

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. Nos. 33946 and 38762 of 2005

and

W.M.P. Nos. 36835 and 36836 of 2005

V.Rajamani

... Petitioner
in both W.Ps

-vs-

1. The Deputy Registrar of Co-operative Society
Coimbatore Region,
Collectorate, Coimbatore - 18.
 2. The Special Officer,
Coimbatore and Erode Districts,
Survey and Land Records Department,
Employees Co-operative Thrift and
Credit Society Limited, C.C. No. 2457,
Collector Office Complex,
Coimbatore - 641 018.
- Respondents in
W.P. No. 33946 of 2005

1. The Special Officer,
Coimbatore and Erode Districts,
Survey and Land Records Department,
Employees Co-operative Thrift and
Credit Society Limited, C.C. No. 2457,
Collector Office Complex,
Coimbatore - 641 018.
 2. The Labour Court,
Coimbatore
- ... Respondents in
W.P. No. 38762 of 2005

PRAYER in W.P. No. 33946 of 2005: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the order dated 26.09.2005 made in Na.Ka.No.9096/2005/Ka.Vi(2) passed by the first respondent herein and the consequential order dated 30.09.2005 made in Na.Ka.No.2/2005Si.Na.Sa passed by the second respondent herein, quash the same.

PRAYER in W.P. No. 38762 of 2005: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the order dated 28.01.2005 made in I.D. No. 82 of 2003 on the

file of the Labour Court, Coimbatore and set aside the same.

For Petitioner : Mr.N.Manokaran
in both W.Ps

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader in
for Respondents in W.P.No.33946 of 2005
for R1 in W.P. No. 38762 of 2005
R2-Court in W.P.No.38762 of 2005

C O M M O N O R D E R

Since the issue raised in both the Writ Petitions by the same petitioner which are interconnected, therefore, with the consent of the learned counsel appearing for both sides, both the Writ Petitions have been heard together and being disposed of by this common order.

2. The petitioner was appointed as a Typist on daily wage basis in the respondent Society from 01.10.1999, she was paid consolidated pay of salary of Rs.2,700/- per month from 01.04.2000. Since she had been working for more than a year, it seems that, she approached the Deputy Commissioner of Labour, Coimbatore, to confer the permanent status under the relevant Act in August 2000. On 15.09.2000, the respondent Society passed an order by regularizing the service from 01.01.2000, however, according to the petitioner, from 01.11.2001, the petitioner was denied employment orally by the Society. Therefore, on 05.11.2001, the petitioner seems to have given a petition to the Deputy Commissioner of Labour, Coimbatore, who passed an order on 23.11.2001, directing the Society to permit the petitioner to continue in the service. Thereafter, on 24.11.2001, the petitioner given a representation to the Society. Subsequently, he filed a Writ Petition in W.P. No. 127 of 2002 seeking for a mandamus to consider the representation of the petitioner with regard to the reinstatement into service, where, this Court has passed an order on 08.01.2002, directing the respondent i.e., Society to consider the representation of the petitioner with regard to her reinstatement.

3. Pursuant to the direction issued by this Court, the Society, on 19.03.2002, passed a resolution to accept the plea of the petitioner to reinstate her in service from 19.03.2002.

4. However, though such a resolution was passed by the Society, she was not reinstated, hence she filed an Industrial Dispute in I.D. No. 82 of 2003 before the Labour Court, Coimbatore, where the Labour Court rejected the I.D., by award dated 28.01.2005, dismissing the said I.D., on the ground that, the petitioner was accommodated in the non-sanctioned post. Therefore, the very appointment of the petitioner in the Society itself was unlawful, hence the

relief sought for by the petitioner cannot be granted.

5. In the meanwhile, since there was an advice given by the Deputy Commissioner of Labour and the respondent Department, on 18.08.2005, the first respondent i.e., Deputy Registrar of Co-operative Society, Coimbatore region has passed an order, directed reinstatement of the petitioner of course with backwages from 01.10.2001 to 30.01.2005 and the backwages shall be calculated and be paid to the petitioner in four installments and if ultimately it is found that, backwages calculated and paid to the petitioner is wrong, the same would be recovered.

6. Pursuant to the said order passed by the first respondent dated 18.08.2005, the petitioner was reinstated and has been continuously working. Insofar as the backwages is concerned, it was quantified as Rs.1,92,564/-, out of which, only a sum of Rs.96,000/- was paid. However, subsequently by order dated 26.09.2005, the first respondent passed an order directing that the backwages paid to the petitioner for the period between 01.10.2001 to 30.01.2005 shall be recovered in one lumpsum by way of one installment. Following the said order passed by the first respondent dated 26.09.2005, the respondent Society on 30.09.2005 passed a consequential order seeking for recovery of the said backwages paid to the petitioner. Challenging the said order passed by the first respondent dated 26.09.2005 and the second respondent Society dated 30.09.2005 with regard to the backwages already paid and was sanctioned, the petitioner filed Writ Petition in W.P. No. 33946 of 2005, where, there has been an interim order of stay granted by this Court.

7. Also the petitioner filed the Second Writ Petition in W.P. No. 38762 of 2005, challenging the Labour Court award dated 28.01.2005 in I.D. No. 82 of 2003. That is how, both the Writ Petitions were filed and are being decided by this order.

8. Mr.N.Manokaran, learned counsel appearing for the petitioner would submit that, the only reason, on which the Labour Court rejected the I.D. filed by the petitioner is that, the petitioner was appointed not through the Employment Exchange, through which the name of the petitioner since has not been sponsored and this aspect even though has been a settled legal position subsequently, the said legal position could not be made applicable to the petitioner's case, as she was appointed in the year 1999, whereas, the law has been subsequently declared to that effect.

9. He would also submit that, insofar as the appointment made in respect of various posts like the petitioner, the names not being sponsored through employment exchange and such kind of appointments subsequently were ratified by the respondent department and those employees had continuously worked till the superannuation, therefore such kind of benefit shall be extended to the petitioner also. Therefore without considering this aspect in proper perspective, since the

Labour Court rejected the petitioner filed by the petitioner, the same is liable to be interfered with, he contended.

10. The learned counsel would further submit that, insofar as the challenge made with regard to the two orders, i.e., the order passed by the first respondent dated 26.09.2005 and the consequential order dated 30.09.2005 passed by the second respondent seeking for recovery of the amount paid to the petitioner for the backwages for the period between 01.10.2001 and 30.01.2005 is concerned, the said amount has been paid as per the very orders passed by the first respondent dated 18.08.2005 and the same has not been reviewed or cancelled.

11. The learned counsel appearing for the petitioner would also submit that, though the entire amount of backwages was quantified as Rs.1,92,564/-, only a sum of Rs.96,000/- paid to the petitioner and that was recovered from the petitioner by virtue of the impugned order. However, subsequently in view of the stay granted by this Court against the impugned order of the first and second respondents, the said amount of Rs.96,000/- has been paid together to the petitioner. Therefore, in the result that, out of Rs.1,92,564/-, a sum of Rs.96,000/- has been released and the same has been paid back to the petitioner though initially it was recovered from the petitioner, however the remaining amount has not been paid.

12. Per contra, the learned Special Government Pleader appearing for the respondents would submit that, insofar as non employment of the petitioner is concerned, though she raised an I.D., where she became unsuccessful, as the award was passed by the Labour Court against the petitioner. Unmindful of the award passed by the Labour Court, since the issue of the petitioner was independently considered by the respondent department, the first respondent, by order dated 18.08.2005, directed that the petitioner to be reinstated with backwages between 2001 and 2005. However, it was made clear that, during the said period since she was out of service and moreover, the petitioner was not initially appointed through the employment exchange as her name was not sponsored, against which, the Rule 149 of the Tamil Nadu Co-operative Societies Rules made under the Tamil Nadu Co-operative Societies Act are very clear, therefore, the law in this regard is well settled. Hence the petitioner is not entitled to reinstatement, nevertheless her case was considered and reinstatement was ordered. Therefore, at no stretch of imagination she can get any backwages between 2001 and 2005 and admittedly, for the said period of out of service, she has not done any service to the Society.

13. Therefore, the learned Special Government Pleader appearing for the respondents submits that, there is every justification on the part of the Society as well the first respondent to seek recovery of the backwages quantified as Rs.1,92,564/-, out of which, since Rs.96,000/- was paid and

the same was though recovered, was subsequently repaid to the petitioner, pursuant to the interim order passed by this Court in pending Writ Petition, therefore such amount shall be recovered from the petitioner.

14. Insofar as the I.D. award is concerned, even though the Labour Court has decided rightly in favour of the department, in view of the subsequent developments, where the petitioner was reinstated by the orders of the first respondent and continuously, the petitioner has been working till date for the past more than twenty years, these subsequent developments may be taken into account and suitable orders may be passed in this regard, he contended.

15. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. Insofar as the reinstatement of the petitioner is concerned, even though the petitioner has become unsuccessful in her attempt made before the Labour Court, where the Labour Court award was against the petitioner, as against which, she filed the second Writ Petition, the department i.e., first respondent himself has considered the case of the petitioner even after the Labour Court award, according to the proceedings dated 18.08.2005, where he decided to reinstate the petitioner with backwages.

17. However, subsequently it was found that, during the period between 2001 and 2005, the petitioner was out of service and she was not entitled to get any salary or backwages. Therefore, the impugned orders were passed by the first respondent as well as the second respondent to recover the amount and accordingly, the backwages since was quantified as a sum of Rs.1,92,564/-, whatever the amount paid, out of the said backwages, was directed to be recovered.

18. In this context, it is an admitted fact that, though it was quantified at a sum of Rs.1,92,564/- as total backwages for the said period, only a sum of Rs.96,000/- alone was paid to the petitioner and that was the amount sought to be recovered from the petitioner, against which, the Writ Petition in W.P. No. 33946 of 2005 was filed, challenging the orders dated 26.09.2005 and 30.09.2005.

19. However, during the pendency of the Writ Petition in view of the stay granted by this Court, the respondents have returned back the amount of Rs.96,000/- recovered from the petitioner.

20. If we take there facts into consideration, this Court feels that, insofar as the reinstatement of the petitioner is concerned, there is no serious dispute, as the very first respondent passed an order dated 18.08.2005, directed the petitioner to be reinstated with backwages.

21. The said order dated 18.08.2005 has been acted upon and accordingly, the petitioner has been reinstated and she

has been working till date for the past nearly about twenty years without any remark. Insofar as the said portion of the order dated 18.08.2005 reinstating the petitioner is concerned, that has become final, as, so far no review has been made by the respondent department. However the portion of the order permitting her with backwages for the period between 2001 to 2005 is concerned, it has been reviewed and accordingly impugned order was passed seeking recovery from the petitioner, out of which, Rs.96,000/- has already been recovered. However due to the order of this Court, the said amount of Rs.96,000/- has been paid back to the petitioner.

22. In this context, though the impugned orders of the respondents are under challenge, by thus, she is seeking the backwages for the whole period, i.e., Rs.1,92,564/-, this Court feels that, the petitioner is not entitled to get the said amount, as the petitioner admittedly has been out of service since 2001 to 2005 and she has not worked for the respondent Society.

23. Though the petitioner become unsuccessful in her attempt made before the Labour Court to get reinstatement, as against which, the present Writ Petition has been filed, in view of the order passed by the first respondent dated 18.08.2005, this Court feels that, the effect of the Labour Court award which is the impugned order in W.P. No. 33946 of 2005 has become otiose, this Court need not ponder on the merits of the award passed by the Labour Court.

24. Insofar as the backwages of the said period is concerned, the respondents are right, as their action is justifiable seeking recovery from the petitioner.

25. However, since a sum of Rs.96,000/- was already paid to the petitioner and at this length of time, the said amount cannot be recovered back from the petitioner as she has been continuously working in the respondent Society till date. By virtue of the impugned orders, though the entire amount of Rs.1,92,564/- was sought to be recovered from the petitioner only a sum of Rs.96,000/- has been recovered and subsequently was repaid. Hence, this Court feels that, the said amount of Rs.96,000/- again paid back to the petitioner, need not be further recovered. Therefore, to that extent or subject to that, the impugned orders can be sustained.

26. In the result, the following orders are passed in these Writ Petitions:

"Insofar as W.P. No. 33946 of 2005 is concerned, the impugned orders are sustainable. Therefore, they are sustained, subject to that the sum of Rs.96,000/- already paid to the petitioner shall not be recovered. In respect of the Labour Court award, which is the subject matter in W.P. No. 38762 of 2005, in view of the subsequent developments taken place, where, by order dated 18.08.2005, the petitioner was reinstated by order

of the first respondent and has been working all along till date the effect of the I.D. award become otiose. Therefore, the merits of the said award need not be further gone into in the said Writ Petition and accordingly, the same is liable to be dismissed. However such dismissal shall not have any effect on the petitioner with regard to her reinstatement and continuity of the service in the department."

27. With these directions and orders, these Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Co-operative Society
Coimbatore Region,
Collectorate, Coimbatore - 18.
2. The Special Officer,
Coimbatore and Erode Districts,
Survey and Land Records Department,
Employees Co-operative Thrift and
Credit Society Limited, C.C. No. 2457,
Collector Office Complex,
Coimbatore - 641 018.
3. The Presiding Officer,
The Labour Court,
Coimbatore

+2cc to Mr.N.Manokaran,. Advocate, S.R.No. 5440, 5438
+2cc to the Special Government Pleader CO.OP, S.R.No. 5381,
5382

W.P. Nos. 33946 and 38762 of 2005

and

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PVS (CO)
GN(08/07/2021)