



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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W.P. (MD) Nos.9125 of 2016 & 18673 of 2015

and

W.M.P. (MD) No.7269 of 2016

and

M.P. (MD) No.1 of 2015

W.P. (MD) No.9125 of 2016

Maravankudi Iruppu Primary Agrucultural
Services Co-operative Bank,
rep by its President,
Mr.Sahaya Vnice,
S/o.Mariam Michale,
No.Y-220,
Kanyakumari District.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Paulraj

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 1st respondent in E.P.No.30 of 2015 in C.P.No.11 of 2014 dated 25.04.2016 by fixing auction sale on 13.05.2016 and quash the same.

For Petitioner : Mr.N.Sankar Ganesh

For R2 : Mr.D.Saravanan

R1-Labour Court.

W.P. (MD) No.18673 of 2015

Maravankudi Iruppu Primary Agrucultural
Services Co-operative Bank,
rep by its President,
Mr.Sahaya Vnice,
No.Y-220,
Kanyakumari District.

... Petitioner

Vs.



1. S.Paulraj
2. The Presiding Officer,
Labour Court,
Tirunelveli.
(Camp) Nagercoil

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 2nd respondent in C.P.No.11 of 2014, dated 11.05.2015 and quash the same.

For Petitioner : Mr.N.Sankar Ganesh

For R1 : Mr.D.Saravanan

R2-Labour Court.

COMMON ORDER

The second respondent in W.P.(MD)No.9125 of 2016 was appointed as a Helper in the writ petitioner society for daily wages in the year 1987. He was terminated on 15.06.1988. The said order of termination was questioned in I.D.No.117/1992 on the file of the Labour Court Tirunelveli. The Labour Court passed an award in favour of the workman on 20.12.1996. The order of the termination was quashed as illegal and reinstatement was directed with back wages. The same was questioned in W.P.12412/1998. The writ petition came to be dismissed on 12.06.2008. Thereafter, the management filed writ appeal and the same is pending at S.R. stage.

2.In the meanwhile, based on the award passed in favour of the workman, he filed C.P.No.11/2014. The same was opposed by the Management. However, the Labour Court allowed the claim petition by directing the Management to pay a sum of Rs.6,86,242/- with interest. This order dated 11.05.2015 in C.P.No.11/14 is questioned in W.P.No.18673/15. No interim order was granted in the said writ petition.

3.In the meanwhile, the workman filed E.P.No.30/15. The asset of the society came to be attached. The same was questioned in W.P.(MD)No.9125 of 2016. This Court while granting an interim order, directed the Management/petitioner to deposit 50% of the quantified amount. The said amount was also permitted to be withdrawn by the workman. The learned counsel appearing for the workman would submit that the said amount has been withdrawn by the workman.

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4.Heard the learned counsel on either side.



5.The writ petitioner is the Co-operative Society. The learned counsel for the petitioner submitted that the petitioner is in financial crisis. The workman was employed for hardly one and half years. He was getting a sum of Rs.300/- per month when he was terminated in the year 1988. The workman reached the age of superannuation on 18.12.2009.

6.This Court went through the contents of the claim petition. No where is there any averment in the claim petition that the workman was not gainfully employed elsewhere. This Court takes note of the fact that for 21 long years the workman would not have been idle and he would definitely have worked elsewhere. Those details are absolutely within the special knowledge of the workman. Since in this case the workman has not made such a claim, this Court is of the view, in the interest of justice, the Management cannot be fastened with the entire financial liability. In this case a sum of Rs.3,50,000/- was ordered to be deposited by the Management and the same was allowed to be withdrawn by the workman. A worker, who was employed for hardly one and half years on daily basis has now been paid a sum of Rs.3,50,000/- as termination-compensation.

7.Even in Section 17(b) of Industrial Dispute Act 1947, wages must be paid to the workman during the pendency of proceeding in High Court, if the workman had not been employed in any establishment during said period and an affidavit must be filed by the workman to that effect before the said Court. The provisions of the 17(b) of the I.D.Act states that if it is proved to the satisfaction of the High Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period as the case may be.

8.Drawing inspiration from the said provision, since before the Labour Court during claim proceedings, the workman concerned did not make such an averment to that effect, this Court is constrained to interfere with the order impugned in this writ petition. The order impugned in this writ petition is quashed. However, it is made clear that the writ petitioner shall not be at liberty to make any claim for recovery for the sum of Rs.3,50,000/-, which was already withdrawn by the workman.

9.These Writ Petitions are allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)



To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1cc to Mr.N.Sankar Ganesh, Advocate Sr.No.54010

GNS

VB/SKN/RSK/SAR2/05.06.2018/4P/3C

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