

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.39673 of 2002 and W.P.M.P.No.59058 of 2002

The Management of
Sri Prasanna Venkatramana Swamy
Primary Agricultural Co-op. Bank Ltd.,
No.4021, rep. by its
Special Officer, Marakottai Village,
Karuvalli, Omalur Taluk,
Salem District.

...Petitioner

-Vs-

1. The Presiding Officer
Labour Court, Salem.

2. Mr.Elumalai.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari calling for the records on the file of the first respondent herein made in I.D.No.205 of 1997, dated 1.10.2001 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.K.V.Shanmuganathan

O R D E R

The second respondent was the employee of the petitioner Society from 1984 as Night Watchman. Thereafter he seems to have been promoted as Peon in the year 1989. While he was working as such, it seems that some disciplinary proceedings were initiated against the second respondent and ultimately the second respondent was initially suspended from service. Subsequently, he was terminated from service on 07.05.1995. Against the said order of dismissal, the second respondent raised an industrial dispute in I.D.No.205 of 1997 on the file of the Labour Court, Salem.

2. The labour Court, having heard both sides, has passed an Award on 01.10.2001 whereby the Labour Court decided to set aside the punishment awarded against the second respondent and

accordingly passed an Award, directing the petitioner Society to reinstate the second respondent with backwages and also continuity of service. Aggrieved over the same, the Society has filed this writ petition challenging the impugned award dated 01.10.2001.

3. Heard Mr.M.S.Palaniswamy, learned counsel for the petitioner Society. When the case came up for hearing on 16.10.2020, the learned counsel for the second respondent Society could not join in the video conference. Therefore, after hearing the learned counsel for the petitioner, this Court passed the following order.

"Learned counsel for the the petitioner Society wants to get instructions as to whether this writ petition can be decided by way of giving a direction to the petitioner Society to pay lump sum compensation which could be calculated taking into account the last drawn pay / salary paid to the employee at the time of taking the disciplinary action against him ie., in year 1997 till his superannuation, which is in the year 2000. If so, what shall be the lump sum compensation payable according to the calculation of the Society, shall also be spelt out. Hence, the learned counsel for the petitioner seeks short accommodation. Post the matter on 04.11.2020."

4. Accordingly, the matter is posted today for further hearing. Mr.M.S.Palaniswamy, learned counsel for the petitioner Society, on instructions, would submit that, since the petitioner Society is in severe financial crisis and its financial stability is not in good shape, it cannot pay any lump sum amount to the second respondent, who in fact in the meanwhile died in the year 2006 and on behalf of the deceased second respondent, no steps have been taken to implead any legal heir. Therefore, the learned counsel for the petitioner would submit that, according to the petitioner Society the last drawn salary of the second respondent was Rs.2300/- per month and if that is taken into account, between 1997 the year in which the second respondent was terminated from service and till 2000, the year in which the second respondent superannuated, it comes roughly about Rs.82,000/- as salary due payable to the second respondent. However, he would further submit that, the allegation made against the second respondent was very serious in nature and therefore that aspect since has not been appreciated in proper perspective by the labour Court and accordingly since the impugned award was passed, the petitioner Society, in view of the death of the second respondent in the meanwhile during the pendency of this writ petition, has come

forward to accept this suggestion which comes from the Court and therefore, a reasonable amount can be fixed by this Court to deposit as a lump sum payable to the second respondent in the I.D. Account by giving a specific time to any legal heir who comes forward to file necessary petition before the labour Court to establish their identity, it is for the labour Court to satisfy with the identity of the legal heir and they may be permitted to withdraw the amount deposited or otherwise the said amount in deposit shall be reverted back to the petitioner Society, he contended.

5. However Mr.K.V.Shanmuganathan, learned counsel appearing on behalf of the second respondent would submit that, despite his best efforts he could not get the second respondent's legal heir details and in this regard he is still taking persistent steps to find out the legal heir and if some more time is granted, he may be in a position to find out the legal heir of the second respondent.

6. I have considered the submissions made by the learned counsel for the petitioner Society and the learned counsel for the second respondent and also perused the materials placed on record.

7. It is a fact that in the year 2006 itself the second respondent died. Assuming that the order of the labour Court was implemented, the period for which the second respondent could have worked was only between 1997 and 2000 ie., three years, he could have earned by way of getting full salary a sum of Rs.82,000/- only, as has been projected by the learned counsel for the petitioner. Now since the second respondent is no more, the validity of the Award passed, which is impugned herein, by the Labour Court cannot be gone into as there is no contesting second respondent available before this Court at this juncture.

8. Insofar as the plea raised on behalf of the second respondent that, it will take some more time to identify the legal heir of the second respondent and to implead them, that position may not arise as of now, in view of the decision to be taken by this Court in this order.

9. The total salary could have been claimed by the second respondent had he been reinstated and worked for the said period ie., 1997 to 2000, by calculating on the basis of the last drawn salary which was fixed by the petitioner Society as Rs.2,300/- per month would come only to Rs.82,000/- . If that amount was paid in time while the second respondent was alive, he would have enjoyed that money. However, for variety of reasons that has been delayed and now only the writ petition has been taken

up for final hearing and in the meanwhile, the second respondent is no more and the said position cannot be brought back now. However, in order to compensate for the said period for which otherwise the second respondent would be entitled to claim the salary between 1997 and 2000, the petitioner Society should pay the lump sum, taking into account the last drawn salary, which according to the petitioner comes to about Rs.82,000/- and if interest is calculated for the said amount at the rate of at least 6% per annum, the amount will be on the higher side.

10. However, since the merits of the case could not be decided at this juncture, taking into account the situation, this Court feels that, instead of awarding interest on the said salary payable to the second respondent between 1997 and 2000, a lump sum can be directed to be deposited by the petitioner in the I.D.Account to enable the legal heir to withdraw it, if they come forward within a reasonable time with their proper identity to the satisfaction of the Labour Court, this Court feels that, justice would be met.

11. Accordingly in order to give a quietus to the issue, this Court is inclined to dispose of this writ petition with the following order.

- a) That the petitioner Society shall deposit a sum of Rs.75,000/- in the I.D. Account in I.D.No.205 of 1997 on the file of the Labour Court Salem, within two months from the date of receipt of a copy of this order, as full and final settlement payable to the second respondent.
- b) On making such deposit, the Court below ie., the Labour Court, Salem shall keep the money either in the said account or a Fixed Deposit in any Nationalised Bank for a period of six months. Within the said period, if any legal heir of the second respondent comes forward to file necessary application before the Labour Court, the Labour Court, after verifying and satisfying the identify of the legal heirship of the said legal heir of the second respondent, shall pass necessary orders permitting the legal heir to withdraw the said amount.
- c) It is further made clear that, within the period of six months if no legal heir comes forward to file any such petition to withdraw the said amount, the labour Court shall permit the petitioner Society to withdraw the said amount after the lapse of six months period, through necessary petition to be filed in this regard by the petitioner Society.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

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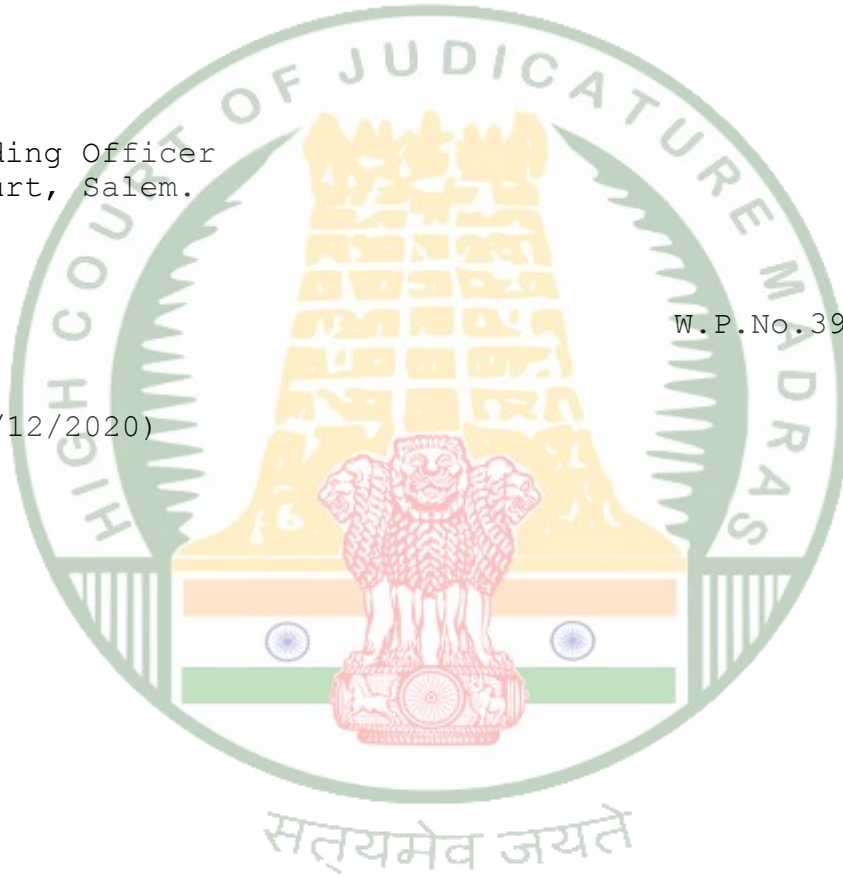
Sub Assistant Registrar

To

The Presiding Officer
Labour Court, Salem.

W.P.No.39673 of 2002

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