



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2020

DELIVERED ON : 12.08.2020

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.7588 of 2013, 9360 of 2016 and 19536 of 2016

and

M.P. (MD) .Nos.1 of 2013 and 1 of 2015 in W.P. (MD) .No7588/2013

and

W.M.P. (MD) .Nos.7415 of 2016 and 3760 of 2017 in W.P. (MD) .No.9360

of 2016

W.M.P. (MD) .Nos.14090 of 2016 and 3761 of 2017 in

W.P. (MD) .No.19536 of 2016

1.The Karavilai Primary Agricultural Co-operative
Credit Society Ltd. No.1570, Karavilai,
Anandanadarkudi Post,
Kanyakumari District,
through its Special Officer.

2.The Secretary,
The Karavilai Primary Agricultural Co-operative
Credit Society Ltd. No.1570, Karavilai,
Anandanadarkudi Post,
Kanyakumari District. ... Petitioners in
W.P. (MD) .Nos.7588 of 2013 and 9360 of 2016

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Murugan ... Respondents in
W.P. (MD) .Nos.7588 of 2013 and 9360 of 2016

The Special Officer,
Karavilai Primary Agricultural Co-operative
Credit Society Ltd. No.1570, Karavilai,
Anandanadarkudi Post,
Kanyakumari District.

... Petitioner in
W.P. (MD) .No.19536 of 2016



Vs.

1.The Controlling Authority
under Payment of Gratuity Act, 1972 cum
the Deputy Commissioner of Labour,
Tirunelveli.

2.S.Murugan ... Respondents in W.P.(MD).No.19536 of 2016

PRAYER in W.P. (MD) .No.7588 of 2013:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the first respondent in Claim Petition No.48 of 2012 dated 31.01.2013 and quash the same.

PRAYER in W.P. (MD) .No.9360 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the first respondent in E.P.No.2 of 2016 in C.P.No.48 of 2012 dated 04.05.2016 and quash the same.

PRAYER in W.P. (MD) .No.19536 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in P.G.No.151/13 dated 31.05.2016 and quash the same.

For petitioners in all
the petitions : Mr.N.Shankar Ganesh

For 2nd respondent in all
the petitions : Mr.M.E.Ilango

ORDER

W.P. (MD) .No.7588 of 2013 has been filed by the Co-operative Society challenging the order passed by the Labour Court in Claim Petition No.48 of 2012 directing the society to pay a sum of Rs.9,84,336/- as backwages with interest at 7.5% to the 2nd respondent/workman. W.P. (MD) .No.9360 of 2016 has been filed by the said Society challenging the order passed in the execution petition in Claim Petition No.48 of 2012. W.P. (MD) .No.19536 of 2016 has been filed by the very same Society against the order refusing to defer the proceedings filed under Payment of Gratuity Act by the second respondent/workman.



2. As the issues involved in these writ petitions are inter-related to each other and as the disputes are between one and the same parties, this Court heard all the petitions together and they are disposed of by way of this common order.

3. The learned counsel appearing for the petitioners submitted that the second respondent/workman was appointed as Clerk in the year 1976 and promoted as Secretary of the Society on 25.02.1991. While so, the second respondent had altered bank records for wrongful gain. After conducting a detailed enquiry, the petitioners dismissed the 2nd respondent from service on 06.05.1996. Aggrieved by the same, the second respondent/workman had preferred an appeal in TNSE.No.11 of 2000 before the Labour Court and on 30.04.2003, the Labour Court had allowed said appeal by setting the order of dismissal and by directing the petitioners to reinstate the second respondent/workman in service with backwages. As against the said order, the petitioners had preferred a writ petition in W.P.(MD).No.1221 of 2007, but the said writ petition was dismissed on the ground of laches, against which a writ appeal in W.A.(MD).No.360 of 2007 was filed. In the meantime, the second respondent/workman had preferred a writ petition in W.P.No.3115 of 2005 seeking to reinstate him in service by implementing the order passed by the appellate authority, but the said writ petition was dismissed by this Court on the ground of stay order granted in W.A.(MD).No.360 of 2007. Subsequently, the said writ appeal was dismissed upholding the validity of the order passed in the writ petition in W.P.(MD).No.1221 of 2007. Aggrieved by the same, the petitioners had preferred a Review Petition in Review Application No.100 of 2010 and the same was also dismissed by this Court on 04.10.2010.

4. The learned counsel appearing for the petitioners would further submit that on 12.01.2011 the second respondent was reinstated into service by the petitioners. On 13.03.2011, the second respondent on his own volition resigned his job. After resigning the job, the 2nd respondent had preferred a claim petition before the Labour Court in C.P.No.48 of 2012 claiming backwages and other attendant benefits during the period of his non employment to the tune of Rs.13,76,795/-. The Labour Court, by the impugned order dated 31.01.2013, allowed the claim petition in part and thereby directed the Society to pay a sum of Rs.9,84,336/- with interest at the rate of 7.5% from the date of claim petition till the date of realization. Aggrieved by the same, the petitioners/Society has preferred the writ petition in W.P.(MD).No.7588 of 2013 and this Court has granted an interim order of stay in M.P.(MD).No.1 of 2013 in W.P.(MD).No.7588 of 2013. Aggrieved by the same, the second respondent/workman has preferred a vacate stay petition in M.P.(MD).No.1 of 2015. This Court, by order dated 29.07.2015, has modified the interim order



of stay as a conditional order directing the Society to pay 25% of the award amount and to pay interest at the rate of 7.5% for the remaining 75% of the award amount to the second respondent/workman once in three months and that in the event of non compliance, the interim order would be vacated automatically. Aggrieved by the said conditional order, the petitioners/Society had preferred an appeal in W.A.(MD).No.1225 of 2015, but a Division Bench of this Court has dismissed the same. As the petitioners/Society failed to comply with the interim order dated 29.07.2015, the second respondent/workman preferred an execution petition before the Labour Court and the Labour Court, by an order dated 04.05.2016, had directed the petitioners either to deposit the E.P. amount or to get stay order, failing which the properties would be attached. Challenging the order passed in the execution petition, the petitioners/Society has preferred the writ petition in W.P.(MD).No.9360 of 2016.

5. The learned counsel for the petitioners/Society would next submit that the second respondent/workman has preferred an application on the file of the Controlling Authority under Payment of Gratuity Act, 1972 cum the Deputy Commissioner of Labour, Tirunelveli, seeking the gratuity amount pending due from the petitioners/Society. The petitioners/Society had prayed to defer the proceedings, but the Controlling Authority has refused to do so. Aggrieved by the same, the petitioners/Society filed the writ petition in W.P.(MD).No.19536 of 2016.

6. The learned counsel appearing for the petitioners/Society would further submit that the second respondent/workman is a convicted person by the competent Court for misappropriation of the Society funds and he was let off only under the Probation of Offenders Act. The second respondent/workman had never claimed in his claim petition that he was not gainfully employed during the period of non-employment. Further, as per the well settled principle of "No work No pay", the second respondent/workman is not entitled to get salary for the period of non employment. After reinstatement, the second respondent/workman himself resigned his job voluntarily from the service. The Labour Court, without considering the above aspects, has erroneously directed the Society to pay a sum of Rs.9,84,336/- as backwages with 7.5% interest to the second respondent/workman. While granting conditional order of stay, this Court has failed to note that if the petitioners/society succeeds in the writ petition in W.P.(MD).No.7588 of 2013, the Society need not pay any money to the second respondent/workman and it will be very difficult for the Society to recover the amount from the second respondent/workman. The Labour Court, without considering the above aspects, has proceeded with the execution petition and held that the properties would be attached. Therefore, the impugned orders passed by the Labour

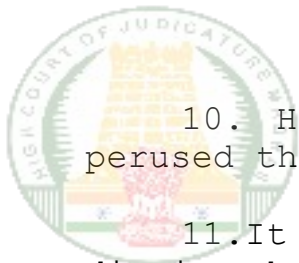


Court may be set aside and the writ petitions in W.P.(MD).Nos.7588 of 2013 and W.P.(MD).No.9360 of 2016 may be allowed.

7. He would further submit that the Controlling Authority, without considering the fact that the petitioner is a convicted person and he was let off only under the Probation of Offenders Act and also without considering the pendency of the proceedings with regard to backwages before the writ Court, has erroneously refused to defer the proceedings under the Payment of Gratuity Act. Hence, this Court may set aside the said order of the Controlling Authority.

8. The learned counsel appearing for the second respondent/workman submitted that the second respondent/workman was dismissed from service illegally without conducting any domestic enquiry. After a long legal battle, he was reinstated in service. After reinstatement, he resigned his job due to compulsion of the petitioners. As the petitioners refused to pay backwages, he has filed claim petition in C.P.No.48 of 2012 on the file of the Labour Court claiming a sum of Rs.13,76,795/- as backwages. The Labour Court has partly allowed the claim petition and thereby, awarded only Rs.9,84,336/- with interest at the rate of 7.5% p.a.. The award passed by the Labour Court can be challenged only on the limited ground of exceeding jurisdiction or passing perverse order without any material evidence, but the said grounds are lacking in the instant case. Further, the principle of "no work no pay" is not applicable to this case. Therefore, the award passed by the Labour Court is not liable to be interfered with. He would further submit that the petitioners failed to comply with the conditional order of stay granted by this Court and therefore, he had filed execution petition and the Labour Court, after hearing both sides, has proceeded with the execution petitions and directed the petitioners herein to either deposit the E.P. amount or to get stay of the order, failing which attachment would be made. There is nothing wrong in the order passed by the Labour Court. Therefore, the order passed in the execution petition need not be interfered with.

9. The learned counsel appearing for the second respondent would further submit that the petitioners had sought to defer the proceedings filed under Payment of Gratuity Act only on the ground of pendency of the writ petitions relating to the backwages. But, it would not have any connection with the application filed before the Controlling Authority / first respondent in that petition and therefore, the Controlling Authority has rightly refused to grant stay of the proceedings. Thus, he prayed to dismiss all the writ petitions.



10. Heard the learned counsel appearing for both sides and perused the records carefully.

11. It is not in dispute that the second respondent/workman was dismissed from service on 06.05.1996 and after setting aside the order of dismissal from service, he was directed to be reinstated in service with backwages by the Labour Court on 30.04.2003. The said order of the Labour Court has become final, after a long legal battle before this Court. Finally, the second respondent/workman had issued reinstatement order on 12.01.2011 and accordingly, the petitioner rejoined on 13.01.2011. The second respondent/workman has filed claim petition before the Labour Court in C.P.No.48 of 2012 claiming backwages from the next day of dismissal from service ie. from 07.05.1996 to till the date of reinstatement ie., till 13.01.2011. The Labour Court, by the impugned order dated 31.01.2013, has held that the second respondent/workman is entitled to backwages for the said period.

12. Though it is submitted by the learned counsel for the petitioners/Society that the second respondent was found guilty by the criminal Court and he was let off only under Probation of Offenders Act and therefore, the second respondent is not entitled to backwages, the petitioners have not shown any Act or Rules or Regulations denying such right to the second respondent/workman or preventing the Labour Court to pass such order. Further, it is a settled legal position that the criminal case proceedings are entirely different from departmental inquiry. The competent authority ie., Labour Court has already held that the second respondent is entitled to reinstatement with backwages and the said order has become final. However, after a long legal battle before this Court, the second respondent was only reinstated in service on 13.01.2011 and he was not paid backwages and therefore, he filed a separate claim petition in C.P.No.48 of 2012 before the Labour Court claiming backwages to the tune of Rs. 13,76,795/-. The Labour Court, after considering the merits of the case, has ordered to pay the backwages to the tune of Rs.9,84,336/- with interest at the rate of 7.5% from the date of claim petition till the date of realization.

13. Merely because the second respondent has resigned his job after reinstatement, the petitioners cannot deny backwages to the second respondent. Further, the principle of "No Work No Pay" cannot be applied in this case as the second respondent was made to suffer by filing cases one after the other only by the petitioners. Time and again, the Hon'ble Supreme Court has held that the power to grant backwages is to be exercised by the Court/Tribunal keeping in view of the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. The second respondent has



stated in his claim petition that he was under non employment ever since he was dismissed from service and he is suffering very much. Considering the facts and circumstances of the case in entirety, the Labour Court has held that the second respondent is entitled to backwages. The petitioners have not raised any valid ground to interfere with the order passed by the Labour Court. Therefore, this Court is inclined to dismiss the writ petition in W.P.(MD). No.7588 of 2013.

14. It is not in dispute that during the pendency of W.P. (MD).No.7588 of 2013, the petitioners had obtained an order of interim stay without any condition, but the said order was modified by the Court based on the vacate stay petition filed by the second respondent and it was granted on condition to pay 25% of the award amount to the second respondent/workman and to pay interest at the rate of 7.5% for the remaining 75% of the award amount to the second respondent/workman once in three months and that in the event of non compliance, the interim order would be vacated automatically. The appeal filed by the petitioners against the said interim order ended in vain. However, as the petitioners have not complied with the interim order, it has become vacated automatically. Therefore, the Labour Court has proceeded with the execution petition filed by the second respondent/workman. A perusal of the impugned order dated 04.05.2016 shows that only on the basis of the request made by the petitioners, the Labour Court has granted time to the petitioners either to deposit the E.P. amount or to get stay order, failing which attachment would be made on 07.06.2016.

15. Of-course, it is true that outcome of W.P.(MD).No.7588 of 2013 will have a direct bearing over the execution petition, but for that reason, the conditional order of stay granted by this Court ought not to have been disobeyed by the petitioners. As stated earlier, the appeal filed against the said conditional order of stay has ended in futile. Even thereafter, the petitioners could have obeyed the order of this Court. But, they have not done so. It gives an impression that the intention of the petitioners was to drag on the matter one way or the other. However, the Labour Court has granted further time to the petitioners to get an order of stay or to make the deposit. But, that order has been challenged by the petitioners in W.P.(MD). No.9360 of 2016 and obtained an order of interim stay of further proceedings in the execution petition subject to the payment of Rs.3 lakhs to the second respondent/workman. It is stated that the said condition has been complied with by the petitioners. There is no ground raised by the petitioners to interfere with the order passed by the Labour Court in the execution petition and therefore, this Court is inclined to dismiss W.P.(MD).No.9360 of 2016 also.



16. W.P.(MD).No.19536 of 2016 has been filed by the petitioners as against the order refusing to defer the proceedings initiated under Payment of Gratuity Act. It is seen that under misconception the first respondent therein has refused to defer the proceedings holding that there is no dispute with regard to payment of backwages and thereafter, adjourned the case for further hearing. However, this Court has granted interim stay of passing of final order in the said proceedings and therefore, it is still pending. In any event, in view of above decisions of this Court to dismiss the writ petitions in W.P.(MD).Nos.7588 of 2013 and 9360 of 2016, this Court is inclined to dismiss this writ petition also.

17. In the result, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

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To

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Controlling Authority
under Payment of Gratuity Act, 1972 cum
the Deputy Commissioner of Labour,
Tirunelveli.

common order made in
W.P(MD)Nos.7588 of 2013,
9360 of 2016 and 19536 of 2016
12.08.2020

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