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W.A.(MD) No.780 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.(MD) No.780 of 2011 and
M.P.(MD) No.1 of 2011
Against WP(MD) No.4176 of 2011

R.Navaneethakrishnan

... Appellant/Petitioner

-vs-

1.The Management,
Madurai District Central Co-operative Bank Ltd.,
187, North Veli Street,
Madurai-1.

2.The Management,
Dindigul District Central Co-operative Bank Ltd.,
Trichy Road,
Dindigul.

3.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 21.06.2011, passed in W.P.(MD) No.4176 of 2011, on the file of this Court.

Prayer in WP(MD) No.4176 of 2011 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the 3rd Respondent relating to his order, dated 27-12-2010 in I.D.No.76 of 1991 and Quash the same as illegal and direct the Respondents 1 and 2 to re-instate the Petitioner in service with back wages and all other attendant benefits.

For Appellant : Mr.Mohan Kumar
for Mr.A.K.Baskarapandiyan

For Respondents : Mr.D.Shanmugaraja Sethupathi for R1 & R2
R3 - Court



J U D G M E N T

Challenging the order, dated 21.06.2011, passed by this Court in W.P.(MD) No.4176 of 2011, the writ petitioner / workman has preferred this writ appeal.

2. The case of the workman is that he along with other workmen were engaged as daily wagers under the Madurai District Central Co-operative Bank Limited, Madurai. Initially, the Dindigul District Central Co-operative Bank Limited was under the control of Madurai District Central Co-operative Bank Limited and after bifurcation, the Dindigul District Central Co-operative Bank Limited was formed. According to the workmen, they were denied employment by the Management without regularizing their services on the ground that the workmen were not sponsored by the Employment Exchange and that Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 has not not been followed and hence, their appointment itself is illegal. Challenging the denial of employment, an industrial dispute was raised in I.D.Nos.76, 78, 83, 84, 85, 86 and 94 of 1991 before the Labour Court, Madurai. The conciliation took place for arriving at amicable settlement ended in vain and the Labour Court, by order dated 27.12.2010, rejected the relief sought for by the workmen holding that no records were produced by the workmen to establish that they have been appointed on permanent basis. Challenging the same, the workmen filed the writ petitions. This Court, after hearing both sides, by order dated 21.06.2011, dismissed the writ petitions confirming the order passed by the Labour Court. Challenging the same, one of the workmen, namely, Navaneethakrishnan has preferred this writ appeal.

3. On perusal of the impugned order, it is seen that the learned Single Judge has proceeded to confirm the order passed by the Labour Court on the basis that the workmen have not produced any records to establish that they have been employed on daily wage basis continuously without any break in service and worked for more than 240 days in a calender year. It is further observed that new documents cannot be introduced in the writ petition stage and therefore, the request for accepting the additional documents before the Writ Court was rightly rejected, more so, in the light of the decision in **Madras Aluminium Company Ltd., Mettur Dam vs. Labour Court, Coimbatore and another**, reported in 1992 (2) LLN 101.

4. A Three Judges' Bench of the Apex Court in **Manager, Reserve Bank of India, Bangalore vs. S.Mani and Others**, reported in (2005) 5 SCC 100, has held as follows:

"28.....The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the Appellant on the premise that they have failed to

<https://hcservices.courts.gov.in/hcservices/> plea of abandonment of service stating:



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"It is admitted case of the parties that all the 1st parties under the references CR No. 1/92 to 11/92 have been appointed by the 2nd party as ticca mazdoors. As per the 1st parties, they had worked continuously from April, 1980 to December, 1982. But the 2nd party had denied the above said claim of continuous service of the 1st parties on the ground that the 1st parties has not been appointed as regular workmen but they were working only as temporary part time workers as ticca mazdoor and their services were required whenever necessary arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the 1st party, since the 2nd party had denied the above said claim of continuous period of service, it is for the 2nd party to prove through the records available with them as the relevant records could be available only with the 2nd party."

The Tribunal, therefore, accepted that the Appellant had denied the Respondents' claim as regard their continuous service."

5. It is no doubt true that the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 will have a major role to play and it has overriding effect above the Tamil Nadu Cooperative Societies Act, 1983 as 1981 Act pertains to service conditions. The employees would have filed an application to call for the documents from the employer, if the employee do not have the documents to establish their case and to call for documents, there are ample provisions under the Industrial Disputes Act, 1947 and the Labour Court has got wider powers to look into those documents in terms of Section 11 of the Industrial Disputes Act, 1947. However, without doing so, mere seeking relief, as prayed for in the present case, cannot be acceded to. Therefore, this Court is of the view that the Labour Court as well as the Writ Court have rightly come to the conclusion that there is no record produced by the employees to establish that they have been appointed on regular / permanent basis and rightly rejected their plea. That apart, since the Labour Court is the fact finding authority, the Writ Court is not an Appellate Authority to re-appreciate the evidence or accept new evidence / documents to come to a different conclusion. In such circumstances, we do not find any error or infirmity in the order passed by the Labour Court as well as the Writ Court and accordingly, the writ appeal deserves to be dismissed.



6. In the result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To:

The Presiding Officer,
Labour Court,
Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-37440[F] dated 06/12/2021)

+1 CC to M/s.A.K.BASKARAPANDIYAN, Advocate (SR-37469[F] dated 06/12/2021)

W.A. (MD) No.780 of 2011

and

M.P. (MD) No.1 of 2011

Against WP(MD) No.4176 of 2011

03.12.2021

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