



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2018

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THE HON'BLE MR.JUSTICE **G.R.SWAMINATHAN****W.P. (MD) No.21210 of 2016****and****WMP (MD) No.15155 of 2016**

Rayappan

... Petitioner

-vs-

1. Presiding Officer,
Labour Court,
Tirunelveli.

2. The President,
K.V.90, Karungal Farmers Service
Co-operative Society Limited,
Karungal 629 157.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other writ or order or direction like nature to call for the received on the files of the 1st respondent pertaining to its order in C.P.No.37 of 2015 dated 18.04.2016 and to quash the same and consequently direct the 2nd respondent to disburse the arrears of salary of Rs.7,53,915/- along with interest at the rate of 18% per annum.

For Petitioner	: Mr.S.C.Herold Singh
For R1	: Labour Court
For R2	: Mr.G.Manivannan

O R D E R

The petitioner had earlier filed C.P.No.18 of 2008 on the file of the Labour Court, Tirunelveli for payment of the wages for the period from 01.06.2001 to 30.04.2008. The said claim petition was dismissed on 20.12.2009. The same was questioned by the petitioner herein in W.P(MD)No.3857 of 2010. This Court, by order dated 14.12.2011, dismissed the writ petition. The chequered history of litigation between the petitioner herein and the second respondent Management was discussed extensively in the said order.



2.The writ petitioner was engaged by the second respondent only on daily wage basis. He was disengaged. He went before the appellate authority constituted under the Tamil Nadu Shops and Establishments Act. The said authority set aside the order passed by the Management on 20.01.2006. This was questioned by the Management in W.P(MD)No.5231 of 2006. An interim order came to be passed in the said writ petition against the Management in terms of Section 17(b) of the Industrial Disputes Act. Aggrieved by the same, W.A(MD)No.478 of 2006 was filed. The Hon'ble Division Bench took up the main writ petition itself for disposal. By order dated 15.12.2006, the writ appeal was disposed of. The Hon'ble Division Bench while disposing of the writ appeal observed that the workman concerned i.e., the writ petitioner herein was at liberty to approach the Government seeking the benefit of regularization of his service on one time measure. The Government was directed to pass appropriate orders, if the workman approached it with such request. As rightly observed by this Court in W.P(MD) No.3857 of 2010, the order passed by the Division Bench did not throw any light, as to whether the Division Bench had confirmed the order of the authority under the Tamil Nadu Shops and Establishments Act or it had set aside the same. But, be that as it may, the writ petitioner herein taking advantage of the observation made by the Hon'ble Division Bench went before the Government. But his claim for regularization was rejected by the Government by order dated 31.10.2007. Thereupon, the petitioner filed even a contempt petition, which was also disposed of. However, while disposing of it, an observation was made that the petitioner herein would be at liberty to move the Labour Court for filing a petition under Section 33(c) of the Industrial Disputes Act, 1947. Armed with these observations, the petitioner herein filed C.P.No.18 of 2008. The Labour Court dismissed the same. The said order as already pointed out was confirmed by this Court in W.P(MD)No.3857 of 2010 filed by the petitioner herein. The writ petition in W.P(MD)No.3857 of 2010 was dismissed in the following terms:-

"14.Admittedly, the petitioner was only a daily wage labourer and his claim for regularisation had been negatived. The Society had not reemployed even after the order passed by the Shops Act Authority. While disposing of the Writ Appeal by the division bench, the only liberty was to move the Government for regularisation. That course of action had been finalised by the order of the Government which had become final. It is not clear as to how the division bench in the Contempt Petition given liberty to the petitioner to approach the Labour Court to enforce a non existent right.

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15.The interim order passed by the single Judge when became a subject matter before the division bench in the



Writ Appeal and the bench after drawing the Writ petition to its own board for disposing instead of dealing with the merits of the case of the petitioner only gave liberty to approach the state government. But at the same time, the Writ Appeal which arose out of the interim order was disposed of without any indication as to whether the workman was eligible to get last drawn wages pending the Writ petition. Since the division bench did not even speak about the existence of any right by the workman, even assuming that he was only daily rated worker drawing a maximum salary of Rs.600/- per month, the interim order of the Single Judge got merged with the final order by the division bench.

16.The fate of the Shops Act Authority's order was not determined when the division bench declined that the Writ petition was disposed of with a direction for him to approach the government for regularisation. There for nothing survived for him to go before the Labour Court to claim any wages. There cannot be any employment by way of regularisation. The Supreme Court in the judgment in **A.Umarani Vs. Registrar of Cooperative Societies** reported in **2004 (7) SCC 112** has held there cannot be any regularisation as a source of employment. The petitioner not having been employed subsequent to his last termination cannot claim any amount in an application filed under Section 33C(2) of the I.D. Act as if there was a pre-existing right.

17.Unfortunately the Labour Court was caught between various orders passed by this Court and had stated that there was no right available to the petitioner to approach the Labour Court under Section 33C(2) of the I.D.Act. The Labour Court cannot be found fault with for this. Unless the division bench which had passed the earlier order clarifies its own order regarding any surviving right for the petitioner, this Court is unable to interfere with the impugned order passed by the Labour Court. Hence, the Writ petition is dismissed. No costs."

3.Not satisfied with the fate that met his earlier venture, the petitioner chose to once again knock at the doors of the Labour Court by filing one more C.P. The second C.P filed by the petitioner herein also met with the very same fate. Again, aggrieved by the same, this Writ Petition has been filed questioning the order dated 18.04.2016 in C.P.No.37 of 2015.

4.This Court has extracted the reasons given by this Court on the earlier occasion in the writ petition in W.P(MD)No.3857 of 2010 (supra). There is no change in circumstances. For the



reasons set out in W.P(MD)No.3857 of 2010, the present writ petition also stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar(AS)

Sub Assistant Registrar

To

Presiding Officer,
Labour Court,
Tirunelveli.

+1 cc to Mr.S.C.Herold Singh, Advocate IN SR No.50537

W.P. (MD) No.21210 of 2016
and
WMP (MD) No.15155 of 2016
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PK/CSL/SAR-4/04.06.2018 : 4P/3C