

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.38770 of 2004, 29790 of 2005 and
29189 & 29190 of 2011
and M.P.Nos.1 & 1 of 2014

P.Rangaraj ... Petitioner in all the WPs.

Vs.

1.The Labour Court,
Coimbatore.

2.The Maharashtra State Co-operative
Cotton Grower's Marketing Federation Ltd.,
Rep. by its Manager
No.81, III Street, P.Box.No.2964
Tatabad, Coimbatore.

.... Respondents in
W.P.No.38770 of 2004

1.The Management of Maharashtra State Co-operative
Cotton Grower's Marketing Federation Ltd.,
No.82, III Street, P.Box.No.2964
Tatabad, Coimbatore-641 012.

2.The Presiding Officer
Labour Court, Coimbatore-18.

.... Respondents in
W.P.Nos.29790 of 2005,
29189 & 29190 of 2011

PRAYER in W.P.No.38770 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondent No.2 to treat the petitioner's service has been regularised from the year 1991 and adopt continuity of service, recourse to promotion of the petitioner and pay him the backwages with interest on the basis of continuity of service after deducting the lesser backwages already paid to him and also pay him the revised slab increased monthly salary in terms of the order dated 14.06.2001 made in I.D.No.235 of 1999 on the file of the Labour Court, Coimbatore.

PRAYER in W.P.Nos.29790 of 2005, 29189 & 29190 of 2011: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records from the 2nd respondent Labour Court relating to its order dated 02.08.2005, 08.11.2011 respectively in Computation Petition Nos.190, 435 of 2005 and 363 of 2008, respectively quash the same and consequently, direct the Management to pay wages on par with the counterparts of the petitioner, atleast on par with K.R.Gangutodai, junior to the petitioner, the amount mentioned in the annexure to the Computation Petitions together with interest at 6% per annum from the date of the amount became due.

For Petitioner in : Mr.K.M.Ramesh
all WPs.

For R2 in : Mr.S.Silambanan
W.P.No.38770 of 2004 Senior Counsel for
Mr.R.Murali

For R1 in : Mr.S.Silambanan
W.P.Nos.29770/2005 Senior Counsel for
29189 & 29190/2001 Mr.R.Murali

C O M M O N O R D E R

The relief sought for in the present writ petitions are based on the award dated 14.06.2001 made in I.D.No.235 of 1999.

2.The issues involved in all 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 respective ranks in the industrial dispute.

3.According to the petitioner, he was working as a clerk in respondent society from 20.07.1998 continuously without any break. While so, the respondent society has terminated the service of the petitioner, which is illegal. The petitioner raised industrial dispute in I.D.No.235 of 1999 before the Labour Court, Coimbatore, with regard to termination. The Labour Court, Coimbatore, by award dated 14.06.2001 set aside the order of termination and ordered reinstatement with continuity of service, backwages and attendant benefits. The writ petitions, writ appeal, S.L.P. filed by the respondent society were dismissed. The respondent society did not comply the order of this Court. The petitioner filed Contempt Petition No.485 of 2004. The respondent society made an endorsement that the respondent society will comply the order. Recording the same, the said Contempt Petition was closed and the petitioner was

reinstated into service on 13.10.2004. He has given only minimum wages and not other benefits as per the award of the Labour Court dated 14.06.2001. The petitioner has come out with the present writ petitions for a direction to the respondent society to treat the petitioner's service has been regularised from the year 1991, adopt continuity of service, recourse to promotion of the petitioner and pay him the backwages with interest on the basis of continuity of service after deducting the lesser backwages already paid to him and also pay him the revised slab increased monthly salary in terms of the order dated 14.06.2001 made in I.D.No.235 of 1999 on the file of the Labour Court, Coimbatore and pay wages on par with the counterparts of the petitioner, atleast on par with K.R.Gangutodai, junior to the petitioner, the amount mentioned in the annexure to the Computation Petitions together with interest at 6% per annum from the date of the amount became due.

4. The learned Senior Counsel appearing for the petitioner contended that the Labour Court ordered reinstatement with continuity of service and backwages. The said award was confirmed by this Court as well as the Hon'ble Apex Court. Even after the award has been confirmed, the respondent society has not regularised the service of the petitioner and has not paid salary on par with other employees. The petitioner is entitled to salary as paid to his junior. The petitioner filed W.P.M.P.No.46333 of 2004 in W.P.No.38770 of 2004 for a direction to the respondent society to treat the petitioner's service has been regularised. This Court by order dated 19.03.2005 directed the petitioner to file necessary application under Section 33C (2) of the Industrial Disputes Act, specifying the amount of backwages that is still due from the respondent society. The petitioner filed Computation Petition Nos.190 of 2005 before the Labour Court, Coimbatore, specifying the amount of the backwages that is still due from the respondent society for the period from 30.04.1991 to 31.03.2005. The said Computation Petition was dismissed on the ground that there is no direction given by the Labour Court in I.D.No.235 of 1999 to regularise the service of the petitioner and that the petitioner has not furnished the particulars as to how he is entitled to claim amounts mentioned in the said computation petition. The petitioner filed Computation Petition No.435 of 2005 before the Labour Court, Coimbatore, claiming a sum of Rs.58,246/- together with interest at 6% per annum for the period from 01.04.2005 to 30.09.2005 and filed Computation No.363 of 2008 claiming a sum of Rs.4,04,272/- as arrears in salary from 01.10.2005 to 31.08.2008, Rs.11,719/- as leave salary for the period from 01.10.2005 to 31.08.2008 and Rs.4,800/- as medical reimbursement for the said period. The Labour Court dismissed the above Computation Petitions on the ground that earlier Computation Petition No.190 of 2005 was dismissed. The petitioner filed W.P.No.29790 of 2005 against

Computation Petition No.190 of 2005, W.P.No.29189 of 2011 against Computation Petition No.435 of 2005 and W.P.No.29190 of 2011 against Computation Petition No.363 of 2008.

5. According to the learned Senior Counsel appearing for the petitioner, interpretations given by the Labour Court for dismissing the Computation Petitions are erroneous. The Labour Court failed to see that in the award dated 14.06.2001, the respondent society was directed to reinstate the petitioner with continuity of service, backwages and attendant benefits. As per the said award, the petitioner is entitled to regularisation and payment of salary on par with permanent employees and prayed for allowing all the three writ petitions.

6(i). The learned counsel appearing for the respondent society filed common counter affidavit denying the averments made by the petitioner and contended that the respondent society is registered under the Maharashtra Co-operative Societies Act, 1960. The respondent society has been formed to procure cotton, arranged to process it and to supply to the consumers. The business of the respondent society is very seasonal. The respondent society was having office at Coimbatore, Bangalore and Ahmadabad. The office at Bangalore was closed. The petitioner was appointed only temporary for daily wages. His duty is to only receive the goods, keep it in the godown and deliver it to the customers. He was employed lastly from 01.05.1998 to 20.07.1998. Subsequently, his service was not required for the respondent society and hence, his service was dispensed with. The petitioner is not entitled to be regularised and not entitled to seek salary on par with regular employees. The respondent society calculated the backwages as per the last drawn salary of the petitioner, deposited a sum of Rs.52,696/- in the Labour Court, Coimbatore, reinstated the petitioner as clerk with effect from 01.10.2004 and continues to pay his salary till date as per the Minimum Wages Act.

6(ii). The petitioner has also sought for fixing of salary on par with other permanent clerks and for full backwages. This Court directed the petitioner to file Computation Petition before the Labour Court. The petitioner filed Computation No.190 of 2005 claiming a sum of Rs.20,67,184/-. The respondent society contested/opposed the said Computation Petition. The Labour Court considering entire materials on record, held that the petitioner is not entitled for backwages and he is not entitled to the amount as claimed in the Computation Petition for The Labour Court has awarded only reinstatement with continuity of service, backwages and attendant benefits. The

Labour Court has not given any direction to the respondent society to regularise the service of the petitioner. The petitioner ought to have challenged the award for denying the regularisation. Having failed to challenge the said award, the petitioner is not entitled for any regularisation.

6(iii). As per the award of the Labour Court, the petitioner was reinstated into service..... he was paid salary as per the Minimum Wages Act and he is not entitled to be regularised and paid salary on par with regular permanent employees. In support of his contention, the learned counsel relied on paragraphs 50 to 53 of the judgment of the Hon'ble Apex Court reported in (2005) 5 SCC 100 (Manager, Reserve Bank of India, Bangalore vs. S.Mani and others) and submitted that unless the order is passed for regularisation, the petitioner is not entitled for regularisation and prayed for dismissal of all the writ petitions.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent society and perused the materials available on record.

8. By deciding the issue in W.P.No.38770 of 2004, other three writ petitions can be disposed of. The issue to be decided in the W.P.No.38770 of 2004 is whether the petitioner is entitled to be regularised and is entitled to salary on par with permanent employees. In I.D.No.235 of 1999, the petitioner stated that he was employed as clerk by the respondent society in the year 1991 and he was continuously working till 1998, when the respondent society has illegally terminated the service of the petitioner. The respondent society denied the said contention and contended that the petitioner was only a daily wage employee engaged during season for limited period. The Labour Court accepted the plea of the petitioner and rejected the contention of the respondent society.

9. From the materials available on record, it is seen that the Labour Court has held that the petitioner worked 240 days in a year. On such finding, the Labour Court ordered reinstatement of the petitioner with continuity of service, backwages and attendant benefits. The said award was challenged by the respondent society in W.P., which was dismissed. Writ Appeal and S.L.P. were also dismissed. The award of the Labour Court has become final. The Labour Court has awarded continuity of service, backwages and attendant benefits. When reinstatement with continuity of service and attendant benefits are ordered, the petitioner is entitled to regularisation and salary on par with permanent employees especially, the same salary as his juniors are paid. In view of continuity of service and attendant benefits are being awarded to the petitioner, the contention of

the respondent society that the Labour Court did not order regularisation, is without merits. The Labour Court has held that the petitioner has worked for 240 days in a year. This makes it clear that the contention of the respondent society that the petitioner was engaged only during season. In view of the above, the petitioner is entitled to be regularised with effect from the year 1991 and is entitled to all attendant benefits, continuity of service and arrears of salary as per the award of the Labour Court dated 14.06.2001 made in I.D.No.235 of 1999. For the above reason, W.P.No.38770 of 2004 stands allowed.

10. In view of the order passed in W.P.No.38770 of 2004, award of the Labour Court in Computation Petition Nos.190 & 435 of 2005 and 363 of 2008, which are impugned in W.P.Nos.29790 of 2005, 29189 and 29190 of 2011 respectively, are set aside and all the three Computation Petitions are remanded back to the Labour Court for a fresh consideration on merits. Both the petitioner as well as the respondent society are entitled to let in evidence and furnish particulars before the Labour Court, if they so desire and advise.

11. With the above direction, W.P.Nos.29790 of 2005, 29189 and 29190 of 2011 are disposed of. As the Computation Petitions are of the year 2005 and 2008 respectively, the Labour Court is directed to dispose of the same within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

krk/kj

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To

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Manager,
The Maharashtra State Co-operative
Cotton Grower's Marketing Federation Ltd.,
No.81, III Street, P.Box.No.2964
Tatabad, Coimbatore.

+4cc to M/s.R.Murali, Advocate Se.73098, 73097, 73095, 73096
+3cc to M/s.K.M.Ramesh, Advocate Sr.73154

W.P.Nos.38770 of 2004, 29790 of 2005
and
29189 & 29190 of 2011

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