

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3113 of 2011

V.K.Palanichamy

..Petitioner

Vs

1.The Presiding Officer
Labour Court, Salem.

2.The President
ED 920, P.Vellalapalayam
Milk Producers Co-op Society Ltd.,
P.Vellalapalayam (PO)
Gopi Taluk, Erode District

..Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to I.D.No.524/2000 and quash the impugned award dated 27.01.2009 passed by the 1st respondent and further direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service, and all other attendant benefits.

For Petitioner : Mr.Mohd Nazrullah
For Respondents : Mr.S.Umapathy, for R2.
R1- Court.

ORDER

This Writ Petition is filed praying to issue a writ of Certiorarified Mandamus to quash the impugned award passed in I.D.No.524/2000 dated 27.01.2009 passed by the 1st respondent and further direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service, and all other attendant benefits.

2. The Petitioner was appointed as Milk Tester on 01.06.1994 and was discharging duties to the satisfaction of his superiors. It is averred in the writ petition that the 2nd respondent terminated the services of the Petitioner on 06.08.1999 on the ground that the quantity of milk procured and distributed by the Society had diminished and that the capital of the society had started to erode.

3. It is the further contention of the Petitioner that the 2nd respondent had issued public notice in the Tamil daily "Dina Malar" to the effect that the Petitioner was retrenched with effect from 06.08.1999.

4. Aggrieved by the retrenchment of the Petitioner from the services, the Petitioner raised an industrial dispute before the Labour Officer, Erode. The conciliation proceedings initiated by the Labour Officer ended in failure. After the failure of the conciliation proceedings, the Petitioner preferred a claim statement before the 1st respondent challenging his termination which was raised as I.D.No.524 of 2000. The 2nd respondent resisted the claim by contending that the Petitioner was retrenched in order to prevent further erosion of capital of the Society consequent to the diminution of volume of business of the society. All formalities under Section 25F of the Industrial Disputes Act, 1947 was complied with in I.D.No.524 of 2000.

5. Before the Labour Court, Salem/1st respondent, the petitioner examined himself and marked documents as Ex.P.1 and Ex.P.2. On behalf of the 2nd respondent Society, the Secretary and the President were examined as R.W.1 and R.W.2 and marked documents Ex.R.1 to Ex.R.9.

6. According to the learned counsel for the petitioner, the Petitioner made several representations to the higher officials about the irregularities like selling of milk at a higher rate than the rate fixed by the Society to the public, misappropriation of fund etc and therefore, the Management has taken vengeance against the petitioner and therefore, the retrenchment order was passed.

7. It is further submitted that the 1st respondent, without considering the evidence adduced by the Petitioner, erroneously rejected the claim of the Petitioner and confirmed the retrenchment order. It is also pointed out that the specific plea raised by the 2nd respondent that the society was facing economic hardship at the relevant time forcing it to take recourse to "retrenchment" was not substantiated by the 2nd respondent by adducing any evidence and therefore, the award passed by the 1st respondent in dismissing I.D.No.524 of 2000 holding that "retrenchment" was justified is totally erroneous in law.

8. The learned counsel for the 2nd respondent society would submit that the petitioner was retrenched from service under Section 25-F of the I.D.Act and the resolution was passed by the Board to reduce the strength of the employees to meet out financial constraints. Hence the Petitioner V.K.Palanichamy was retrenched and retrenchment order was passed on that day. The said retrenchment order was also communicated through RPAD and the same was returned with an endorsement that he refused to receive it. All the said facts and documents were placed before the 1st respondent. Therefore, the Writ Petition is liable to be rejected.

9. The Petitioner worked as Milk Tester in the 2nd respondent society. The impugned retrenchment order was

passed by the 2nd respondent on the basis of the resolution passed by the society in respect of reducing the staff strength of the society. It is also observed in the award by the 1st respondent that the inflow of milk to the society was considerably reduced. Therefore there is insufficient income to the society and to meet out the financial constraints of the society in respect of salary payable to the staff, the said resolution was passed by the society to reduce the strength of the staff. Therefore, there is no malafide intention in passing the retrenchment order against the petitioner.

10. The Petitioner's contention that the 2nd respondent has not produced any evidence in support of the so called financial crisis in the society and the alleged malafide bias on the Petitioner, has no force and hence, the same cannot be accepted but is liable to be rejected.

11. It is submitted by the petitioner that if finance condition is improved in the 2nd respondent society, an opportunity could be given to the petitioner to serve in the 2nd respondent society.

12. While considering the above said statement of the Petitioner, this court deems it fit to direct the 2nd respondent to consider the Petitioner's request and give him first priority in future vacancy. But in other aspects, the award of the 1st respondent dated 27.01.2009 requires no interference by this court.

13. With the above observation, the Writ Petition is dismissed. No costs.

Sd/--

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Presiding Officer
Labour Court, Salem.

+1cc to Mr. K.V.Shanmuganathan, Advocate SR.No. 2969

+1cc to Mr.S.Umapathy , Advocate SR.No. 2960

WP.3113 of 2011

A.SK (25/02/2019)