



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Twenty Fifth day of April Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.M.P.No.121 of 2022

in W.P.No.13628 of 2019

S.SUNDARAMBAL

[PETITIONER]

Vs

1 K.711 KASIPALAYAM PRIMARY AGRICULTURAL [RESPONDENTS]
CO-OPERATIVE SOCIETY,
REP. BY ITS PRESIDENT K.K.KARTHIKEYAN,
KASIPALAYAM POST, GOBICHETTIPALAYAM TALUK,
ERODE DISTRICT- 638 454 .

2 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
ERODE REGION, ERODE.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to direct the 1st Respondent to pay the last drawn wages under section 17B of the industrial Dispute Act, 1947 from 27.11.2017 to 31.12.2021 and continue to pay the wages every month (in WMP.No.121 of 2022) till the disposal of the WP.No.13628 of 2019.

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.L.P.SHANMUGASUNDARAM, Advocate for the petitioner and of MR.R.ARUNDATTAN, Advocate for the 1st Respondent and of MR.S.BALAMURUGAN, Government Advocate for the 2nd Respondent, the court made the following order:-

The parties are hereinafter referred to as per their description in the Writ Petition for the sake of clarity and convenience.

2. Heard Mr. L.P.Shanmugasundaram, Learned Counsel for the Second Respondent, Mr. R.Arundattan, Learned Counsel for the Petitioner and Mr. S.Balamurugan, Learned Government Advocate appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.



3. The Second Respondent, while working as clerk in the Co-operative Society of the Petitioner, was dismissed from service by Order No.Na.Ka.1/2017 dated 27.11.2017 passed by the Petitioner pursuant to the enquiry conducted for certain acts of misconduct said to have been committed by her. In the Review Petition in Na. Ka.No.8735/2017/Sapa filed against the said order by the Second Respondent under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, it was held by the First Respondent in the order dated 22.02.2019 that the punishment inflicted by the Petitioner on the Second Respondent was disproportionate to the charges proved and the order of dismissal dated 27.11.2017 was set aside and instead an order was passed for withholding the increment with cumulative effect for a period of one year, which is challenged by the Petitioner in the Writ Petition.

4. The Second Respondent has filed this Miscellaneous Petition claiming last drawn wages from the Petitioner under Section 17-B of the Industrial Disputes Act, 1947, along with the requisite affidavit stating that she has not been gainfully employed elsewhere. The claim has been made for the period from 27.11.2017 to 31.12.2021, but Learned Counsel for the Second Respondent restricts it from the date of filing on Writ Petition on 26.04.2019 and has made an endorsement to that effect in the court record.

5. Though the impugned order has been passed under the Tamil Nadu Co-operative Societies Act, 1983, the benefits under Section 17-B of the Industrial Disputes Act, 1947, would be available to an employee of a Co-operative Society, like the Second Respondent in this case, as observed by the Division Bench of this Court in **Sri Mushnan Centre Teachers Co-op. Thrift and Credit Society -vs- P.Motacharakim** (Order dated 22.03.2019 in W.A. No. 924 of 2019), referring to earlier decisions in that regard.

6. The Petitioner has filed Counter-Affidavit dated 12.04.2022 in this Miscellaneous Petition, but has not made any averment or produced any material showing the gainful employment of the Second Respondent during the relevant period. Since the assertion of the Petitioner that she has not been gainful employed elsewhere remains uncontroverted, she is entitled to the same rate of wages that she was receiving at the time of termination on 27.11.2017 from the time of filing of the Writ Petition on 26.04.2019 until further orders. The monthly payment for the said amount with effect from May 2022 onwards shall be made on the due dates and the arrears that have accumulated till April 2022 shall be paid by 31.07.2022. It is made clear that if it is intended to extract work from the Second Respondent prospectively, the Petitioner is not precluded from reinstating her in service on payment of wages to her at the rate applicable in terms of the impugned order passed by the First Respondent, subject to the result of the Writ Petition.



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In fine, this Miscellaneous Petition is ordered on the aforesaid terms. No costs.

-sd/-
25/04/2022

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRESIDENT K.K. KARTHIKEYAN,
K.711, KASIPALAYAM PRIMARY AGRICULTURAL
CO-OPERATIVE SOCIETY, KASIPALAYAM POST,
GOBICHETTIPALAYAM TALUK, ERODE DISTRICT- 638 454 .

2 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
ERODE REGION, ERODE.

C.C. to M/S.L.P.SHANMUGASUNDARAM, ADVOCATE, SR.No.3258/2022.

C.C. to M/S.GOVERNMENT PLEADER, SR.No.3319/2022.

Order
in
WMP.No.121 of 2022
IN WP.No.13628 of 2019

Date :25/04/2022

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PA (12/04/2022) IT
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