



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 17.09.2018
ORDER PRONOUNCED ON : 30.07.2019

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THE HONOURABLE MRS.JUSTICE J.NISHABANU

W.P (MD) No.13398 of 2011
and
M.P (MD) .No.1 of 2011

E.Habib

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Dindigul Zone,
Dindigul.

2.The Special Officer,
M.D-107, Tamilnadu State Transport Corporation,
Employees Co-operative Thrift & Credit Society Ltd,
138, (1) R.S.Road,
Dindigul-624 003

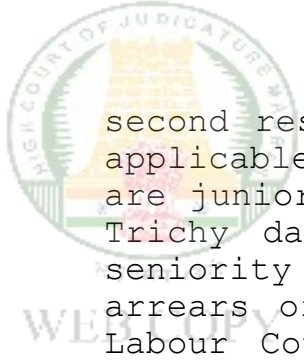
... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the orders of the first respondent dated 29.08.2011 in Na.Ka.No.1511/2011 SaPa, quash the same and consequently direct the second respondent to pay the petitioner regular time scale of pay applicable to his cadre as Clerk on par with his co-employees who are juniors to him from the date of the award of the Labour Court, Trichy dated 09.10.2001 in I.D.No.129/2000 and also to fix his seniority as per the date of his joining service and to pay the arrears of pay and allowances from the date of the award of the Labour Court after deducting Rs.25,000/- paid to him as interim payment during the pendency of the Writ Petition.

For Petitioner	: Mr.S.Arunachalam
For R.1	: Mr.D.Muruganandam
For R.2	: Mr.J.Karl Jacob

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the orders of the first respondent dated 29.08.2011 in Na.Ka.No.1511/2011 SaPa, quash the same and consequently direct the



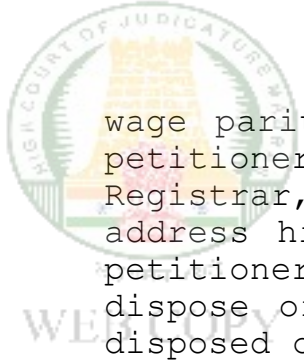
second respondent to pay the petitioner regular time scale of pay applicable to his cadre as Clerk on par with his co-employees who are juniors to him from the date of the award of the Labour Court, Trichy dated 09.10.2001 in I.D.No.129/2000 and also to fix his seniority as per the date of his joining service and to pay the arrears of pay and allowances from the date of the award of the Labour Court after deducting Rs.25,000/- paid to him as interim payment during the pendency of the Writ Petition.

2. Though very many pleadings have been stated in the affidavit, the short facts for deciding the case is as follows:-

2.1. The petitioner would aver among other things that he was appointed as a Clerk in D.D.393 Postal and Telegraph Employees Co-operative Store Ltd., on 23.11.1991 and worked as such till 30.09.1993. Thereafter, it is stated by the petitioner that he became the employee of the second respondent society from 01.10.1993. It is further stated by the petitioner though he worked under the second respondent and wages were actually paid by them directly to him, but records were created to show as if he continued to be the employee of D.D.993 Postal and Telegraph Employees Co-operative Store Ltd. While so, by the proceedings dated 28.02.1995, the petitioner was officially relieved from the services of D.D.993 Postal and Telegraph Employees Co-operative Store Ltd on 28.02.1995 and he became the employee of the second respondent from 01.03.1995 onwards.

3. When the matter stood thus, it is alleged that the second respondent society orally refused employment to the petitioner when he reported for duty on 15.07.1996 after illness suffered by him. Challenging the non-employment, the petitioner raised an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947 which was taken up as I.D.No.129 of 2000 on the file of the Labour Court, Thiruchirapalli (Dindigul group). By an order dated 09.10.2001, the labour Court passed an award holding that the non-employment of the petitioner was not justified and directed the second respondent society to reinstate him in service with continuity of service, but without backwages and with other attendant benefits.

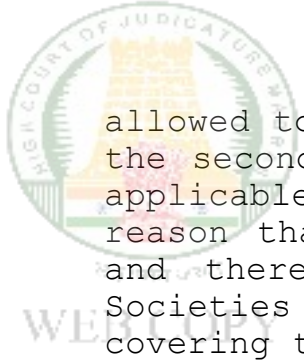
4. Aggrieved over the same, the second respondent Society challenged the said award by way of W.P.No.13244 of 2002. Pending that writ petition, by an order dated 31.07.2010, this Court passed an order made in W.P.M.P.No.17795 of 2002 directing the second respondent herein to pay wages to him, which was challenged by the Society by way of W.A.No.3642 of 2003. However the Division Bench of this Court directed the second respondent to pay consolidated amount of Rs.25,000/- to the petitioner, which was paid by the Society too. Eventually, by an order, dated 20.04.2009, this Court confirmed the award passed in I.D.No.129 of 2000. Subsequently, the petitioner was reinstated by the Society but it is alleged that the wages were not paid in the scale of pay applicable to the post of clerk on par with his juniors. Stating all these facts, regarding



wage parity, arrears of wages and continuity of service etc, the petitioner shoot a representation dated 17.03.2010 to the Registrar, Joint Registrar and Deputy Registrar requesting them to address his grievance. Since it did not evoke any response, the petitioner filed W.P.No.13244 of 2010 seeking a direction to dispose of his representation dated 17.03.2010, which came to be disposed of by this Court through its order dated 08.11.2010 with a direction to approach the appropriate forum, namely, the Registrar of Co-operatives. Accordingly, the petitioner approached the Registrar of Co-operative Societies by filing a revision petition dated 25.01.2011 and the impugned order dated 29.08.2011 came to be passed by the first respondent which is challenged in the present Writ Petition.

5. The learned counsel appearing for the petitioner would submit that despite the fact that the issues already decided by the Labour Court as to whether the petitioner was the employee of the second respondent, his termination and reinstatement which was also confirmed by this Court, the first respondent has once again gone into the preliminary issues and given his findings, thus, leaving the petitioner from back to square one, in other words, he exceeded his jurisdiction and therefore, the impugned order is perverse and illegal. The second respondent has not even paid the minimum wages as per the Act. The first respondent cannot ignore the wages payable to the petitioner for the period from the date of Labour Court. i.e. from 21.10.2001 till the date of reinstatement 17.09.2009 minus the amount of Rs.25,000/- paid to the petitioner as per the order of the Hon'ble Division Bench. It is also alleged that the petitioner was not allowed to sign in the attendance register. Further, the first respondent ought to have followed the provisions of Tamilnadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981 and ought to have directed the first respondent to confer the permanent status from the date on which the petitioner completed 480 days of continuous service from 01.10.1993, the date on which the petitioner joined the services of the first respondent, as per Section 3 of the Act, since the same is applicable to the second respondent society, which they failed to do so. Even now, the second respondent is still paying wages Rs.973/- per month which is far below than the minimum wages fixed by the Govt. under the Minimum Wages Act. To sum up, he prays for setting aside the order of the first respondent.

6. A counter affidavit has been filed by the second respondent in which it is stated that they have got their own bye-laws in regard to its objects and other affairs of the Society. Further, the petitioner joined the second respondent society only from the month of March 1995 and while it was so, he absented himself, unauthorisedly, from 01.12.1995 and thereafter, he appeared on 03.06.2000 and sought to join the duty without giving any proper reason for his unauthorised absence for a period of more than 4 $\frac{1}{2}$ years and it is denied that the petitioner was not



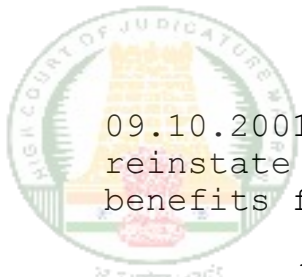
allowed to sign in the attendance register. It is also denied that the second respondent society failed to fix the time scale of pay applicable to the post of clerk on par with his colleagues, for the reason that he was working on deputation from his parent society and therefore, as per Rule 149 of the Tamilnadu Co-operative Societies Rule 1988, as the respondent society has its own bye-laws covering the service conditions of its employees, he is not covered by the Minimum Wages Act too.

7. That apart, the order of the Labour Court has not dealt with the employment status of the petitioner. The Joint Registrar of Co-operative Societies, Dindigul in his order in revision petition under Section 153 of the Tamilnadu Co-operative Societies Act 1983 held that the petitioner was originally deputed D.D.393 Postal and Telegraph employees co-operative stores to the second respondent society and so the Writ Petitioner is the employee of his parent society in which he was recruited and as such he is not eligible for pay on par with the employees of the borrowing 2nd respondent society. The revisional authority also held that the pay and allowance of the petitioner would be fixed as per the Registrar circular in Na.Ka.No.139108/2009-Nu.Ku.Pa.1 dated 26.02.2011 and the service of the petitioner is not required to be regularised as he was appointed through employment exchange. Further, the second respondent society is prepared to pay the scale of pay fixed by his parent society as per the revision order dated 29.08.2011. Therefore, the order impugned in this Writ Petition is a well-considered one and it need not be interfered by this Court.

8. Heard the counsels for both sides and perused the records. The petitioner seeks to quash the orders of the first respondent in NA.KA.No.1511 of 2011 dated 29.08.2011 and requests for a direction to pay the regular scale of pay applicable to his cadre as clerk on par with his co-employees who are juniors to him from the date of award of the Labour Court, Trichy dated 09.10.2001 in I.D.No 129/2000 and to pay the arrears of pay and allowances from the date of the award after deducting the interim payment of Rs. 25,000/- paid to him during the course of the litigations.

9. The petitioner was appointed as clerk in D.D.393 Postal and Telegraph Employees Co-operative Store Limited on 23.11.1991 and was later deputed on full additional charge of the 2nd respondent society viz., Tamil Nadu State Transport Corporation Employees Co-operative Thrift & Credit Society Limited from 01.10.1993 after being permanently relieved by the former employer. Accordingly he became an employee of the 2nd respondent.

10. During November, 1995, the petitioner had filed his resignation letter with the 2nd respondent society and left the job. It is reported that the resignation was not acted upon by the 2nd respondent, and the petitioner claimed employment again during 2000 which was refused by the 2nd respondent. The petitioner raised an industrial dispute I.D.No 129 of 2000 and vide order dated



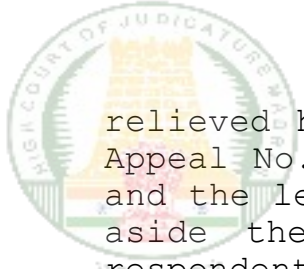
09.10.2001, the labour court directed the 2nd respondent to reinstate the petitioner without backwages and other attendant benefits for the period of absence.

11. The 2nd respondent preferred Writ Petition No.13244 of 2002 against the above order of the Labour Court and this Court had granted interim stay vide order dated 31.07.2010 in M.P.No.17795 of 2002, later confirmed the order of the Labour Court vide Order dated 20.04.2009 in W.P.No.13244 of 2002. Based on the above order of this court in W.P.No.13244 of 2002, the order of reinstatement was issued by the Special Officer of the 2nd respondent on 16.09.2009 and the petitioner joined duty in the forenoon of 18.09.2009. The petitioner was placed on a pay of Rs. 973/- being the amount last drawn by him in his employment in the 2nd respondent society during 1995.

12. Aggrieved by the pay fixation, the petitioner had filed representation dated 17.03.2010 before the Registrar of Co-operatives, the 1st respondent and others to fix his pay, seniority and other benefits in terms of the award passed by the Labour Court vide order dated 09.10.2001 in I.D.No 129 of 2000. As no action was taken by the authorities, the petitioner filed Writ Petition No.8344 of 2010 and this court by its order dated 08.11.2010 disposed off the Writ Petition directing the petitioner to approach the appropriate authority as to his demands. Accordingly, the petitioner filed revision petition under Section 153 of the Co-operative Societies Act on 25.01.2011 before the Registrar of Co-operatives and the 1st Respondent passed the impugned order dated 29.08.2011 that is challenged by the writ petitioner.

13. The 1st respondent in the impugned order had framed three questions for consideration before recording his findings and passing orders. On the first question whether the petitioner is entitled for the scale of pay of the employees at The Tamil Nadu Transport Corporation Thrift & Credit Society Limited, it was held that the petitioner being on deputation on full additional charge with the 2nd respondent society, he is not entitled for the scale of pay of the employees of the 2nd respondent society. On the second question of the fixation of pay and allowances, it was held that the pay should be notionally fixed on the scale of pay he held before the break from the date of joining service on 18.09.2019 as if he continued in the service and that the pay has to be fixed on the scale of pay determined in terms of the order dated 26.02.2011 in Na.Ka.No.139108/2009-Consumer Cooperative Stores. No pay or other allowances like leave salary, earned leave, EPF contribution need to be paid for the period the petitioner was not in employment. On the third question of regularizing the service, it was held that as the petitioner was already appointed through employment exchange, there was no need for regularization again.

14. Pending the Writ petition, the 2nd respondent vide an order dated 29.02.2012 terminated the petitioner from service and

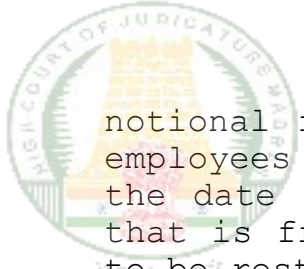


relieved him from duty on the same day. The petitioner preferred Appeal No.6/2012 under Section 41 of the Shops & Establishment Act and the learned appellate authority vide order dated 27.11.2014 set aside the termination order of the 2nd respondent. As the 2nd respondent failed to comply with the above order in Appeal No.6/2012, the petitioner had sent a representation dated 25.04.2015 to the respondents seeking to reinstate him in terms of the order dated 27.11.2014 of the Appellate Authority. As no action was taken against the representation and the order, the petitioner filed Writ Petition WP(MD)No.22719 of 2015 before this court. This court vide order dated 17.12.2015 directed the respondents to reinstate the petitioner in terms of the order dated 27.11.2014 of the Appellate Authority with liberty to the respondents to file Writ Petition against the order dated 27.11.2014 of the learned Appellate Authority. This court had observed that the petitioner is entitled for wages even pending the adjudication of his termination and therefore directed the respondents to reinstate him and pay wages after extracting work from the petitioner.

15. The respondents filed WP No 15092 of 2015 against the order dated 27.11.2014 in Appeal No.6/2012. Pending the writ petition, the 2nd respondent reinstated the petitioner again in service vide an order dated 16.07.2016. This court vide its final order dated 05.12.2018 dismissed writ petition in WP.No.15092 of 2015 of the respondents holding that the the petitioner has no lien in DD-393 Postal & Telegraph Co-operative Stores Limited, Dindigul, the original employer of the petitioner and as such the respondents are the employers of the petitioner and directed the respondents to disburse the consequential benefits.

16. The petitioner had challenged all the three findings and decisions of the 1st respondent and had prayed for the dismissal of the impugned order in toto. From the pronouncements made by various forum in the petitioner's case, it is clear that the decision arrived at by the 1st respondent with regard to the first question framed by him is reversed by the order dated 05.12.2018 of this court in WP.No.15092 of 2015. The answer of the 1st respondent to the second question in the impugned order flows from the findings and decisions arrived in the first question framed by him. In view of the categorical order of this court in WP.No.15092 of 2015 that the petitioner is the employee of the 2nd respondent, the decisions arrived at by him with regard to the second question framed by him in the impugned order is not tenable and liable to be reversed. The Registrar's Order in Na.Ka.No 139108 dated 26.02.2011 has no application to the case of the petitioner. In view of the reversal of the decisions in respect of the first two questions framed in the impugned order, there is a necessity to regularize the appointment and pay of the petitioner in the roll of the 2nd respondent. Therefore, the impugned order dated 29.08.2011 of the 1st respondent is liable to be set aside in toto.

17. In view of the above, the petitioner is entitled for



notional fixation of pay in the scale of pay on par with his co-employees holding the same post at the 2nd respondent society as on the date of the order in I.D.No 129 of 2000 of the Labour Court, that is from 09.10.2001. The seniority of the petitioner is liable to be restored in terms of the order dated 09.10.2001 in I.D.No.129 of 2000 of the Labour Court. As the petitioner is not entitled to back wages and attendant benefits for the back period in terms of the order dated 09.10.2001 in I.D.No 129 of 2000 of the Labour Court, and as increment is not earned by the petitioner on par with his juniors during the period prior to 09.10.2001, the petitioner is not entitled to pay parity with his juniors. The petitioner is entitled for arrears of pay and eligible allowances from 09.10.2001. The amount of Rs.25,000/- paid as interim relief in terms of the order dated 17.12.2003 in W.A.No.3642 of 2003 shall be deducted while calculating the payment of award.

18.The Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Joint Registrar of Co-operative Societies,
Dindigul Zone,
Dindigul.
- 2.The Special Officer,
M.D-107, Tamilnadu State Transport Corporation,
Employees Co-operative Thrift & Credit Society Ltd,
138, (1) R.S.Road,
Dindigul-624 003.

+1CC TO MR.S.ARUNACHALAM, Advocate Sr. No.79312

order made in
W.P(MD)No.13398 of 2011
30.07.2019

PM(CO)
TR (06.08.2019) 7P 4C