



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.03.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.339 of 2015

P.Durai

... Petitioner

Vs.

1.The Presiding Officer,
The Principal Labour Court,
Vellore.

2.The Management,
Special Officer,
C-2540, Jayapuram Primary Agricultural
Co-operative Bank,
Jayapuram Post,
Thirupattur Taluk.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, after calling for the records relating to the Award dated 25.07.2012 passed in I.D.No.84 of 2011, quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with continuity and with back wages and other attendant benefits, Award costs.

For Petitioner : Mr.S.T.Varadarajulu

For R1 : Court

For R2 : Mr.P.S.Sivashanmugasundaram

ORDER

The petitioner herein is alleged to have been terminated from service on 12.12.2003. While the learned counsel for the petitioner submitted that the respondent/Management had terminated him without conducting an enquiry, the learned counsel for the respondent/Management submitted that the petitioner herein was not on regular service and his appointment was not in accordance with the provisions of the Tamil Nadu Cooperative Societies Act, 1983.

2. As such, he would submit that the termination without enquiry is proper. When the petitioner had raised a dispute before the Labour Court, the same came to be rejected on the ground that the petitioner's appointment was not in accordance with the Section 149 of the Tamil Nadu Co-operative Societies Act and by placing reliance on the decision of the Hon'ble Supreme Court in the case of A.Umarani Vs. Registrar Cooperative Societies and others reported in CDJ 2004 SC 849,



the Labour Court had found that since the petitioner's appointment was not on regular basis, he was not entitled for regularization and therefore, the question of reinstatement will not arise.

WEB COPY

3. I am not in agreement with the findings of the Labour Court. Section 25-F of the Industrial Disputes Act 1947, the definition of workman would include any workman who has put in one year of continuous service under an employer. Such workman would also include, workman who all are on temporary basis or on daily wages. This position has been reiterated by the Hon'ble Supreme Court in various cases including the case of the President, Srirangam Co-operative Urban Bank Limited vs. the Presiding Officer, Labour Court and another reported in 1996-2-LLJ 216, the relevant portion of the order reads as follows:

"From the impugned order of termination of the petitioner, it is clear that the same has been done pursuant to the direction issued by the Joint Registrar of Co-operative Societies, Tiruchy in the report made by him in RC.No.14755/81-B5 (i) dated April 9, 1982. It may be pointed out here that even though the termination was made pursuant to the direction of the Joint Registrar, nevertheless such a termination was required to be made in accordance with the provisions contained in S. 25F of the Act in as much as the said section does not make any difference whether the appointment has been made in accordance with law or not. The expression used in that section is, 'workman employed in any industry who has been in continuous service for not less than one year under an employer', therefore the factum of employment is relevant and not the legality or otherwise of it."

4. The aforesaid extract is self-explanatory. In view of this, the termination of the petitioner without conducting an enquiry or following the procedure under Section 25-F of the Industrial Disputes Act, is illegal. Though this Court has found the termination to be illegal, I have also taken into account of the fact that the petitioner herein had preferred the present writ petition in the year 2015 and the same came to be finally disposed of only in the year 2022. In these circumstances, if the back wages is restricted to 50%, the ends of justice could be secured.

5. In the light of the above observations, the impugned Award dated 25.07.2012, is quashed. Consequently, there shall be a direction to the respondent/Management to reinstate the petitioner together with continuity of service and 50% of the back wages, calculated on the basis of the last drawn salary of the petitioner herein. Such disbursement shall be done within a period of eight (8) weeks from the date of receipt of a copy of this order.



6. Accordingly, this Writ Petition stands allowed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pns
To

1.The Presiding Officer,
The Principal Labour Court,
Vellore.

2.The Management,
Special Officer,
C-2540, Jayapuram Primary Agricultural
Co-operative Bank,
Jayapuram Post,
Thirupattur Taluk.

+1 cc to Mr.S.T.Varadarajulu, Advocate Sr.NO. 22008

+1 cc to Mr.P.S.Sivashanmugasundaram, Advocate Sr.NO. 22819

W.P.No.339 of 2015

SKM(CO)

A.SK(20/04/2022)