

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.9070 of 2003 and 26809 of 2014
and
WP.MP.Nos.160 & 161 of 2014

W.P.No.9070 of 2003

The Management,
Salem District Consumers'
Co-Operative Wholesale Stores Limited,
Seetharam Road,
Salem 9. ... Petitioner

Vs.

1.The Presiding Officer,
Labourt Court,
Salem.

2.The Liquidation Officer,
S.726, Idappady Co-operative Stores Ltd.,
Office of the Deputy Registrar of Co-operative
Societies,
Omalur Circle,
Omalur.

3.L.Sivasankaran

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records in I.D.No.353 of 1999 on the file of the Labour Court Salem, the 1st respondent herein, quash the award dated 08.07.2002.

For Petitioner : Mr.M.R.Raghavan

For R2 : Ms.T.Girija,
Government Advocate

For R3 : Mr.M.MD.Ibrahim Ali

W.P.No.26809 of 2014

L.Sivasankaran

.. Petitioner

Vs.

1.The Presiding Officer,
Labourt Court,
Salem.

2.The Liquidation Officer,
S.726, Idappady Co-operative Stores Ltd.,
Office of the Deputy Registrar of Co-operative
Societies,
Omalur Circle,
Omalur.

3.The Management,
Salem District Consumers'
Co-Operative Wholesale Stores Limited,
Seetharam Road,
Salem 9.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records pertaining to the order in Award No.353 of 1999 passed by the learned Labour Court, Salem/1st respondent herein dated 08.07.2002 and quash the same, consequently enhance the award from 50% to 100% of back wages with continuity of service and other lawful service benefits entitled by the petitioner immediately.

For Petitioner : Mr.M.MD.Ibrahim Ali

For R2 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

For R3 : Mr.M.R.Raghavan

COMMON ORDER

The petitioner in W.P.No.9070 of 2003 is the Management of Salem District Consumer's Co-operative Wholesale Stores Ltd., and the petitioner in W.P.No.26809 of 2014 is the employee of the said Management. Both are challenging same award of the Labour Court, Salem dated 08.07.2002 made in I.D.No.353 of 1999.

2.The issues and the parties involved in both the Writ Petitions are one and the same and hence, they are disposed of

by this common order. The parties are referred to as per their rank in W.P.No.9070 of 2003.

3.The 2nd respondent was running six fair price shops. It distributes commodities under Public Distribution System. The 3rd respondent was employed as a salesman in one of the fair price shops under the control of the 2nd respondent. The 2nd respondent suspended the 3rd respondent while he was in service. All the fair price shops run by the 2nd respondent along with its employees were transferred to the petitioner's wholesale stores. The petitioner absorbed all the employees of the 2nd respondent, but did not absorb the 3rd respondent as he was under suspension at the time of taking over the fair price shops of the 2nd respondent by the petitioner. The 3rd respondent raised an Industrial Dispute in I.D.No.353 fo 1999 before the 1st respondent, claiming reinstatement of service with service benefits from 01.04.1998. Before the 1st respondent, the petitioner and 2nd respondent filed counter statements. The parties have not let in any oral evidence. The 3rd respondent marked 4 documents as Exs.A1 to A4. The petitioner and 2nd respondent marked 5 documents as Exs.B1 to B5. The 1st respondent considering the pleadings, oral and documentary evidence and arguments advanced by the petitioner and the respondents, by the award dated 08.07.2002 held that non-employment of the 3rd respondent is not valid and ordered reinstatement of the 3rd respondent with continuity of service and 50% backwages.

4.The petitioner is challenging the award of the Tribunal ordering reinstatement and granting other benefits. The 3rd respondent has challenged the portion of the award denying 50% of the backwages.

5.The learned counsel appearing for the petitioner contended that the 3rd respondent was not transferred to the petitioner by the 2nd respondent. He was not an employee of the 2nd respondent as he was under suspension. There was no employer-employee relationship between the petitioner and the 3rd respondent. The 2nd respondent did not transfer the 3rd respondent to the petitioner when he transferred other employees. The 1st respondent exceeded its jurisdiction in ordering reinstatement of 3rd respondent. By such an award, the 1st respondent has appointed 3rd respondent in the petitioner's society when he is not entitled to such appointment. The 1st respondent failed to see that the 3rd respondent has claimed relief against two employers. The contract is only with one employer and 3rd respondent is not entitled to claim relief from both the petitioner and 2nd respondent. The 3rd respondent failed to let in any oral evidence to substantiate his claim made in the claim petition. The 3rd respondent was not the employee of

the petitioner and the petitioner did not terminate the service of the 3rd respondent. Under such circumstances, the 3rd respondent cannot invoke Section 2(k) of the Industrial Disputes Act and I.D raised by the 3rd respondent is not maintainable. The 1st respondent on erroneous consideration that 3rd respondent was an employee, ordered reinstatement with 50% of backwages. The 1st respondent failed to see that the 3rd respondent was not appointed in accordance with rules and hence, he is not entitled to any relief. The 3rd respondent failed to let in any oral evidence to substantiate his claim. The finding of the 1st respondent-Labour Court is perverse and prayed for setting aside the award of the Tribunal and allowing W.P.No.9070 of 2003 and dismissing W.P.No.26809 of 2014 filed by the 3rd respondent.

6. Per contra, the learned counsel appearing for the 3rd respondent contended that the 2nd respondent was liquidated and all the fair price shops along with its employees were transferred to the petitioner. The 3rd respondent was an employee of the 2nd respondent at the time of transfer. Even though the 3rd respondent was kept under suspension, he continued to be an employee of the 2nd respondent at the time of transfer. The Joint Registrar of the Co-operative Society by his proceedings dated 23.04.1998 marked as Ex.A2 directed the 2nd respondent to collect a sum of Rs.118.50/- from 3rd respondent as fine amount and reinstate the 3rd respondent into service by order dated 30.04.1998. Some of the employees of the 2nd respondent were also transferred, who were facing disciplinary proceedings and employees of other societies were also ordered to be reinstated after collecting the fine amount. The co-employees of the 3rd respondent were reinstated and transferred to the petitioner. Similarly placed persons who were appointed contrary to the rules were absorbed by the petitioner. The 1st respondent considering all the materials on record, ordered reinstatement of the 3rd respondent with continuity of service by giving valid reason. The 1st respondent ordered 50% backwages on the erroneous ground that the petitioner approached the 1st respondent after one year when the 3rd respondent was without any employment and denied 100% backwages without any valid reason. The 3rd respondent is entitled to 100% backwages and prayed for dismissal of Writ Petition No.9070 of 2003 filed by the petitioner and allowing W.P.No.26809 of 2014 filed by the 3rd respondent.

7. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the 2nd respondent, learned counsel appearing for the 3rd respondent as well as the learned Special Government Pleader appearing for the 2nd respondent in W.P.No.26809 of 2014 and perused the materials available on record.

8. From the materials on record, it is seen that all the fair price shops of the 2nd respondent along with its employees were transferred to the petitioner. The petitioner absorbed all the employees of the 2nd respondent, but did not absorb the 3rd respondent. According to the petitioner, the 3rd respondent was suspended by the 2nd respondent and he was not an employee. There was no employer-employee relationship between the petitioner and 3rd respondent. Further, the contention of the learned counsel appearing for the petitioner is that the 3rd respondent is an irregular appointee and is not entitled to be absorbed. Both the contentions are without merits. From Exs.A2 and A4 it is seen that the 3rd respondent was suspended for shortage of goods in fair price shops to the value of Rs.118.50/-. The Joint Registrar of the Co-operative Societies by Exs.A2 and A4 directed the 2nd respondent to collect Rs.118.50/- from the 3rd respondent and reinstate him into service. The contention of the learned counsel appearing for the 3rd respondent that as per Ex.A4, some of the employees of 2nd respondent who were also suspended along with 3rd respondent were reinstated and transferred to the petitioner and petitioner also absorbed them and the 3rd respondent also is entitled to be absorbed by the petitioner as per Exs.A2 and A4 has considerable force. The 3rd respondent was under suspension and he was not dismissed or removed from service. The Joint Registrar of the Co-operative Societies directed reinstatement of the 3rd respondent. In view of the proceedings of Joint Registrar marked as Ex.A4, the petitioner is bound to absorb the 3rd respondent as his suspension was revoked and is liable to be reinstated. The contention of the learned counsel appearing for the petitioner that 3rd respondent was not an employee as he was suspended is without merits. Unless an employee is dismissed, terminated or removed from service, he continues to be an employee. Even after the order of suspension, an employee continues to be an employee but his services are temporarily discontinued till final orders are passed.

9. From the award of the Labour Court, it is seen the 2nd respondent has not passed resolution to transfer only three employees, but transferred the employees, S.Saiyad Kasim, P.Iyyamperumal and A.Mani as salesmen and V.Amudha as sales women. Out of these employees, S.Saiyad Kasim and A.Mani were irregular appointees as per the list of employees of the 2nd respondent. The petitioner absorbed all the employees even without any resolution and also absorbed the irregular appointees transferred by the 2nd respondent. In view of the same, the contention of the learned counsel appearing for the petitioner that the 3rd respondent cannot be absorbed as he was an irregular appointee is unacceptable. The 1st respondent has considered all the above materials in proper perspective, especially Exs.A2 and A4 and ordered reinstatement of the

3rd respondent with continuity of services and other benefits. There is no error in the impugned award in respect of this portion.

10.As far as the denial of 50% of backwages is concerned, the 1st respondent has granted only 50% of the backwages on the ground that the 3rd respondent raised dispute after the delay of one year of non-employment. The 3rd respondent has not pleaded and proved that he is not gainfully employed. In view of the same, the 3rd respondent is not entitled for full backwages.

11.In the result, both the writ petitions are dismissed, confirming the order of the 1st respondent dated 08.07.2002 made in I.D.No.353 of 1999. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Presiding Officer,
Labour Court,
Salem.
- 2.The Liquidation Officer,
S.726, Idappady Co-operative Stores Ltd.,
Office of the Deputy Registrar of Co-operative
Societies,
Omalur Circle,
Omalur.

+1 cc to M/s.T.Girija, Advocate Sr.No. 68196
+1 cc to The Special Government Pleader Sr.No.68487
+1 cc to M/s.M.MD.Ibbrahim Ali, Advocate Sr.No.68193
+2 cc to Mr.M.R.Raghavan, Advocate Sr.No.67881

AKM/25.09.19/6P- 8C /

W.P.Nos.9070 of 2003 and 26809 of 2014