



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.12.2019
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.14480 of 2013
and
M.P(MD)No.1 of 2013

D.Kamaraj

... Petitioner

vs.

1)The Management,
A1663, Aandipatti Co-operative Stores Ltd.,
Mini Super Market,
Madurai-Theni Road,
Andipatti,
Theni District.

2)The Deputy Registrar of Co-operative Society,
Periyakulam,
Theni District.

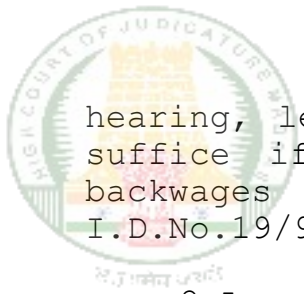
... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to fix the salary in the scale applicable to the petitioner from the date of termination of the petitioner's service taking into consideration the increments due to the petitioner by sanctioning the same and also to pay the arrears of salary arising thereon together with the difference in salary payable as per the scale of pay and the consolidated payment of Rs.3,000/- per month together with 12% interest from the date of termination till the date of realization within the stipulated period as prescribed by this Court.

For Petitioner : Mr.K.Muthumalai
For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

Though the prayer in this writ petition is to for issuance of a Writ of Mandamus, directing the respondents to fix the salary in the scale applicable to the petitioner from the date of termination of the petitioner's service taking into consideration the increments due to the petitioner by sanctioning the same and also to pay the arrears of salary arising thereon together with the difference in salary payable as per the scale of pay and the consolidated payment of Rs.3,000/- per month together with 12% interest from the date of termination till the date of realization within the stipulated period as prescribed by this Court, when the matter is taken up for



hearing, learned counsel for the petitioner would state that it is suffice if a direction is issued to the respondents to grant backwages and other benefits as awarded by the Labour Court in I.D.No.19/97 dated 24.07.2001.

2.Learned counsel for the petitioner would submit that the petitioner joined the 1st respondent Co-operative Stores Ltd., as a Clerk in the year 1978 as a permanent staff. While so, on 31.01.1994, he was placed under suspension without any justification and subsequently he was dismissed from service with effect from 18.03.1996 without even holding enquiry violating the principles of natural justice. Challenging the dismissal order, the petitioner raised an industrial dispute in I.D.No.19/97 before the Labour Court, Madurai, and also sought for a direction to the respondents to reinstate him in service with 50% backwages for the period of non employment from 18.03.1996 till reinstatement. The Labour Court by order dated 24.07.2001 set aside the dismissal order and granted the relief as prayed for with a further direction to the respondents to treat the period of non employment as continuity of service for all purposes. According to the petitioner, though he was reinstated on 01.02.2002, he was paid only a consolidated salary of Rs.3,000/- per month while similarly situated persons were paid Rs.6,000/- per month.

3.He would further submit that against the order of the Labour Court, the 1st respondent filed W.P(MD)No.26094 of 2001 before this Court and this Court by order dated 21.11.2007 while dismissing the said writ petition, directed the respondents to reinstate the petitioner within four weeks. Thereafter, when the petitioner made representations to pay backwages and other benefits as per the order of the Labour Court, he was informed that he is liable to pay Rs.26,000/- under surcharge proceedings initiated against him. It is further submitted that against the surcharge proceedings, the petitioner filed CMA(CS)No.142/95 before the Co-operative Tribunal which was allowed by order dated 13.10.2004 setting aside the surcharge proceedings and therefore, the petitioner is not liable to pay any amount under surcharge proceedings thereby, there is no impediment for the respondents to implement the order passed by the Labour Court. Thus he would pray for the direction to the respondents to grant monetary benefits as ordered by the Labour Court.

4.Though the writ petition is pending from 2013, the respondents have not chosen to file counter affidavit. The learned Government Advocate appearing for the respondents would submit that surcharge proceedings are pending against the petitioner and therefore, the respondents are not in a position to comply with the order passed by the Labour Court. Thus, he would pray for dismissal of the writ petition.



6.Perusal of record shows that orders have been passed by the Labour Court, Madurai, as early as on 24.07.2001 in I.D.No.19/97, whereby, the termination order dated 18.03.1996 passed by the 1st respondent Management was set aside holding that the petitioner is entitled to 50% of backwages from the period of his non employment from 18.03.1996 till his reinstatement with a direction that the period of non-employment of the petitioner be considered as continuity of service for the purpose of salary increase, promotion, gratuity and other retirement benefits. But the petitioner was reinstated in service on 01.02.2002, with the consolidated salary of Rs.3,000/- only. It is stated by the learned counsel for the petitioner that even after the dismissal of the writ petition filed by them, the respondents did not pay the monetary benefits as per the order of the Labour Court. Learned counsel for the respondents stated that surcharge proceedings are pending against the petitioner. Learned counsel for the petitioner would state that the surcharge proceedings itself were set aside and to that effect, he has filed proceedings dated 21.03.2005 in the typed set of papers. Therefore, there is no option for the respondents except to comply with the order passed by the Labour Court and therefore, the respondents are directed to implement the order of the Labour Court and pay backwages and other benefits as ordered by the Labour Court, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

bala

To

1)The Management,
A1663, Aandipatti Co-operative Stores Ltd.,
Mini Super Market,
Madurai-Theni Road,
Andipatti,
Theni District.

2)The Deputy Registrar of Co-operative Society,
Periyakulam,

<https://hcservices.eco.dti.gov.in/hcservices/>



+1 CC to M/s.K.MUTHUMALAI, Advocate (SR-103555[F] dated
05/12/2019)
+1 CC to SPL GP (SR-103844[F] dated 06/12/2019)

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W.P (MD) No.14480 of 2013
05.12.2019

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