



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.02.2020

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THE HONOURABLE MRS.JUSTICE J.NISHABANU

W.P(MD)Nos.1393 and 5039 of 2012
and
M.P(MD).No.2 of 2012

W.P(MD)No.1393 of 2012

Ramanathapuram East Sarvodya Sangam
Head Office,
10/382,Erattaipilliyar Koil Street,
Paramakudi 623 707,
rep.by its Secretary

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
District Court Building,
Melur Road,
Madurai-625 020.

2.V.Kuppusamy

... Respondents

Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari to call for the records
of the first respondent in I.D.No.7 of 2007 and quash the award
dated 20.10.2011 passed therein.

For Petitioner : Mr.T.Ravichandran

W.P(MD)Nos.5039 of 2012:-

V.Kuppusamy (Died)

... Petitioner

1.Yasodhai
2.Ganga
3.Karthik
4.Vinayagam
5.Sigappi

(Petitioners 1 to 5 are brought on record by
this Court vide WMP(MD).No.2629 of 2020
dated 20.02.2020)



1.The Presiding Officer,
Labour Court,
Madurai-20.

2.Ramanathapuram East Sarvodaya Sangam,
rep.by its Secretary,
Head Office,
No.10/382, Erattai Pillaiyar Koil Street,
Paramakudi,
Ramanathapuram-623 707.

... 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 pertaining to the order passed by the first respondent in I.D.No.7 of 2007 dated 20.10.2011 and quash the same insofar as the backwages is concerned and consequently, direct the second respondent to provide the backwages and other all attendance monetary benefits.

For Petitioner : Mr.S.Karthick

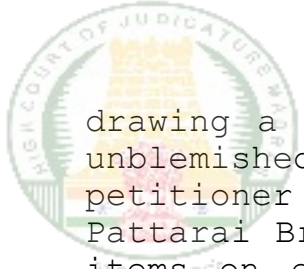
COMMON ORDER

Since the issue involved in both the Writ Petitions are one and the same, they are taken up together and a common order is passed.

2. The petitioner in W.P.(MD).No.5039 of 2012 was an employee of the second respondent Society. On certain allegations, he was terminated from service. As against the termination order of the Management, the employee preferred I.D.No.7 of 2007 before the Labour Court, Madurai, where, the Court below has ordered continuity of service but without backwages. As a result, the employee filed W.P.(MD).No.5039 of 2012. Similarly, aggrieved over the order of the Labour Court in its entirety, the Management has preferred W.P.(MD). No.1393 of 2012 praying to quash the Award made in I.D.No.7 of 2007, dated 20.10.2011.

3. The short facts which are necessary for disposal of both the Writ Petitions are as follows. The facts narrated in W.P. (MD).No.1393 of 2012 is as follows :-

3.1. For the sake of convenience, the petitioner in W.P. (MD).No.5039 of 2012 is called as 'employee' and the petitioner in W.P.(MD).No.1393 of 2012 is called as 'management'. The employee in W.P.(MD).No.5039 of 2012 would aver among other things that he was appointed as workmen in the second respondent's Sarvodaya Sangam on 27.04.1982 on daily wages basis. On 01.01.1991, the employee's service was confirmed by the second respondent/Management and he was



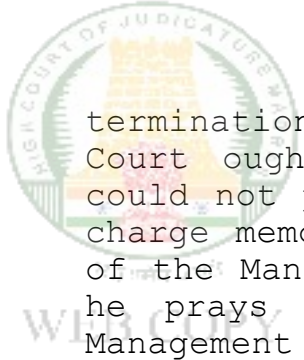
drawing a sum of Rs.4,643.70 as his monthly salary. He has put in unblemished service in various branches. While so, when the petitioner was working as an Assistant Manager in Paramakudi Kollan Pattarai Branch, he was directed to sell sarvodaya steel furniture items on credit sale basis. In the meanwhile, he was transferred from Paramakudi Kollan Pattarai Branch to Keelakkarai Branch. On the date of transfer from the previous branch, a sum of Rs.27,700/- was pending as 'outstanding' from the customers, in which, for a sum Rs.900/- was done by the incharge-officer. It is averred by the employee that after his transfer he handed over all the records, ledger and liabilities to one Muthukrishnan who was the incharge of the said branch. As per the existing sales, the detailed creditor's list also handed over to the said Muthukrishnan, who is solely responsible for the subsequent collection of the said credit sales.

3.2. It is further averred in the affidavit that after the transfer, when the petitioner was working in Keelakarai Branch, Sarvodaya Sangam election was conducted and newly elected office bearers had assumed their charges. It is alleged that since the petitioner did not help to the newly office bearer during Sarvodaya Sanagam Election, the second respondent wrote a letter on 05.05.2004 and 26.04.2004 stating that the office was not open on time to which the petitioner promptly replied negating the said allegation. Not satisfied with the same, on 31.08.2004, the second respondent suspended the petitioner without any valid reason, hence, the petitioner filed the Writ Petition in W.P.(MD).No.1619 of 2004 before this court and obtained an order of interim stay. Subsequently, the second respondent, on 19.08.2004 and 03.09.2004 had issued two charge memos for flimsy reasons. The petitioner gave reply to the said charges and an enquiry officer was appointed, who in turn submitted a Report that the charges levelled against the employee had been proved. As a consequence, the employee was dismissed from service.

3.3. Aggrieved over the same, the employee challenged the dismissal order before the first respondent in I.D.No.7 of 2007, who in turn, had passed an order on 20.10.2011 by reinstating the employee from service with continuity of service but without backwages. According to the employee from the date of dismissal itself, he lost his job and facing unemployment problem. Hence, the present Writ Petition is filed for the relief stated supra.

4. As stated earlier, the Management has also filed W.P. (MD).No.1393 of 2012 challenging the award passed by the Labour Court. Since the facts projected in W.P.(MD).No.5039 of 2012, are more or less same in W.P(MD)No.1393 of 2012, it is not discussed in detail.

5. The learned Counsel appearing for the employee would submit that the award of the labour Court is violative of Article 14 of the Constitution of India in respect of not awarding back wages to the employee. Once it comes to the conclusion that the



termination order is illegal, it goes without saying that the Labour Court ought to have awarded backwages. Further, the management could not produce any evidence against the employee to support the charge memo issued by them. Therefore, the entire dismissal order of the Management is illegal and punitive in nature and therefore, he prays for the dismissal of the Writ Petition preferred by Management in W.P.(MD).No.1393 of 2012.

6. *Per contra*, the learned counsel appearing for the Management assails the order of the labour court by stating that the Labour court failed to appreciate the facts and evidence produced by the Management and that the charges alleged against the employee is serious in nature, as he has misappropriated collection amount and recorded false accounts. The Labour Court also failed to note the fact that the terminated employee is not at all an employee under Section 2(s) of the Act. Hence, he prayed for the dismissal of the Writ Petition preferred by the employee in W.P.(MD).No.5039 of 2012.

7. Heard the learned counsel appearing for the employee and learned counsel appearing for the Management and perused the materials available on record.

8. It is seen that the employee before transferring to the another branch he has properly handed over all the records and ledger, liabilities to his successor, which is not disputed by the management. Though it is alleged by the Management that the employee has not properly accounted a sum of Rs.24,500/-, the Court below has properly observed that it is not proved by the Management with supporting documents. In paragraph No.8 of the Labour Court, a specific observation has been made that the amount in question has subsequently been collected and the same has been credited into the Society's account. Therefore, there is no question that the Management met with loss due to the attitude of the employee. It is also not the case of the Management that he has swindled the amount. The employee has only done his duty by giving materials to the customers on credit sale basis as per the extant rules, in which, some sort of delay had occurred in collecting the amount which has been subsequently rectified by collecting the amount and the same was credited into Society's account. In fact, before transferring to the another branch, the employee has properly accounted to his successor. In such a situation, the termination of the employee is highly illegal and the same could not be sustained in the eye of law. Though the lower court has specifically found that the termination order was illegal, but without any valid reason, it has failed to award backwages to him. This Court is of the considered view that the cascading effect to be given to the employee and therefore, considering the service of the employee that he has put in more than 23 years of unblemished service and allegations levelled against the employee has no legs to stand, this Court passes the following order:-

<https://hcservices.ecourts.gov.in/hcservices/>
a) W.P.(MD).No.1393 of 2012 preferred by the Management stands dismissed and



b) W.P.(MD).No.5039 of 2012 preferred by the employee stands allowed.

9. It is stated that the employee is no more and he has been battling for the benefits since the date of his termination order and therefore, the Management is directed to calculate the arrears of pay and all attendant benefits within a period of two months from the date of receipt of a copy of this order. In case, it fails to settle the benefit, as directed by this Court, the Management is directed to pay interest at the rate of 8% per annum from the date of termination till the date of realisation of the amount by the employee's family. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar(CS)

Bala

To

1.The Secretary
Ramanathapuram East Sarvodya Sangam
Head Office,
10/382,Erattaipilliyar Koil Street,
Paramakudi 623 707.

2.The Presiding Officer,
Labour Court,
District Court Building,
Melur Road,
Madurai-625 020.

+1 CC to Mr.S.Karthick,Advocate in SR.No.7627.

W.P(MD)Nos.1393 and 5039 of 2012
20.02.2020

PM(CO)

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