was passed in favour of the employee directing the Society to re-instate the employee.

e) It is also the fact that, the benefits for the past service till 1984 was not ordered and the employee was directed to be re-instated only from 1984. This order was passed sometime in 1984 by the writ Court, pursuant to which though Writ Appeal was filed by the Society during the pendency of the writ appeal, the employee had been re-instated on 18.8.1994 and he worked for 4 years till he reaches the superannuation in the year 1998 and he retired from service.

f) During the pendency of the writ appeal, it seems that the employee in order to get the back wages for the period from 1984-1994 had voluntarily come forward by restricting his claim only for a sum of Rs.45,288/- and filed a memo, dated 13.02.1996 before the Division Bench of this Court in the Writ Appeal.

g) Though such a gesture had been shown by filing a memo by the employee that was not accepted by the Society and ultimately, the said writ appeal filed by the Society in W.A.No.713 of 1994 was dismissed by the Division Bench of this Court, by order on 14.08.1996. In the operative portion of the said order, the Division Bench has made the following observations:

10. "One last word on the attitude of the second respondent and the conduct of the appellant/Society. The second respondent had filed a memo on 13.2.1996, wherein he has stated that he was reinstated in service on 5.8.1994 and that he was willing to receive a total sum of Rs.45,288/- as per the calculation memo of the appellant/Society in full quit of his claim for back wages for the period from July, 1984 to July, 1994. The second respondent was willing to have the appeal disposed of on the above terms. But the appellant was not willing to accept the said offer of the second respondent.

11. For all the above reasons, the Writ Appeal is dismissed. There will however, be no order as to costs".

12. In view of the disposal of the Writ Appeal, no further or separate orders are necessary in the connected C.M.Ps. and they are closed.

3. Though the writ appeal filed by the Society was dismissed in the year 1996, it was the claim of the employee that from the date of re-instatement viz., 18.08.1994, the salary of the petitioner ought to have been fixed. However, belatedly it was fixed on 05.05.1997 that too without proper fixation and therefore, in order to get correct fixation of the

salary comparing with his juniors of the employee, who had been receiving higher pay than the employee, he had approached the Labour Court seeking the benefits of the correct back wages for the period of 1984-1994 and also the correct fixation of pay and consequential arrears of pay and other benefits from 1994 till 1998. The said claim petition was taken on file by the Labour Court in C.P.No.277 of 1999, where an award was passed on 25.8.2003. In the said award, the Society was directed to pay a sum of Rs.1,95,500/-, within a period of two months, failing which the said amount would carry the interest at the rate of 6% per annum. Aggrieved over the said order passed by the Labour Court, both the Society as well as the employee filed separate writ petitions which are being disposed of herein.

4. On behalf of the Society, in the writ petition filed by the Society Mr.M.R.Raghavan appeared and argued.

5. The learned counsel for the Society made submissions that, in so far as the back wages for the period from 1984-1994 is concerned, it is the voluntary offer on the part of the employee to receive the said amount of Rs.45,288/- and that was also recorded by the Division Bench of this Court in the Writ Appeal order. Therefore, the said amount had been paid to the employee immediately on dismissal of the writ appeal. In so far, as the further claim of the correct pay as has been made by the employee before the Labour Court is concerned, on 05.05.1987, the Society had fixed the correct pay to the employee and based on correct fixation not only the salary of the employee, but also the arrears of salary, was paid to him accordingly and therefore, he cannot have any grievances with regard to any arrears of salary in this regard. Therefore, the learned counsel appearing for the Society would submit that the Labour Court cannot go beyond what has been recorded by this Court in the Writ Appeal with regard to the back wages and hence, the award now passed in the claim petition filed by the employee which is impugned herein to pay a sum of Rs.1,95,500/- is totally unjustifiable, as far as the said amount, the employee is not entitled to.

7. However, per contra, Mr.V. Ajay Khose, learned counsel appearing for the employee in both writ petitions would submit that, it is the decision of this Court that the employee is entitled to get back wages from 1984 onwards till the date of re-instatement. Admittedly, the petitioner was re-instated only on 18.08.94. Therefore, from 1984 till 18.8.94, the employee was entitled to get the entire arrears of back wages. Though an offer was given by the employee by filing a memo before the writ appellate Court on 13.02.1996, the said offer was not accepted by the Society and this has been recorded by the Division Bench of this Court in the said order itself and

the writ appeal was also dismissed.

8. Once the offer was not accepted by the Society and after having recorded the same, the writ appeal was dismissed, hence, the Society cannot thereafter turn around and say that the very same amount alone for which the employee would be entitled to get back by way of salary / back wages for the period between 1984 and 1994.

9. The learned counsel for the employee would further submit that, so far as the wrong calculation for fixation of pay for the employee is concerned, it is an admitted fact that though the employee was re-instated on 18.8.1984, the pay was only fixed on 05.05.1997. Even the said fixation was a wrong one, as the correct pay was not fixed to the employee taking into account the pay band for similarly placed employees, who are even the juniors of the employee.

10. In this regard, the learned counsel for the employee further submitted that, before the Labour Court along with the claim petition the employee has given a chart showing the correct pay and other emoluments payable to the employee from 22.08.1994 till 31.05.1998, the day on which he was superannuated.

11. In this regard, the Labour Court has given a chance to the Society to file documents to establish that the salary fixed for the employee on 5.05.1997 was correct fixation, the Society had not chosen to file any documents.

12. In this regard, since the Labour Court had no other option accepting the calculation given by the employee, had come to a conclusion that the salary fixed for the employee was not proper and therefore, based on the proper fixation, the calculation given by the employee was accepted. Accordingly, the said claim for a sum of Rs.1,40,887/- as the difference of arrears of salary and emoluments including bonus etc., for the period between 1994-1998 was accepted by the Labour Court. Also, the Labour Court accepted the non payment of bonus for the period between 1984-1994, as only a sum of Rs.45,228/- alone was paid as back wages leaving a balance of Rs.54,613, the said amount was also directed to be paid along with a sum of Rs.1,40,887/- and therefore, altogether the said sum of Rs.1,95,500/- was directed to be paid to the employee by the Labour Court by the impugned order, which cannot be questioned or assailed without any plausible reason on the side of the Society. Therefore, the writ petition filed by the Society has to be dismissed.

13. The learned counsel appearing for the employee also

argued that, the said fixation for a sum of Rs.1,95,500/- is not the correct fixation and in fact according to the calculation of the employee, a sum of more than Rs.4,00,000/- had been the arrears under various heads from 1984 till superannuation and the said amount ought to have been allowed by the Labour Court, which the Labour Court has failed. Therefore, in order to get the enhanced amount and arrears of salary, the employee filed writ petition and therefore, the same can be allowed.

14. I have considered the rival submissions made by the learned counsel appearing for the Society as well as Mr. Ajay Khose, learned counsel for the employee and also perused the materials placed before this Court including the impugned order passed by the Labour Court.

15. The admitted facts before this Court in these two matters are that, the employee was suspended in the year 1966 and thereafter, long years there had been legal issues ultimately the employee had gone to Labour Court in the year 1983 and pursuant to which the employee also had approached this Court by filing writ petition in 1984. The said writ petition was allowed in the year 1994, where the employee was directed to be re-instated and it was further directed that he would be entitled to get back wages from 1984 onwards.

16. Though Intra Court appeal was filed by the Society as against the said order of the writ Court, during the pendency of the writ appeal the employee was re-instated on 18.8.1994 from that date, he had been working in the Society and retired from service on superannuation in the year 1998.

17. Further, admitted facts before this Court is that, during the pendency of the writ appeal or at the time of disposal of the writ appeal, the employee himself had come forward to confine with his claim as back wages for the period between 1984-1994 by filing a memo on 13.02.1992, whereby he claims only a sum of Rs.45,288/-. However, the said offer was not accepted by the Society and these factors had been recorded by the Division Bench in the said judgment and ultimately the writ appeal filed by the Society was dismissed. Having these facts in the background, as to whether the claim made by the employee before the Labour Court by filing the claim petition by the petitioner can be accepted or not is to be examined.

18. In this regard, the Labour Court has considered the issue elaborately and has decided the first issue that it is the higher claim made by the employee towards back wages and other benefits for the period between 1984-1994. In so far as the said claim of the employee is concerned, the Labour Court has come to a conclusion that when the employee himself had filed a

memo to receive only Rs.45,288/- as back wages for the period between from 1984 to 1994 and the same also having been recorded by the Division Bench of this Court in the writ appeal order and the said amount was subsequently paid by the Society and which was accepted by the employee and in this regard the said acceptance letter of the said amount, since was produced before the Labour Court, the Labour Court has come to a right conclusion that the employee has accepted the said amount of Rs.45,288/- only under protest. Therefore, the Labour Court had concluded that the said amount of Rs.45,288/- received by the employee for the said period is the full back wages or full quit.

19. In this regard, the Labour Court had cautiously taken the view that the said amount of Rs.45,288/- was only related to back wages where the bonus component had not been included and there is no express document to show that the said amount was also included bonus for which the employee was entitled to. Hence, the Labour Court had come to a conclusion that the employee would be entitled to get the bonus for the said period of 10 years viz., 1984-1994.

20. The Labour Court has gone to the second issue of the correct fixation of pay for the employee from 1994-1998, where he worked after re-instatement and also other benefits payable to the employee.

21. In this regard, though opportunity was given to the Society, to rebut the claim made by the employee about the correct fixation of pay and the arrears of difference of pay, no documents have been filed by the Society, which has been recorded by the Labour Court. However, on behalf of the employee, a working chart had been filed, where, the basic pay and other emoluments including DA, HRA etc., payable to the employee on the basis of the said emoluments already been paid to the similarly placed employees or junior employees, has been mentioned. According to the said chart, from 22.08.1994 till 31.05.1998, the basic pay varies from Rs.1800 to 2100 correspondingly the DA and other relief have also been shown.

22. However the fact remains that, as per the fixation of pay for the employee as per the order, dated 5.5.1997, the Society had fixed only a sum of Rs.1,500/-as basic pay to the employee.

23. Only in that context the Labour Court having no other option had come to a conclusion that in absence of any documents to rebut the stand taken by the employee, on the side of the Society, it had to accept the calculation given by the employee with regard to the correct fixation of pay, and accordingly, the

calculation given by the employee that a sum of Rs.1,40,887/- have to be paid to the employee, as arrears of difference of pay between the period 1994-1998 was accepted.

24. Having accepted the same the Labour Court has given a direction that since the employee was entitled to get the bonus for the period between 1984-1994 and also entitled to get the arrears of difference of pay as per the correct fixation of pay for the period between 1994-1998 and by calculating both the amount, the Labour Court has given a direction to the Society to pay a sum of Rs.1,95,500/- to the employee through the impugned order.

25. I have gone through the reasoning given by the Labour Court and have perused all the materials. Having gone through the said order passed by the Labour Court, which is impugned herein, this Court finds that there is no error apparent on the face of the record or there is no perverse finding available in the said Labour Court order.

26. Though the employee is entitled to get back wages between 1984-1998, since he already received Rs.45,288/- which was his own offer and was also recorded by the Division Bench of this Court, the employee cannot claim any higher amount by way of back wages apart from the said amount of Rs.45,288/-. At the same time, he will be entitled to get the bonus amount that was also calculated accordingly by the Labour Court and had ordered the said amount in the impugned award.

27. Insofar as the period between 1994-1998 is concerned, the entire calculation given by the employee had been in toto accepted by the Labour Court, as there was no contra document filed by the Society and if both the amounts are put together, the said amount of Rs.1,95,500/- alone will come and the said amount had been directed to be paid to the employee.

28. The only area which has not been covered by the said order impugned herein is that, though the petitioner has confined the said amount Rs.45,288/- as back wages for the period between 1984-1994 and the same was not immediately paid and it was paid only after the dismissal of the writ appeal. Since the employee was entitled to get the back wages, the said amount should have been paid within the due date and therefore, the said amount of Rs.45,288/- certainly would carry some nominal interest from the date of actual due till the date of payment. The nominal interest as per the views of this Court shall be only 6% per annum.

29. In view of the aforesaid discussions and the factual matrix of both the cases, this Court is inclined to pass the

following orders for disposal of these writ petitions

i) The impugned order does not requires any interference ;
ii) A slight modification can be made in the impugned order by giving a direction to the Society to calculate the interest at the rate of 6% per annum for a sum of Rs.45,288/- being the back wages payable to the employee for the period between 1984-1994 and such interest shall be calculated from the date of actual due of the said payment till the date of payment. The said interest shall be calculated and be paid by the Society to the employee within a period of two months from the date of receipt copy of this order, failing which the said amount will carry further interest of 12% per annum on the expiry of two months. With these slight modification of the impugned order, these writ petitions are disposed of. However, there shall be no order as to costs. It is also brought to the notice of this Court that during the pendency of the writ petition the entire award amount had been deposited by the society, out of which, it is submitted that the employee has already withdrawn 50% and the remaining 50% is still lying with the said account at the Labour Court. The employee shall be at liberty to withdraw the said 50% of the deposited amount, by filing a formal petition as early as possible with accrued interest.

vsi2/nsd

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
Labour Court,
Vellore.

+1cc to Mr.M.R.Raghavan, Advocate, SR.No. 56493
+1cc to Mr.V.Ajoy Khose, Advocate, SR.No. 56367

W.P.No.2263 of 2004
and
W.P.No.36951 of 2004

Kak (01/04/2019)