



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD)No.4000 of 2012

and

M.P (MD)No.1 of 2012

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The Arumuganeri Salt Workers Co-operative
Production and Sales Society Limited
Railway Feeder Road, Arumuganeri,
Thoothukudi District through its
Special Officer C.Chandrasekar

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The District Vice President,
District Co-operative Employees Society(CITU)
16, Masilamanipuram 3rd Street,
Thoothukudi-628 003.

... Respondents

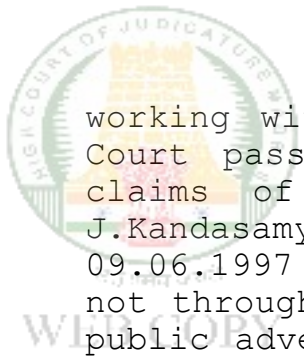
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings in ID No.87 of 2005 dated 14.09.2011 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
For R2 : Mr.D.Srinivasa Raghavan
For R1 : Court

O R D E R

This writ petition has been filed challenging the order passed in ID No.87 of 2005, dated 14.09.2011 by the 1st respondent and to quash the same.

2.The case of the petitioner is that the petitioner Society was founded in the year 1949 with an object to manufacture and sell the salt for the benefit of its members, who are salt workers themselves. Presently, the Society is administered by the petitioner as Special Officer, deputed from the Co-operative Department, Government of Tamil Nadu. While so, the second respondent raised an industrial dispute in I.D.No.87 of 2005 before the first respondent seeking arrears of salary and yearly increment of certain employees

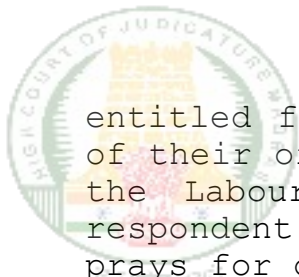


working with the petitioner Society. The first respondent/Labour Court passed an award against the petitioner in respect of the claims of three employees viz., S.Ganesaperumal, S.Ponraj and J.Kandasamy. The said 3 employees were working since 03.03.1998, 09.06.1997 and 20.04.1998 respectively and their appointments were not through Employment Exchange, but direct appointment without any public advertisement, and were irregular appointments. Further, the petitioner has averred that by virtue of G.O.Ms.No.86 Co-operative F&CP, dated 12.03.2001, the judgment of this Court in *Justin's case* and the judgment of the Hon'ble Supreme Court in *M.Umarani's case*, the Registrar of Co-operative Societies issued a direction directing the regularization of the employees regularly appointed from 08.07.1980 till 11.03.2001 at the minimum scale of pay determined with effect from 01.09.2007. Accordingly, the appointments of the said three employees were also regularized, by fixing their pay scale with effect from 01.09.2007.

3.Even prior to such regularization, the aforesaid industrial dispute was raised for claiming increment from the date on which they completed one year in service. In fact, the Board has made such irregular appointments and regularized such appointments and also acted against the interest of the Co-operative Societies. When the petitioner Society was brought under the administration of the Special Officer of the Government of Tamil Nadu, the said officer refused to recognize such regularization. The appointments of the three employees were regularized by the proceedings of the Joint Registrar, dated 28.02.2007, 25.06.2007 and 28.02.2007 respectively. Therefore, the said employees are entitled to get the increment only by taking into consideration the regularization of service in the minimum pay scale, dated 07.09.2007, whereas, the second respondent was insisting that the increment to be paid to the said employees from the completion of one year service of the three employees original employment. The first respondent has passed an order directing the petitioner to pay increment to the said three employees on completion of one year from the date of original appointment. Challenging the said award, the petitioner has filed the present writ petition.

4.The learned counsel appearing for the petitioner submitted that though the appointments of the members of the second respondent were irregular, such appointments were regularized in the year 2007, by fixing the minimum scale of pay. Without any scheme or by-law, the members of the second respondent claiming only increment and also without considering the said judgments, the first respondent/Labour Court has passed an award in favour of the members of the second respondent, which is unsustainable. Hence, he prays for allowing the present writ petition.

5.Per contra, the learned counsel appearing for the second respondent submitted that as per 18(1) and 12(3) settlements, which were entered into as Ex.W.18, Ex.W.19, the said three employees are



entitled for annual increment on completion of one year of service of their original employment. After considering Ex.W.18 and Ex.W.19, the Labour Court has passed an award in favour of the second respondent members, which need not be interfered with. Hence, he prays for dismissal of the present writ petition.

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6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

7. Before this Court venture into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court, in catena of decisions, has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

8. The issue involved in the writ petition is whether the members of the second respondent are entitled to get annual increment from the completion of one year service of their original employment.

9. Admittedly, the members of the second respondent are working in the petitioner Society since 1998 and 1997 onwards and their respective appointments were not through Employment Exchange, but direct appointment, without any public advertisement, which were irregular appointments. Further, it is not in dispute that the members of the second respondent service were regularized in the year 2007, based on the judgment of the Hon'ble Supreme Court in *Umarani's case*, whereas, the members of the second respondent claims that they are entitled to get annual increment from the completion of one year service of their original appointment. A perusal of Ex.W.18 and Ex.W.19 reveal that the said three employees are entitled for annual increment on completion of one year service of their original employment. However, there is no Scheme available for granting annual increment to the employees.

10. In the absence of any Scheme or any By-law claiming annual increment from the date of completion of one year of service of their original employment, the Labour Court had erred in passing the award in favour of the members of the second respondent, which is an error of law. Hence, the order of the labour Court dated



14.09.2011 passed in I.D.No.87 of 2005 is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

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To

1.The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-9950[F] dated 10/03/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-9988[F] dated 10/03/2021)

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