



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	15.11.2021
Pronounced on	29.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.289 of 2015

and

WMP(MD) .Nos.1 and 2 of 2015

The Management/Special Officer,
N.N.576, Poosalakudi Primary Agricultural-
Co-operative Credit Society,
Now represented through President,
Devakottai Post, Sivagangai District. : Petitioner

.vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.V.Suriyakala : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari, to call for the records from the first respondent's impugned award made in I.D.No.13 of 2009 dated 23.07.2014 and quash the same.

For Petitioner : Mr.C.G.Pethanaraj

For R2 : Mr.J.Anandkumar

ORDER

This Writ Petition has been filed to call for the records from the first respondent's impugned award made in I.D.No.13 of 2009, dated 23.07.2014 and quash the same.

2.The brief facts of the case are that the 2nd respondent was having all qualifications to be appointed as Saleswomen in the petitioner's society and was appointed from 07.03.2002 on daily wages of Rs.900/- per month vide Resolution No. 1 / 2002, dated 01.03.2002. Thereafter, the second respondent was brought under consolidated pay by the Erstwhile Board of Management. However, the 2nd respondent service was terminated on 01.07.2008 showing various reasons. Aggrieved over the 2nd respondent preferred I.D. No. 13 / 2009 and the same was allowed vide order, dated 23.07.2014.



3. The petitioner's society has filed counter and has stated that the Registrar of Co-operative Societies, Chennai had issued a circular, dated 08.02.2008 to terminate all the employees working in the societies in irregular manner such as without consulting the employment exchange and appointing committee. On the basis of the circular, the Deputy Registrar of Co-operative Societies and the Joint Registrar of Co-operative Societies, Sivagangai Region has sent a letter, dated 03.03.2008 and 02.06.2008 to stop the daily wage employees working in the co-operative institution. Hence, the second respondent was relieved from service on 01.07.2008. Aggrieved over, the second respondent raised Industrial Disputes in I.D.No.13 of 2009 before the Labour Court, Madurai and the petitioner society appeared and filed counter. Thereafter, the Labour Court directed the second respondent to reinstate with continuity of service without backwages on 23.07.2014. Aggrieved over the award, the petitioner's society has filed this present writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent.

5. The claim of the petitioner society is that the second respondent was not appointed as per Recruitment Rules applicable to Cooperative Societies. The list was not called from the employment exchange and the appointing committee has not appointed the second respondent. There is no valid appointment order and hence the appointment is illegal. The Government had issued G.O. Ms. No. 86 dated 12.03.2001 to regularize the workers of Cooperative Societies. As per Justin's case, the Registrar of Cooperative Societies had regularized the workers appointed from 1982 to 12.03.2001. But the petitioner had worked from 2002 as daily wage basis and her appointment is purely temporary to run the Fair Shop. The petitioner society has also raised a plea that the second respondent has not completed 480 days in any 2 years period.

6. The 2nd respondent submitted that pending this writ petition, the writ petitioner's society was directed to pay last drawn salary to the second respondent which was ordered under M.P.No.2 of 2015 and the writ petitioner is receiving the payment until now.

7. The claim of the petitioner society that the appointment was irregular as the list was not called for from employment exchange, not appointed through recruitment committee, as a one time the appointees from 1982 to 12.03.2001 were regularized, the 2nd respondent was appointed in the year 2002 as daily wages to run Fair Price shop cannot be entertained. If these pleas are accepted then it is unknown why there are recruitment beyond 2002 without following recruitment rules. The petitioner society cannot be allowed to take such pleas violating their own rules and regulations and instructions issued from time to time. Therefore the present writ petition filed by the petitioner society fails.



8. The Government / Cooperative Societies / Public Sector Undertaking are the largest employer providing jobs. In order to have more or less a uniform code for providing job opportunities and to avoid bias, prejudice and stand scrutiny in Court of law for its justness and fair play, Rules ought to be issued. In order to implement the same without deviating, strict implementation procedure ought to be followed.

9. Already there are temporary appointments are made. For example there are appointment under Rule 10a(i) of the Tamil Nadu State and Subordinate Services Rules, which are not permanent and the rights appointees are restricted. Likewise the government ought to come out with some rules so that the appointees rights may be restricted and the same would be well with the knowledge of the appointees. Instead of that there are appointments like Daily Wages employees, NMR, Contract Labourer, Consolidated pay employees etc., The nomenclature alone changes but for the appointees it is only "JOB".

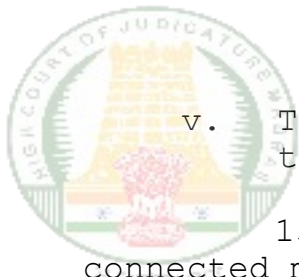
10. The appointees take up the job for meagre salary with a fond hope that one day they will be regularised and then make such claim under the principles of "legitimate expectation" before the Courts, such pleas cannot be brush aside.

11. It is seen that the 2nd respondent is receiving last drawn salary from the date of filing of the writ petition. The petitioner is receiving the salary until now. It is also seen that the 1st respondent has allowed the 2nd respondent's petition with continuity of service without backwages. Since the 2nd respondent is receiving the last drawn salary without doing any work, based on the interim order of this Court, which the 2nd respondent is not entitled to under the principles of "No work No Pay". To meet the ends of justice this Court holds that the 2nd respondent ought to be directed to repay the 50% of the amount back to the petitioner's society.

12. Therefore, this Court passes the following order:

- i. The petitioner society is directed to reinstate the 2nd respondent forthwith;
- ii. The petitioner society is directed to grant continuity of service to the 2nd respondent;
- iii. The 2nd respondent is not entitled to the back wages from the date of dismissal i.e. from 01.07.2008 until the interim order passed in writ petition directing to pay the last drawn salary.
- iv. Under the principles of "No work No Pay", the 2nd respondent is directed to repay the 50% of the amount received under the interim order back to the petitioner's society and the petitioner society shall grant instalment

<https://hcservices.ecourts.gov.in/hcservices/> to repay the amount.



v. The petitioner's society shall pay a cost of Rs.10,000/- to the 2nd respondent.

13. The writ petition is disposed of on above terms and the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sji/trp

To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-36430[F] dated 29/11/2021)

+1 CC to M/s.R.SARAVANAN, Advocate (SR-36453[F] dated 30/11/2021)

**Order made in
W.P(MD) No.289 of 2015
and
WMP(MD) .Nos.1 and 2 of 2015
29.11.2021**

nsn(CO)

TR(08.12.2021) 4P 4C